

- City of Atascadero
- City of Auburn
- City of Carmel by the Sea
- City of Ceres
- City of Davis
- City of Del Rey Oaks
- City of Lincoln
- City of Lodi
- City of Lompoc
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- City of Patterson
- City of Pismo Beach
- City of Placerville
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- County of San Luis Obispo
- County of Sonoma
- County of Santa Cruz
- County of Shasta
- County of Stanislaus
- County of Yolo
- California Chapters of the American Public Works Association
- California State Association of Counties
- League of California Cities
- Regional Council of Rural Counties
- Shasta County Water Agency

STATEWIDE STORMWATER COALITION

September 8, 2011

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



RE: COMMENT LETTER – DRAFT PHASE II SMALL MS4 GENERAL PERMIT

Dear Ms. Townsend:

The members of the Statewide Stormwater Coalition submit the following comments on the State Water Resources Control Board's ("Board") Draft Phase II Small Municipal Separate Storm Sewer Systems (MS4s) General Permit ("draft Permit"). The draft Permit was released for public review and comment on June 7, 2011.

Forty-eight public entities and public agency interest groups throughout California have joined together as the Statewide Stormwater Coalition ("Coalition") to review and comment on the draft Permit. *The Coalition is supportive of efforts to improve and maintain water quality in California. Our goal is to partner with the Board to develop an effective and workable Phase II Stormwater Permit that will allow Coalition members to comply with and continue to advance our common objective of clean water.*

134.1

We are gravely concerned that MS4s and businesses cannot afford to comply with the draft Permit. Many provisions of the draft Permit are neither effective nor workable. This letter details these Coalition concerns. A legal opinion on the draft Permit from Best Best & Krieger is also provided as Attachment "A". Coalition members will provide detailed jurisdiction-specific issues in separate comment letters.

134.2

The Coalition supports the comments sent separately by:

134.3

- California State Association of Counties, League of California Cities and the Regional Council of Rural Counties
- California Stormwater Quality Association
- Mayors of Monterey County

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- Monterey County Hospitality Association
- Monterey Regional Stormwater Program
- Napa Chamber of Commerce
- Placer Regional Stormwater Coordination Group

The Coalition has not had the opportunity to review all of its members' comments. Omission of any Coalition member letters in the listing above in no way is meant to indicate a lack of support for their individual comment letter(s).

The Coalition's number one concern: COST.

134.4 → *The draft Permit imposes substantial and unjustifiable new costs on permittees and businesses at a time of widespread economic distress.*

The draft Permit contains significant new requirements which are not included in the Federal Clean Water Act's rules for small MS4s. Most Coalition members estimate their **costs to comply with the draft Permit will increase by more than three hundred percent**. Statements from Coalition members detailing anticipated impacts of the draft Permit upon their agency are provided in Attachment "B".

MS4s will be forced to hire consultants and new staff to comply with the draft Permit. Many will have to purchase costly equipment such as Vactor-type sewer maintenance trucks. **This new State demand for local agency spending comes at the same time local governments are implementing furloughs and employee layoffs of municipal staff**, including police officers and firefighters, because they lack funds to pay salaries. Local governments are also struggling to maintain existing infrastructure and equipment because of declining revenue. **Coalition members cannot afford to comply with the draft Permit.**

134.5 → *Public entities have no practical way to raise funds to meet these costs.*

Property and sales tax revenues have plummeted in recent years leaving public agencies struggling to fund core, or in some instances, basic services. Theoretically, public agencies can collect revenue through taxes, reimbursements or fees. Practically, however, they are unlikely to obtain funds through these means due to the requirements established in Propositions 218 and 26. **It is nearly impossible to impose new or increased taxes or property-based fees** as the State Constitution requires majority or super-majority vote of the people to approve any new taxes or fees. To make matters worse, recent State actions aim to take tax-type funds away from local governments with laws like Assembly Bills X1 26 and X1 27 (redevelopment fund raids).

134.6 → *Coalition members can have no reasonable expectation the State will agree to reimburse us for imposed programs that are unfunded state mandates.*

The State has strongly opposed local government claims to reimbursement for new stormwater unfunded state mandates such as those advanced by the co-permittees on the Phase I Permits issued in San Diego and Los Angeles Counties. Attachment "A" discusses these practical barriers in detail.

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134.7 → *Local businesses can't afford the cost to comply with the draft Permit.*

The draft Permit would require existing businesses, industries and property owners to make costly changes. These valuable community members are facing hard economic times. Many have already cut back their operations and laid off employees in an effort to survive.

The draft Permit would further burden a broad spectrum of established large and small businesses with **costly new requirements that are not linked to a proven need.** New requirements would include structural trash capture control retrofits and on-site modifications for run-off retention. These and other overly broad and highly prescriptive **requirements will feed already existing economic distress** and likely lead to litigation. Worse, these burdensome regulations may cause businesses to close or leave California.

At a minimum, **the State should delete retrofitting requirements** from the draft Permit. Redundancy with existing business regulatory programs should be examined and eliminated and the scope of targeted businesses should be prioritized and significantly scaled back.

134.8 → **The Coalition's number two concern: THE DRAFT PERMIT IS NOT FEASIBLE OR REASONABLE.**

The draft Permit includes excessive data gathering and unnecessary reporting requirements.

An effective stormwater program spends money where it can best achieve the goal of improving water quality. The draft Permit heavily emphasizes detailed documentation and reporting. Coalition members have learned these and **many requirements of the draft Permit have little or no discernible connection to water quality outcomes!** Diverting scarce resources into unnecessary activities is an inappropriate use of the public monies we are entrusted to use wisely. The Coalition has prepared Attachment "C," a matrix which documents the wasteful provisions of the draft Permit.

134.9 → *The draft Permit is inconsistent and redundant.*

Permittees need clarity and consistency in regulatory requirements. The draft Permit contains numerous internal inconsistencies, incomplete information, ambiguities and redundancies with existing regulatory programs. Clear, unambiguous language is an absolute necessity in light of the recent Ninth Circuit Court case, Natural Resources Defense Council, Inc. v. County of Los Angeles. The elimination of redundant programming is necessary to use our limited resources as efficiently and effectively as possible to achieve stormwater quality improvements. These problems, if they remain, will lead to confusion and uncertainty about how to comply. They will render the final regulation unworkable. **Compliance challenges will require limited program resources to be spent on justifying actions and fending off enforcement fines and third-party law suits.** Attachment "A" and comments from the California Stormwater Quality Association catalog these problems in detail.

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134.10 → *The draft Permit ignores basic fairness principles.*

The draft Permit fails fairness tests. It substantially raises costs, ignores economic and legal realities, and regulates inconsistently by failing to account for the vast difference in circumstances between MS4s. It wastes precious funds on documentation and reporting. It ignores the “grandfather” principle that regulators should leave existing legally operating businesses alone. It lacks scientific justification for change. This point is further elaborated in the CASQA comment letter.

The draft Permit requires local entities to provide front-line enforcement of the State’s industrial and construction stormwater permit requirements while the State is collecting and retaining fees for this work. Local entities are willing to fill this role, or partner with the State, if the State is willing to pay for it. A portion of the permit fees paid to the State through the Construction General Permit and the Industrial General Permit which is intended to fund inspections should be provided to local entities being regulated to do that work.

The Coalition’s request: A COMPLETE RE-DRAFT.

134.11 → *Coalition members want to comply and support good regulatory programs to clean up stormwater.*

Coalition members have worked hard to develop their stormwater programs and want to continue to comply with federal regulations. Many states, including Maryland, North Carolina and New Jersey, have good regulatory programs that actually clean up stormwater. These states support their programs through proper funding such as a stormwater utility. Coalition members support a smart, well-funded stormwater program *that will work in California*. **We want a program that allows us to comply**; a program that does not set us up for failure.

134.12 → *The Coalition members request a complete re-draft: one that includes stakeholder input and a better public review process.*

Coalition members request the Board prepare a new draft permit using a different process. This time, the Board should invite stakeholders (MS4s and other regulated entities, public interest groups, businesspeople, and enforcement agencies) to help with the redraft, and should incorporate ample time for public review. The new version should also be drafted to allow for a strict interpretation of its contents, as noted in the recent Ninth Circuit Court case, Natural Resources Defense Council, Inc. v. County of Los Angeles.

Coalition members are very willing to work with the Board to help examine stormwater program costs, prioritize program elements and develop cost-effective programs that protect water quality.

The Coalition members request a complete re-draft: one that considers cost implications to permittees and to the business community.

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The Board should prepare a new draft of the permit that considers the fiscal implications to all entities regulated under the draft Permit including the business community. A cost-benefit analysis of implementation requirements and a business case evaluation should be prepared for any retrofitting requirements.

134.13 → *The Coalition members request a complete re-draft: one that includes practical solutions to achieving stormwater compliance.*

Coalition members understand their responsibility and role in achieving federal and state goals for clean water. The Board must understand its responsibility to establish regulations that are achievable. The draft Permit should adhere to the federal Six Minimum Control Measures and find creative solutions for defining and prioritizing water quality issues within the state.

Creative solutions we recommend the Board pursue include:

134.14 → • Allow MS4s that are over 50,000 in population to replace dry weather outfall monitoring with a Stormwater Wise House Call program as part of the Illicit Discharge Detection and Elimination Element. MS4s would target high pollutant potential discharges based upon information learned during the first permit term to assist them in developing a simplified Facility Source Control Plan. This program would be on-par-with Water Wise House Calls performed by water agency staff to assist customers with water conservation efforts. The permit should also allow for the possibility that MS4s could coordinate with their local water and wastewater agencies to jointly conduct these type of programs (for example when water agency staff conduct a Water Wise House Call or when a wastewater agency conducts a Fats Oils and Grease inspection those staff could be trained to also evaluate and educate customers on source control best management practices).

134.15 → • Allow MS4s that are under 50,000 in population to replace dry weather outfall monitoring with enhanced public outreach targeted to high pollutant potential sectors of the business community as part of the Illicit Discharge Detection and Elimination Element.

134.16 → • Where MS4s work to develop agreements with cooperating agencies to perform program elements, allot those MS4s additional time to comply. The additional time is necessary in order to establish interagency agreements and develop and implement training programs to ensure successful implementation.

134.17 → • Move the responsibility of monitoring the quality of waters of the state from MS4s to the State's Surface Water Ambient Monitoring Program (SWAMP). Provide opportunity for MS4s to pay a to-be-agreed-upon amount above current annual fees to support the SWAMP.

134.17 → • Allow MS4s to continue to implement current stormwater programs consistent with the federal Six Minimum Control Measures provided SWAMP monitoring does not indicate demonstrable adverse stormwater impact. Where the SWAMP identifies

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waters of the state that are degrading and identifies the specific pollutants of concern causing the degradation, then the local MS4s should develop programs to locate and correct possible sources of the pollutants found by the State to be a problem.

- 134.18 → • Work with Department of Consumer Affairs to include stormwater awareness requirements in contractor, engineer, architect, landscape architect and geologist licensing exams.
- 134.19 → • Provide more program implementation tools for MS4s. For example, create a website, or data base with a listing of all what the State identifies as successful program elements (Public Education and Outreach, Public Involvement, Municipal Operations and interagency, regional collaborative programs). This would allow other MS4s to see what successful program elements look like regionally and statewide; and then recreate or use those resources within their own jurisdiction. This will be especially important for newly designated MS4s.
- 134.20 → • Revise the Storm Water Multiple Application and Reporting Tracking System (SMARTS) to allow MS4s to utilize that system in lieu of creating their own databases and tracking systems. Data could be input "real-time". This would allow for statewide consistency of information. State and Regional Board staff could run their own reports and audits from SMARTS directly and not have to wait for MS4s to submit costly annual reports that, from our experience, often are never reviewed by enforcement staff.

In closing, and as indicated by our comments, the Coalition has significant concerns. We request the Board craft an effective and workable permit that will allow MS4s to comply. We reiterate our common objective and our interest in working with Board staff to improve water quality and on creating a permit that will work for all of California's small MS4s and the business community. Thank you for the opportunity to comment.

Sincerely,



Russell S. Thompson, PE
Public Works Director
City of Atascadero



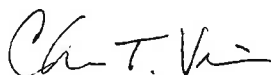
John Goss
Interim City Administrator
City of Carmel by the Sea



William Marshall
City Engineer, Interim
City of Davis



Bernie Schroeder
Director of Public Works
City of Auburn



Chris Vierra
Mayor
City of Ceres



Jerry Edelen
Mayor
City of Del Rey Oaks

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Jim Estep
City Manager
City of Lincoln



Thomas Frutchey
City Manager
City of Pacific Grove



Jan Marx
Mayor
City of San Luis Obispo



Konradt Bartlam
City Manager
City of Lodi



Matt Thompson
Wastewater Resource Manager
City of Paso Robles




Richard G. Simonitch
City Engineer
City of Sand City



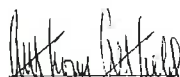
Brad Wilkie for
Laurel Barcelona
City Administrator
City of Lompoc



Rod B. Butler
City Manager
City of Patterson



Larry Lavagnino
Mayor
City of Santa Maria



Anthony Altfeld
City Manager
City of Marina



Shelly Higginbotham
Mayor
City of Pismo Beach



Ray Corpuz
City Manager
City of Seaside



Chuck Della Sala
Mayor
City of Monterey



M. Cleve Morris
City Manager
City of Placerville



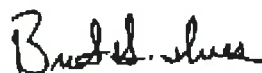
Linda Kelly
City Manager
City of Sonoma



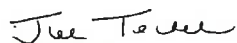
Andrea Lueker
City Manager
City of Morro Bay



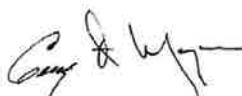
JD Hightower
Development Services Director
City of Riverbank



Brent Ives
Mayor
City of Tracy



Jill Techel
Mayor
City of Napa



George Magnuson
Mayor
City of Rocklin



Robert Ketley
Senior Utilities Engineer
City of Watsonville



Garner R. Reynolds
Director of Public Works
City of Newman



Pauline Roccucci
Mayor
City of Roseville



Mark Deven
City Manager
City of Woodland

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Steve Jepsen
City Manager
City of Yuba City



Granville "Bow" Bowman
Director of Public Works
County of San Bernardino



Matt Rexroad
Chair
Yolo County Board of
Supervisors
County of Yolo



Perry Beck
Town Manager
Town of Loomis



Adam Hill, Chairman
San Luis Obispo County Board
of Supervisors
County of San Luis Obispo




Doug Fredericks
Advocacy Chair
California Chapters of the
American Public Works
Association



Tony Lashbrook
Town Manager
Town of Truckee



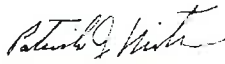
John Presleigh
Director of Public Works
County of Santa Cruz



Karen Keene
Senior Legislative
Representative
California State Association of
Counties



Mike Crump
Director of Public Works
County of Butte



Patrick J. Minturn
Director
Department Public Works
County of Shasta



Kyra Emanuels Ross
Legislative Representative
League of California Cities



Thomas R. Harty for
Yazdan Emrani
Director of Public Works
County of Monterey



Reg Cullen
Senior Engineer
County of Sonoma



Staci Heaton
Regulatory Affairs Advocate
Regional Council of Rural
Counties



Ken Grehm
Director of Public Works
County of Placer



Matt Machado
Director of Public Works
County of Stanislaus



Patrick J. Minturn
Chief Engineer
Shasta County Water Agency

Attachment A – Letter from Best Best & Krieger
Attachment B – Cost Impacts of the Draft Permit
Attachment C – Water Quality Matrix

cc:

Senator Thomas Berryhill
State Senator Sam Blakeslee
Senator Anthony Cannella
State Senator Noreen Evans
Senator Tony Strickland
State Senator Doug LaMalfa

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State Senator Rod Wright
State Senator Lois Wolk

Assembly Member Katcho Achadjian
Assembly Member Luis Alejo
Assembly Member Michael Allen
Assembly Member Bill Berryhill
Assembly Member Joan Buchanan
Assembly Member Wes Chesbro
Assembly Member Beth Gaines
Assembly Member Ted Gaines
Assembly Member Kathleen Galgiani
Assembly Member Jared Huffman
Assembly Member Bill Monning
Assembly Member Jim Nielsen
Assembly Member Kristin Olsen
Assembly Member Mariko Yamada

ATTACHMENT A

Letter from Best Best & Krieger



BEST BEST & KRIEGER
ATTORNEYS AT LAW

INDIAN WELLS
(760) 568-2611

IRVINE
(949) 263-2600

LOS ANGELES
(213) 617-8100

ONTARIO
(909) 989-8584

655 WEST BROADWAY, 15TH FLOOR, SAN DIEGO, CA 92101
PHONE: (619) 525-1300 | FAX: (619) 233-6118 | WWW.BBKLaw.COM

RIVERSIDE
(951) 686-1450

SACRAMENTO
(916) 325-4000

WALNUT CREEK
(925) 977-3300

WASHINGTON, DC
(202) 785-0600

SHAWN HAGERTY
(619) 525-1327
SHAWN.HAGERTY@BBKLAW.COM
FILE No. 82510.00117

August 12, 2011

Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: Comment Letter – Phase II Small MS4 General Permit

Dear Ms. Townsend:

The City of Roseville (“City”) has retained Best Best & Krieger LLP (“BBK”) to provide legal comments on the draft National Pollutant Discharge Elimination System (“NPDES”) General Permit and Waste Discharge Requirements (“WDRs”) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (“MS4s”) (the “Draft Permit”).¹ Our comment letter is divided into two parts. Section I of the letter addresses the unfunded state mandates issues presented in the Draft Permit. Section II of the letter contains more general legal comments on the Draft Permit.

SECTION I.
UNFUNDED STATE MANDATES

The Draft Permit includes many new programs or higher levels of service that qualify as unfunded state mandates. As explained below, the State Board should either delete those new programs or higher levels of services from the Draft Permit or be prepared to pay for them.

134.21 → **A. Overview of State Mandates Law As Applied to Storm Water Permits**

Article XIII B, Section 6(a) of the California Constitution (“Section 6”) provides that whenever “any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service” Section 6 applies to storm water

¹ The Draft Permit is dated June 7, 2011. Several of the attachments to the Draft Permit were reissued by the State Board on or about July 8, 2011.
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permits issued by the State Board and the Regional Water Quality Control Boards.² Thus, Section 6 will apply to the State Board's reissuance of the Small MS4 Permit.

Section 6 was added to the California Constitution by voter approval in 1979, as part of a larger effort that had as its goal both limiting state and local spending and restricting the ability of local entities to raise revenue. Section 6 must be viewed as a "safety valve" designed to protect local governments from being placed in the untenable position of being required by the state, on the one hand, to implement certain state mandated programs while also, on the other hand, being prohibited from raising the money needed to pay for those state mandated programs.³ Recognizing that such a situation was neither a fair nor a wise approach to governing, the voters enacted Section 6 to prevent state government from shifting financial responsibility for carrying out governmental functions to local agencies without the state paying for them.

To implement Section 6, the Legislature created the Commission on State Mandates ("Commission").⁴ The Commission has sole and exclusive jurisdiction to determine whether a state law or order of a state agency is an unfunded state mandate.⁵ In accordance with Section 6, Government Code section 17500 et seq., and case law, the Commission has determined that an unfunded state mandate exists when: (a) the state imposes a new program or higher level of service that is; (b) mandated by state law, not federal law; and (c) when the local government lacks adequate fee authority to pay for the new program or higher level of service.

The Commission has issued two recent decisions that apply the unfunded state mandates law to storm water permits, both of which have determined that certain elements of storm water permits constitute unfunded state mandates.⁶ In one decision involving the Los Angeles County Phase I Storm Water Permit, the Commission found that the requirement to install trash cans at transit facilities constituted an unfunded state mandate. In a second decision involving the San Diego County Phase I Storm Water Permit, the Commission found that the street sweeping, street sweeping reporting, conveyance system cleaning, conveyance system cleaning reporting, educational component, watershed activities and collaboration, Regional Urban Runoff Management Program, program effectiveness assessment, long-term effectiveness assessment and all permittee collaboration components of the permit were unfunded state mandates.

² County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 920 (holding that Government Code section 17516(c), which purports to bar State and Regional Board orders from the state mandates process, is unconstitutional as applied to storm water permits).

³ Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727, 735; County of San Diego v. State of California (1997) 15 Cal.4th 68, 81.

⁴ See Government Code §§ 17500 et seq. and California Code of Regulations, Title 2, Chapter 2.5, §§ 1181 et seq.

⁵ Government Code §§ 17551 and 17552; Kinlaw v. State of California (1991) 54 Cal.3d 326, 331-334.

⁶ In Re Test Claim on Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001 (Test Claims 03-TC-09, 03-TC-19, 03-TC-21), Statement of Decision dated July 31, 2009 ("Los Angeles Test Claim"); In Re Test Claim on San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Statement of Decision dated March 26, 2010 ("San Diego Test Claim").

These two decisions represent the Commission's views on how the state mandates law applies to storm water permits. As such, the decisions provide insight into how the Commission would assess the state mandates issues presented in the Draft Permit. As explained in more detail below, the Draft Permit includes many new programs or higher levels of service that the Commission has either already determined constitute unfunded state mandates or which the Commission's analysis in the Los Angeles and San Diego Test Claims would suggest are unfunded state mandates.

134.22 → **B. The Draft Permit Contains Many New Programs or High Levels of Service**

The unfunded state mandates law applies when a state agency imposes a new program or higher level of service on a local agency. To determine if a program is new or imposes a higher level of service, the Commission will compare the challenged program with the legal requirements in effect immediately before the enactment of the challenged program. If the program did not exist under previous law, it is a new program. A "higher level of service" occurs when the new requirements are intended to provide an enhanced level of service to the public that is more specific than the prior law.⁷

Whether the Draft Permit imposes new programs or higher levels of service therefore requires a comparison of the Draft Permit with State Board Order No. 2003-2005-DWQ, the existing Small MS4 Permit ("Existing Permit"). Without attachments, the Existing Permit is only 19 pages long and tracks precisely the 6 minimum measures that U.S. EPA determined in the Phase II Storm Water Regulations to be sufficient to reduce the discharge of pollutants from MS4s to the maximum extent practicable ("MEP"). In contrast, the Draft Permit is, without attachments, 93 pages long and includes multiple programs and requirements that either are not addressed in the Phase II Storm Water Regulations at all or greatly enhance the requirements of the 6 minimum measures.

A comparison between the Draft Permit and the Existing Permit reveals that the Draft Permit contains many new programs. Specifically, the following program elements contained in the Draft Permit are not required by the Existing Permit and, consistent with the Commission's analysis, would represent new programs under the state mandates law.

- The requirement to regulate landscape irrigation, irrigation water, lawn watering, individual residential car washing and street wash water. (Draft Permit, Section B.3). The regulation of these categories of non-storm water is not required by the Existing Permit. (See Existing Permit, Section D.2.c.(6).)
- The development of an Enforcement Response Plan. (Draft Permit, Section E.4.c). Nothing in the Existing Permit requires an Enforcement Response Plan, particularly one that contains the detail reflected in the Draft Permit and that expressly requires the dischargers to assume

⁷ San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal.4th 859, 878.
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responsibility for “front-line” enforcement of the Construction General Permit and the Industrial General Permit.

- The requirement to secure adequate resources to comply with the mandates of the Draft Permit. (Draft Permit, Section E.4.d). The Existing Permit does not contain such a requirement. This is particularly true with regard to the specific capital and O & M expenditure, staffing and other reporting requirements of Draft Permit, Section E.4.d.(ii) and (iii).
- The development of a trash reduction program. (Draft Permit, Section E.10). The Existing Permit does not require the development of such a program.⁸
- The development of an industrial/commercial runoff program. (Draft Permit, Section E.11). The Existing Permit does not require such a program.⁹
- The development of a receiving water monitoring program. (Draft Permit, Section E.13). The Existing Permit does not require such a program.
- The development of an effectiveness assessment program, including pollutant loading quantification. (Draft Permit, Section E.14). The Existing Permit does not require such a program.¹⁰
- The incorporation of TMDLs and implementation plans. (Draft Permit, Section E.16). The Existing Permit does not address how TMDLs apply to the Existing Permit.

A comparison between the Draft Permit and the Existing Permit also reveals that the Draft Permit contains many higher levels of service. Specifically, the following program elements contained in the Draft Permit are enhanced program requirements that represent higher levels of service under the state mandates law:

- Major components of the Public Outreach and Education Program. (Draft Permit, Section E.5.) Under the Existing Permit, dischargers “must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the

⁸ The Commission determined in the Los Angeles Test Claim that the requirement to install trash cans at transit facilities was an unfunded state mandate.

⁹ The Commission determined in the Los Angeles Test Claim that industrial and construction inspections were state mandates.

¹⁰ The Commission determined in the San Diego Test Claim that the effectiveness assessment programs in the permit were unfunded state mandates.

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BEST BEST & KRIEGER
ATTORNEYS AT LAW

public can take to reduce pollutants in storm water runoff.” In contrast to this one sentence requirement of the Existing Permit, Section E.5 of the Draft Permit contains a host of very specific and enhanced education and outreach requirements that must be targeted to many different groups. For example, Section E.5.b mandates the use of very involved Community-Based Social Marketing (“CBSM”) strategies or a CBSM equivalent. Section E.5.b then enumerates at least 13 express requirements for such a CBSM program, including implementing at least 2 surveys during the permit term, conveying the message to 20% of the target audience each year and providing educational information that goes well beyond the storm water program itself. Sections E.5.c (Industrial/Commercial) and E.5.d (Construction) contain similar provisions that greatly exceed the requirements of the Existing Permit. All of these components are higher levels of service.¹¹

- Major components of the Public Involvement and Participation Program. (Draft Permit, Section E.6.) The Existing Permit provides that the dischargers “must at a minimum comply with State and local public notice requirements when implementing a public involvement/participation program.” (Existing Permit, Section D.2.b.) In contrast to this one sentence requirement, Section E.6 of the Draft Permit requires the development of a public involvement and participation strategy, a budget to implement that strategy, the establishment of a citizen’s advisory group containing specified members, and the sponsoring of activities. (Draft Permit, Section E.6.(d).(ii).(a)-(d).) All of these components are higher levels of service.
- Major components of the Illicit Discharge Detection and Elimination (“IDDE”) Program. (Draft Permit, Section E.7.) The Existing Permit requires the development and implementation of an IDDE program, but provides flexibility in the development of such a program. (Existing Permit, Section D.2.c.) In contrast, Section E.7 of the Draft Permit contains at least 6 very specific and enhanced requirements. Section E.7.a requires that a GIS map containing specialized information be prepared and updated. Section E.7.b requires that dischargers develop priority areas that are “likely” to have illicit discharges and specifies that 20% of the urbanized area be included in that designation. Section E.7.c requires field observations, field screening and analytical monitoring at specified intervals. Section E.7.d requires the investigation of any illicit discharge within 48 hours and requires corrective action in a very short time period. Section E.7.d requires the development of a Spill Response Plan. Section

¹¹ The Commission determined in the San Diego Test Claim that several educational components in the permit were unfunded state mandates.



E.7.e requires a specific training program. All of these requirements are higher levels of service.

- Major components of the Construction Site Storm Water Runoff Control Program. (Draft Permit, Section E.8.) The Existing Permit requires the development of a program to reduce pollutants in any storm water runoff to the MS4 from construction sites. (Existing Permit, Section D.2.d.) The program focuses on the development of erosion and sediment control measures, requirements to implement those erosion and sediment control measures and enforcement of those measures. In contrast, Section E.8 contains very specific measures to inventory all construction sites (Section E.8.a), to inspect sites at designated frequencies (Section E.8.c), to train staff, including requiring staff to be certified as Qualified SWPPP Developers or Practitioners (Section E.8.d), and to educate construction site operators (Section E.8.e). All of these requirements are higher levels of service.
- Major components of the Pollution Prevention/Good Housekeeping Program. (Draft Permit, Section E.9.) The Existing Permit requires the development and implementation of an operation and maintenance program that includes a training component designed to prevent or reduce pollutant runoff from municipal operations. (Existing Permit, Section D.2.f.) In contrast, Section E.9 of the Draft Permit contains very extensive new requirements for such a program. Dischargers must inventory all of their facilities (Section E.9.a), map them (Section E.9.b), annually assess them for pollutant “hotspots” (Section E.9.c), develop SWPPPs for each “hotspot” (Section E.9.d), inspect them regularly and at specified intervals (Section E.9.e), develop a storm drain assessment, with at least 20% of all catch basins prioritized at high (Section E.9.f), maintain storm drains at specific intervals, including cleaning all catch basins within one week of being found one-third full and removing trash and debris in high priority areas 3 times per year (Section E.9.g), develop a very specific O&M assessment, incorporate water quality and habitat enhancement features in flood management facilities, including implementing 2 changes or 2 additions to 2 projects per year unless infeasible (Section E.9.i), implementing a pesticides, herbicides and fertilizer program (Section E.9.j) and conducting annual training (Section E.9.k). These requirements are higher levels of service.¹²

¹² The Commission determined in the San Diego Test Claim that the conveyance cleaning and conveyance cleaning reporting requirements in the permit were unfunded state mandates, including a provision to clean catch basins that were one-third full.



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- Major components of the Post-Construction Storm Water Management Program. (Draft Permit, Section E.12.) The Existing Permit requires the development, implementation and enforcement of a program to address storm water runoff from new development and redevelopment projects, but provides flexibility in the development of such a program. (Existing Permit, Section D.2.e.) While certain larger communities (generally over 50,000) had to follow more detailed rules for program development, these more detailed requirements still maintained program flexibility, as evidenced by the different ways different Regional Boards handled enrollment for entities subject to these rules. In contrast to both of these requirements of the Existing Permit, Section E.12 of the Draft Permit contains enhanced and very detailed program requirements. Among other things, Section E.12 requires a watershed baseline characterization (Section E.12.b.1), watershed sediment budgets, interim hydromodification management (Section E.12.b.4), long-term watershed process management, including numeric criteria (Section E.12.b.5), and treatment system verification (Section E.12.b.8). These requirements are higher levels of service.¹³
- Major components of the reporting requirements and reporting program. (Draft Permit Section E.16 and individual elements of each of the new programs and higher levels of services identified above). The Existing Permit contains an annual reporting requirement. (Existing Permit, Section 2.F.) In contrast, the Draft Permit contains very detailed reporting requirements for almost every element of the program. These detailed reporting requirements are a higher level of service.¹⁴

134.23 → C. **The New Programs or Higher Levels of Service are Imposed Under State Law not Federal Law**

The second question under the state mandates law is whether the new program or higher level of service is imposed under state law or federal law. Consistent with the purposes of Section 6, which seeks to prevent the state from shifting state program responsibility to local governments without providing funding, federal mandates are not subject to reimbursement under the state mandates law.¹⁵ The portions of the Draft Permit identified above are state law requirements, not federal ones.

¹³ The Commission determined in the San Diego Test Claim that the hydromodification and low impact development portions of the permit were state mandates.

¹⁴ The Commission determined in the San Diego Test Claim that many of the reporting requirements of the permit were unfunded state mandates, including the reporting requirements for street sweeping and conveyance system cleaning.

¹⁵ Government Code § 17556(c); Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1593.

The Small MS4 Permit issued by the State Board is a state permit, not a federal permit, that is issued under state law.¹⁶ The State's NPDES program, including the Small MS4 Permit, is administered "in lieu of the federal program under state law"¹⁷ The State's NPDES program is not a delegation of federal authority, but instead is a state program which functions in lieu of the federal program.¹⁸ There is no legitimate legal dispute on this question.¹⁹ Therefore, the only question under the unfunded states mandates law is what elements of the state program are required by the federal regulations. Anything not required by the federal regulations is imposed under state law.

To determine what elements of the State's NPDES Program are required by the federal regulations, the Commission will look to the express requirements of the Clean Water Act and the federal regulations. Since states are free to implement more stringent requirements as part of their state NPDES programs that exceed the federal requirements,²⁰ the Commission will compare the requirements of the Draft Permit with the specific requirements of the Clean Water Act and regulations. For example, in the Los Angeles and San Diego Test Claim decisions, the Commission looked carefully at the requirements of the Clean Water Act and the Phase I Regulations and compared the express requirements of those laws with the requirements of the permits at issue. Those challenged portions of the permits that were not required by the federal regulations were considered to be state mandates. Here, the Phase II Regulations would guide the Commission's analysis. As explained below, the Draft Permit exceeds the requirements of the Phase II Regulations.

134.24 → 1. The New Programs and Higher Levels of Service in the Draft Permit Exceed the Requirements of the Six Minimum Measures.

Section 402(p)(3)(B) of the Clean Water Act requires that an NPDES permit be obtained for discharges from municipal storm sewers, and further requires that those permits meet the requirements of Section 402(p)(3)(B)(i) to (iii). Section 402(p)(3)(B)(4) and (6) required U.S. EPA to adopt regulations for such permits in two phase—Phase I, applicable to larger MS4s and Phase II, applicable to small MS4s. Specific to small MS4s, Section 402(p)(3)(B)(6) required

¹⁶ *Shell Oil Company v. Train* (9th Cir. 1978) 585 F.2d 408, 410-412.

¹⁷ 33 U.S.C. §§ 1342(b) and 1342(c)(i); 40 C.F.R. § 123.22.

¹⁸ *State of California v. U.S. Department of Navy* (9th Cir. 1988) 845 F.2d 222, 225-226 (noting that "state permit programs are not a delegation of federal authority, but instead are state programs which function in lieu of the federal program.").

¹⁹ Both Congress and the courts have resolved this question in a way that leaves no room for legal dispute. Congress has made clear that "such a state program is one which is established under state law and which functions in lieu of the federal program. It is not a delegation of federal authority. This is a point which has been widely misunderstood with regard to the permit program under Section 402 of the Act. That Section . . . provides for state programs which function in lieu of the federal program and does not involve a delegation of federal authority." (H.R. Conf. Rep. No. 95-830, 95th Cong., 1st Sess., p. 104) Myriad cases have confirmed this point. (*District of Columbia v. Schramm* (D.C. Cir. 1980) 631 F.2d 854, 861; *American Paper Institute, Inc. v. U.S. E. P.A.* (7th Cir. 1989) 890 F.2d 869, 874; *Chesapeake Bay Foundation, Inc. v. Virginia State Water Control Bd.* (E.D. VA 1978) 453 F.Supp. 122, 126; *Chesapeake Bay Foundation, Inc. v. United States* (E.D. VA 1978) 445 F.Supp. 1349, 1353)

²⁰ 33 U.S.C. § 1370; Water Code § 13377.

EPA to adopt regulations which, among other things, establish a “comprehensive program” for small MS4s and create, at a minimum, requirements for state storm water management programs.

In 1999, EPA issued its Phase II Storm Water Regulations.²¹ The Phase II Regulations establish six minimum control measures that must be implemented through NPDES permits. These six minimum control measures are (1) public education and outreach; (2) public involvement; (3) illicit discharge detection and elimination; (4) construction site runoff control; (5) post-construction storm water management in new development and redevelopment; and (6) pollution prevention and good housekeeping of municipal operations. In the Phase II Regulations, U.S. EPA was very clear that implementation of these six minimum measures through an NPDES permit would achieve the MEP standard and, absent evidence to the contrary, would also be sufficient to achieve state water quality standards. In fact, U.S. EPA stated in guidance to the Phase II Regulations that it “strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4,” except in limited cases.²²

The six minimum control measures contained in the Phase II Regulations therefore represent the federal mandates under the Clean Water Act. To the extent the requirements of the Draft Permit exceed the six minimum control measures, they represent state mandates, not federal mandates. As noted above, the Existing Permit incorporates the six minimum measures verbatim from the Phase II Regulations. Therefore, the analysis above regarding the comparison between the Existing Permit and the Draft Permit also serves to illustrate the components of the Draft Permit that exceed the federal mandates. In other words, the new programs identified above exceed the federal mandates because they are not one of the six minimum control measures. The higher levels of service identified above exceed the federal mandates because they go beyond the requirements of the six minimum measures as set forth in the Phase II Regulations. Together the new programs and higher levels of service exceed the federal requirements.

134.25 → 2. The New Programs or Higher Levels of Service Cannot Be Converted into Federal Mandates Simply By Reference to MEP

Program requirements that are not mandated by the federal regulations do not become a federal mandate simply because the State Board says the requirements are necessary to achieve the MEP standard found in Section 402(p)(3)(B)(iii) of the Clean Water Act. There are several reasons why this is true.

First, in the Phase II Regulations, U.S. EPA made clear that the six minimum measures, when properly implemented, “will reduce pollutants to the maximum extent practicable.” Of course, Congress and U.S. EPA, not the state, define the requirements of federal law. Here, U.S.

²¹ Generally contained in 40 CFR § 122.30 et seq. The full Phase II Regulations, with an important Preamble, are contained in 64 FR 68722.

²² 40 CFR §122.34(e)(2).

EPA has found that the six minimum measures reduce discharges to the MEP. While the State Board is authorized to exceed these requirements under state law, it cannot convert those state mandates into federal mandates by reference to MEP.

Second, the State Board itself has already recognized that the MEP standard reflected in Section 402(p)(3)(B)(iii) prohibits the discharge of pollutants “from” the MS4 that have not been reduced to the MEP and does not extend to discharges “to” the MS4.²³ In connection with a petition filed over the 2001 San Diego Phase I Storm Water Permit, the State Board struck down language in the permit that applied the MEP standard to dischargers “into” MS4s. The State Board concluded that such permit language applied the MEP standard too broadly. Further, the State Board found that the provisions of the permit that regulated discharges “to” the MS4 had to be justified by other state or federal provisions of the law, not by MEP. Thus, the State Board has already found that MEP cannot be used to justify all elements of a permit.

Third, the MEP standard is similar to due process and other broad federal standards which the Commission regularly addresses in the state mandates context. Like these other broad federal standards, the Commission defines the minimum requirements of such federal standards by reference to federal statutes, regulations and court decisions. Here, the Phase II Regulations establish the meaning of MEP, and the elements of the Draft Permit that exceed those requirements are state mandates, not federal mandates.

134.26 → **D. The Permittees Lack Adequate Fee Authority to pay for the State Mandated New Programs or Higher Levels of Service**

To qualify as a reimbursable state mandate, the local agency subject to the mandate must lack adequate fee authority to pay for the mandate.²⁴ A local agency will have adequate fee authority if it “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” In both the Los Angeles and San Diego Test Claims, the Commission determined that “a local agency does not have sufficient fee authority . . . if the fee or assessment is contingent on the outcome of an election by voters or property owners.” On this issue, the Commission reasoned that under “Proposition 218, the local agency has no authority to impose the fee without the consent of the voters or property owners.”

The Commission’s decisions in the Los Angeles and San Diego Test Claims demonstrate that dischargers do not have adequate fee authority to pay for the new programs or higher levels of service required by the Draft Permit.

²³ In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association, State Water Board Order WQ 2001-15.

²⁴ Government Code § 17556(d)
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134.27 → E. **Unless the State is Willing to Fund These New Programs or Higher Levels of Service, the Sate Board Should not Include Them in the New Small MS4 Permit**

The unfunded state mandates law is about funding of state programs. It is a constitutional requirement imposed upon the state to fund programs that it requires local agencies to implement. Everyone involved in storm water regulations recognizes that the current programs are not fully funded at all levels, federal, state and local. In its report on Urban Stormwater Management in the United States, the National Research Council concluded that state and local governments do not have adequate financial support to implement the storm water program in a rigorous ways. Similarly, State Board staff, in the workshops on the Draft Permit, have repeatedly recognized that the programs are underfunded.

Under the state mandates law, the State Board has a clear choice. If it elects to impose new states mandates, on top of ones that are already underfunded, it must provide the funding to implement those mandates. If it does not wish to provide the funding, then the State Board should not include the mandates in the new Permit. Rather, the State Board should work with the dischargers to develop a permit that is consistent with the federal requirements and can be implemented by local agencies. The choice is with the State Board.

SECTION II.
GENERAL LEGAL COMMENTS
ON THE DRAFT PERMIT

The Draft Permit raises other legal concerns beyond the state mandates issues discussed above. Section II of this letter outlines these other key legal issues.

134.28 → A. **The Draft Permit Contains Ambiguous or Misleading Language that Must Be Deleted or Clarified, Especially in Light of Recent Case Law**

The Ninth Circuit Court of Appeals recently issued a decision (the “NRDC Decision”)²⁵ involving the Los Angeles County Phase I Storm Water Permit that the State Board must take into account in connection with the Draft Permit. In the NRDC Decision, the Ninth Circuit held that the Los Angeles County Flood Control District was liable for discharges from two mass emissions monitoring stations located in the Los Angeles and San Gabriel Rivers because measurements at the stations showed levels of pollutants that exceeded the numeric requirements of the Basin Plan.

The NRDC Decision illustrates several key legal points that emphasize why very careful drafting of the conditions contained in the new Permit is required. According to the Ninth Circuit, courts review a permit’s provisions as they would review any contract or legal document. Each permit term is simply enforced as written, and all permit conditions are enforceable. For this reason, the State Board must carefully draft each term in the Permit, and only conditions that are intended to be enforceable as written should be included. In this regard,

²⁵ Natural Resources Defense Council, Inc. v. County of Los Angeles (Filed July 13, 2011) Case No. 10-56017.
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it is common for State Board staff to say that a certain permit condition is “intended” to be flexible or that it will not be interpreted in certain ways. These comments are well meaning and are appreciated by program managers because they demonstrate the State Board’s desire to work with dischargers on issues. However, as the NRDC Decision underscores, the permit will be enforced as written. Thus, all ambiguous and misleading language, regardless of how well meaning it may be, must be removed from the Draft Permit. Only express terms that the State Board intends to be enforced as written should be included.

To address this issue, it may be advisable for the State Board to take the approach the U.S. EPA took in its Phase II Regulations. U.S. EPA very clearly separated its “guidance” on how the regulations might be implemented from the mandatory requirements of the regulations. The State Board should consider substantially reducing the enforceable provisions of the Draft Permit and placing much of the broader guidance language in a separate document, such as the Fact Sheet. In this way, the State Board can provide recommendations on how the enforceable components of the Permit are to be implemented without needlessly opening the dischargers up to liability based upon poorly drafted permit language.

A second important component of the NRDC Decision is that it undermines the iterative process that has been the core of State Board’s storm water regulation for years. Even when a discharger is engaging in the iterative process, the discharger may still face liability for poorly drafted permit conditions. The State Board should use the Draft Permit as an opportunity to bolster the iterative process by developing stronger language on the protections afforded to dischargers who engage in the iterative process in good faith. At the same time, the State Board should only include permit provisions that are intended to be enforced as written. It should not allow, as happened in the Los Angeles example, receiving water standards contained in the Basin Plan to be used as numeric, end of pipe effluent limitations.

134.29 → **B. The Draft Permit is Inconsistent with the Requirements of Water Code Section 13360**

Water Code section 13360(a) provides that “[n]o waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.” The Draft Permit’s 93 pages of very prescriptive requirements are not consistent with the provisions of Section 13360. Rather than allowing the dischargers to comply with the Permit in any lawful manner, the Draft Permit specifies exactly how the dischargers must comply. Extreme examples include telling dischargers how often they must pick up trash in open channels, who must be on a mandatory “citizen’s advisory committee”, how they must prioritize certain facilities (i.e., at least 20% of x shall be designated as high priority) and what specific type of educational strategy they must use to comply with the educational minimum measure.

In addition to the discussion above regarding the NRDC Decision, Water Code section 13360 demonstrates why the State Board should take a different approach than the prescriptive one taken in the Draft Permit. Water Code section 13360 requires the State Board to set forth the enforceable requirements to which the dischargers must conform, but leaves implementation to the dischargers. If the State Board, similar to U.S. EPA, would like to provide guidance on how to comply, it should do so in documents that are not enforceable themselves. However, to include such requirements in an enforceable permit condition is contrary to Water Code section 13360.

134.30 → **C. The Draft Permit Improperly Expands Requirements of TMDLs Without Going through the Basin Plan Amendment Process**

When the State Board includes effluent limitations in an NPDES permit based upon a TMDL, it must do so in a manner that is “consistent with the assumptions and requirements of any available wasteload allocation for the discharge”²⁶ In the Draft Permit, the State Board appears to have expanded requirements of the various Basin Plan Amendments that incorporate the listed TMDLs and their corresponding implementation plans. For example, the Draft Permit appears to require the City of Roseville, as well as the City of Woodland, to perform certain requirements that are not imposed on it under the Basin Plan Amendment at issue. The Draft Permit must be revised to only include TMDL requirements that are consistent with the assumptions and requirements of the existing wasteload allocations. Any requirements that are not consistent with the relevant Basin Plan Amendment must be deleted.

134.31 → **D. The Draft Permit Should Allow for More Flexible Water Capture Solutions Consistent with the State Recycled Water Policy**

In February of 2009, the State Board adopted the Recycled Water Policy. Among other things, the Recycled Water Policy identified storm water as a valuable resource that must play a part in augmenting the state’s water supply. The Recycled Water Policy established very ambitious goals for increasing the capture and reuse of storm water.

The Draft Permit includes provisions that require the capture and infiltration of storm water. (See, e.g., Draft Permit, Section E.12.b.3.) However, as with many recent Phase I permits issued by the Regional Boards, the Draft Permit appears to stress on-site solutions over regional projects that might have similar water quality benefits but greater groundwater recharge and storm water capture results. The Draft Permit should provide more flexibility on these issues, and the State Board should use the Draft Permit as an opportunity to provide flexibility in order to achieve the goals of the Recycled Water Policy.

²⁶ 40 CFR section 122.44(d)(1)(vii)(B).
82510.001176637624.2

134.32 → E. **The Draft Permit Should Only Include Provisions that Can be Achieved By the Dischargers, Not Requirements that Dischargers Cannot Achieve Without Approval of Others**

The Draft Permit includes many provisions that are mandatory as to the dischargers but the implementation of which are not entirely within the control of the dischargers. By way of example, Section E.9.i.(ii) of the Draft Permit states that “the Permittee shall develop and implement a process to incorporate water quality and habitat enhancement features in the design of all new and retrofitted flood management projects that are associated with the MS4 or that discharge to the MS4.” The Draft Permit goes on to provide that the “Permittee shall implement changes or additions to two flood management projects per year to enhance water quality and habitat functions, unless a feasibility analysis demonstrates the infeasibility of such changes or additions.”

Mandatory provisions such as E.9.i.(ii) should be deleted from the Draft Permit. It is an undue burden on local agencies to be required to implement certain projects or programs while not having complete control of the ability to complete the project or program. In the flood management example, many other entities are involved in flood management projects, including, without limitation, flood control districts and the Army Corps of Engineers. Imposing a mandatory requirement on dischargers to perform something over which they do not have complete control is not fair, and only exposes dischargers to liability. The unfairness of this language is not mitigated by the infeasibility language inserted in the Draft Permit. An infeasibility analysis is costly and the standard for infeasibility is not clear. The Draft Permit should only include mandatory provisions that the dischargers have the ability, on their own, to achieve.

134.33 → F. **The Draft Permit Cannot Purport to Provide Dischargers with Authority that the State Board Does not Possess**

The Draft Permit includes language that purports to authorize dischargers to perform certain functions or activities without identifying the State Board’s authority to make the authorization. For example, Section E.7.d.(ii).(e) of the Draft Permit states that the “Permittees may seek recovery and remediation costs from responsible parties or require compensation for the cost of field screening and investigations.” The ability of dischargers to seek cost recovery is limited by the California Constitution, state statutes, city charters and local ordinances. It is unclear under what authority the State Board is providing dischargers with the power to seek recovery of such costs. If the State Board has specific authority to make such an authorization, the Draft Permit and Fact Sheet should explain the legal basis for the authorization. If the State Board does not have specific authority to make such an authorization, provisions such as this one must be deleted from the Draft Permit.



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134.34 → G. The Draft Permit Should Clarify How the Permit’s Requirements Relate to Already Enrolled Entities and Their Current Program Efforts, Such as the Joint Effort in the Central Coast

The Draft Permit contains a repeated footnote stating that if “a Regional Water Board Executive Officer determines that a Renewal Traditional Small MS4 Permittee’s current implementation of its program BMPs meets the MEP standard and is equally or more effective at reducing pollutant discharges than implementation of the requirements of this Section, the Executive Officer may require continued implementation of the Permittee’s current program BMPs and reporting requirements in lieu of implementation of the requirements of this Section.” (See, e.g., Draft Permit, Section E.4, fn. 9.)

While it makes good sense to accommodate the current programs of Renewal Traditional Small MS4 Permittees within the structure of the Draft Permit, the authority delegated to the Regional Boards is too great and creates too much confusion about the applicability of enforceable provisions of the Permit. A better approach would be to find that the current programs of Renewal Traditional Small MS4s that have been enrolled under the Existing Permit satisfy the requirements of the Draft Permit. If a role for the Regional Board is necessary, the State Board should redraft this footnote to create a presumption that current programs satisfy the requirements of the Draft Permit, and require the Regional Board to make findings to the contrary. If this course is pursued, the Draft Permit should also provide a vehicle by which Renewal Traditional Small MS4s who believe that their current programs exceed the requirements of the Draft Permit may elect to implement the requirements of the Draft Permit rather than their current programs.

134.35 → H. The Draft Permit Should Clearly Specify the Regional Board’s Authority

Section F of the Draft Permit contains a one paragraph discussion of the authority of the Regional Boards to oversee, modify and enforce the Draft Permit. This broad delegation of authority is inconsistent with the statewide nature of this general permit and the need for clarity on the enforceable provisions of the Permit. As the 8 years of implementation of the Existing Permit by the Regional Boards demonstrates, the broad delegation of authority in the Draft Permit will result in inconsistent and unfair implementation of the Permit. Certain dischargers will be required to comply with requirements not expressly found in the Draft Permit, while other dischargers under the same Permit will not be faced with those requirements. While the Regional Boards may play an oversight role, the State Board should specify in the Draft Permit the extent, and limits, of that role. Without such clarity, there will be ambiguity and disputes over the requirements of the Permit. In light of the NRDC Decision, dischargers will need to pursue available remedies to clarify what enforceable requirements actually apply to them. This will divert money to permit disputes that could more appropriately be spent on permit implementation.

The need for the State Board to specify the Regional Board’s authority is entirely consistent with the preceding comments regarding Water Code section 13360 and the need for

the State Board to reduce the prescriptive nature of the Draft Permit as to the dischargers. Consistent with its role as the final decision maker on water quality issues, the State Board should be very specific about the role the Regional Boards. This specificity is needed to ensure statewide consistency and clarity about the enforceable terms of the Permit. In contrast and consistent with Water Code section 13360, the State Board should establish the key enforceable provisions of the Permit, but let the dischargers decide how best to achieve those requirements. The Draft Permit turns these legal requirements on their heads. The Draft Permit is very prescriptive as to the dischargers, but provides very broad authority to the Regional Board. Consistent with the requirements and policy of Porter-Cologne, these approaches should be reversed.

134.36 → **I. The Findings in the Draft Permit and The Fact Sheet Do Not Support the Draft Permit's Requirements**

The federal regulations require that the Draft Permit be accompanied by a fact sheet²⁷ meeting the applicable requirements for such fact sheets.²⁸ In addition, as a quasi-judicial decision, the Draft Permit must contain findings and those findings must be supported by evidence in the record.²⁹

Neither the Fact Sheet nor the findings in the Draft Permit support the significant new programs or higher levels of service required in the Draft Permit. For example, neither the Fact Sheet nor the findings contain a clear discussion of the federal and state law authorities pursuant to which the Draft Permit is issued, and neither delineates between authority under federal law and authority under state law. The Fact Sheet, the findings and the Draft Permit itself should specify the state or federal authority under which an enforceable condition of the Draft Permit is imposed. Without such an explanation of the State Board's legal authority, the dischargers are not provided with a sufficient opportunity to assess the legal and factual basis upon which each permit condition is imposed.

²⁷ 40 CFR section 124.6(e).

²⁸ 40 CFR sections 124.8 and 124.56.

²⁹ 40 CFR section 124.6(e)(requiring that draft permits be based on the administrative record); Topanga Ass'n for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.

Jeanine Townsend
Clerk of the Board
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SECTION III.
CONCLUSION

Thank you for this opportunity to provide the State Board with these legal comments on behalf of the City of Roseville. We look forward to the State Board's written responses to them and a revised draft of the proposed permit.

Very truly yours,

Shawn Hagerty
of BEST BEST & KRIEGER LLP

ATTACHMENT B

Cost Impacts of the Draft Permit

ATTACHMENT B
SSC COMMENT LETTER

COST IMPACTS OF THE DRAFT PERMIT

This attachment provides statements from Coalition Members explaining the fiscal impact the permit is expected to have upon their agency. This information is provided to document that fiscal concerns are real.

134.37 → City of Auburn

The City's stormwater program is administered through the Public Works Department of which there is a Public Works Director, Associate Civil Engineer and Engineering Technician. Based on preliminary estimates, approximately two additional full-time staff members would be required in order to administer the new permit for the City. With the stormwater program operating strictly from the general fund, the City anticipates the new draft permit to increase costs by five times annually. At a time when the City of Auburn (population 13,000) has experienced employee reductions through early retirements and layoffs, employee salary reductions, with the associated service level reductions, the permit as written is simply not feasible.

134.38 → City of Davis

Based on the City of Davis' preliminary estimates, implementation of the permit would require an increase in the annual stormwater program budget of approximately three or more times the current budget. The City is currently looking to trim its entire operating budget by 10%. This reduction is set for all programs in the City. When coupled with limited abilities to raise funds without a Proposition 218 vote of the general public, the City has no realistic way to pay for the increased costs without cutting other essential program and services such as Fire or Police. At a time when the City has experienced employee reductions through early retirements and associated service level reductions, the permit as currently proposed will not be feasible to implement.

134.39 → City of Lincoln

Cost estimates for the City of Lincoln prove similar in magnitude as that cited for the City of Roseville. Dramatic reductions in general fund revenues (revenues are about half the amount they were four years ago) have forced the City of Lincoln to defer for at least several years implementation of any non-development fee supported aspect of the current MS4 permit. Lincoln has no financial ability to implement additional MS4 permit requirements.

134.40 → City of Lompoc

The economic and social impacts of the revised Draft General MS4 Permit on the City of Lompoc would be extreme. Lompoc's community of 42,424 has 16.7% unemployment, and is a California Disadvantaged Community, with a median income of less than 80% of the statewide household income. Based on the 2010 CENSUS, a significant portion of the population (44.9 percent) is either under 18, over 65, or in a group home or institution.

As many as 27.1 percent of households are receiving social security, while 5.5 percent of households are receiving disability. Cash public assistance income is distributed to 5.7 percent of households and food stamps are distributed to 8.7 percent of households. These figures are

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based on the Census Bureau's 5-year estimate from 2005 – 2009 and likely have increased during the past two (2) years of economic hardship.

With the economy down and high unemployment, property values in Lompoc have fallen, foreclosure rates have risen greatly, property and sales tax revenues are down and many businesses have closed. This has made it impossible for the City of Lompoc to maintain its prior staffing levels, and provide the services that were considered basic only a few years ago. In the past three budget cycles (from 2007 to 2013) there has been a hiring freeze; elimination of vacant positions; consolidation of departments; layoffs; 13 days of furlough per employee per year. Employees now pay out-of-pocket for retirement; pay increased medical and dental insurance costs and percentages not previously paid, while step increases have been frozen, travel and training expenditures restricted and facility hours and service levels reduced. Full-time professional positions in the Legal Department, Community Development Department and Building Division have been eliminated. Some of these functions, as well as Planning and Engineering Division functions are currently being performed by contract staff. It is important to recognize that each of these job functions is critical in the implementation of storm water regulations. In addition, approximately 22 percent of City reserve funds were used to support current operations in the 2009-2011 budget cycle. These extreme measures have been required to keep the City solvent.

During better times, private development fees have brought in revenue that allowed for higher staffing levels in some areas impacted by Municipal Storm Water Requirements, however since the City of Lompoc was put under the MS4 Permit in October 2008, only thirteen applications for private discretionary development have been submitted and processed. Of these, only three (3) projects have actually been completed and paid related fees, including a small addition and facade improvement at an existing McDonalds, a new parking lot for the Chumash Casino employees/customers, and a new Panda Express. Therefore at this time, development fees cannot be expected to generate adequate revenue to fund any portion of the Draft MS4 Permit program envisioned by State Water Resources Control Board staff.

The Phase II Draft MS4 Permit revision requires the addition of a significant number of staff in multiple departments, significant capital expenditures for consultants, equipment and laboratory fees, and additional funds for incentives and assistance to the public and businesses. As there is no realistic source of funding for these additional requirements, they are not feasible. While the State Board has traditionally failed to consider economic and social feasibility, as required by the Porter-Cologne Act, in determining the appropriateness of its regulation, this is the time in which it must be considered.

134.41 → City of Marina

The City's stormwater program is administered through the Engineering Division of which there is an Acting City Engineer, Associate Civil Engineer and Administrative Assistant II. Based on preliminary estimates, approximately two additional full-time staff members would be required in order to administer the new permit for the City. With the stormwater program operating strictly from the general fund, the City anticipates the new draft permit to increase costs by five times annually. At a time when the City of Marina (population 20,000) has experienced employee reductions through early retirements and layoffs, employee salary reductions, with the associated service level reductions, the permit as written is simply not feasible.

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134.42 → City of Napa

The City of Napa currently spends approximately \$400,000 per year related to its NPDES compliance; the City's General Fund supports 100% of these costs because state law prohibits passing these costs on to property owners. A portion of these costs support one full-time Engineering Assistant position which is dedicated to implementing the City Stormwater Management Program. The costs also cover the City's proportionate share of the Napa County Stormwater Pollution Prevention Program (which is a county-wide JPA dedicated to stormwater pollution prevention) and SWRCB MS4 permit fees. In addition the City is a participant in the federal Napa River/Napa Creek Flood Protection Project. This award winning project, which have costs to date totaling in excess of \$600,000,000 are at the vanguard of environmentally responsible flood and watershed protection initiatives and represents our community's extraordinary commitment to the enhancement of water quality of the Napa River and its tributaries.

The City's preliminary analysis of the costs of the new MS4 permit are that it will cost approach nearly \$4,000,000 to implement the first year and it will cost nearly \$3,000,000 annually thereafter; the per capita costs will vary between \$40 – \$50. The City has recently forecasted a \$2,500,000 deficit for our FY12-13 General Fund Budget. To date during this current recession, the City has managed to avoid significant layoff by consolidating services and eliminating vacant positions (all the while still maintaining our commitment to the enhancement of water quality through our stormwater program). However, to overcome the forecasted deficit this next fiscal year, we are considering the possibility of layoffs across all departments, especially in the area of public safety, community resources, and maintenance. If required to implement this new MS4 permit as-is, the City will be unwillingly forced to re-allocate General Funds in excess of \$3,500,000 away from critical life-safety services into less important areas such our stormwater program. The result will likely be additional layoffs of public safety and maintenance personnel, which will imperil the safety and well-being of our community.

134.43 → City of Rocklin

The City of Rocklin estimates its annual cost to implement the proposed requirements in the draft order to be approximately \$645,000 over and above what the City currently expends for its Stormwater Management Program. Over the five year permit term that equals more than \$3.2 million. Based on the 2010 Census population of 56,000, this result is an estimated annual increase per resident of \$11.52 (\$57.59 over the permit term) This figure does not include an estimate for the mandated community based social marketing component of the Public Education and Outreach provision. Preliminary cost estimates for establishing such a marketing program make it prohibitive

134.44 → City of Roseville

As currently drafted, the City of Roseville anticipates its stormwater program costs to increase from approximately \$800,000 per year to as high as \$3.5M in year 1 with a 5 year average cost of \$2.9M. This represents a 3.6-fold increase in compliance costs (4.3 times in year 1). Given the City's average population estimated over the permit term of 121,185 this would result in an average annual program cost of \$61.10 per household (based on 2.54 persons per household). This is \$15.1 to \$43.1 more per household then the \$18-\$46 per household annual costs of Phase I MS4 programs cited within the Fact Sheet of the permit (page 10). Attachment A to this comment letter includes the detailed cost estimate prepared by the City of Roseville.

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General fund revenues for the City of Roseville are down \$20.2M since fiscal year 2007. The City has implemented employee reductions through early retirements and layoffs, service level reductions and employee salary reductions to address structural financial deficits. The City was able to use one time money and deferrals to balance the General Fund budget this fiscal year; however the existing structural deficits is expected to continue in future years. The impact of expanded and new state regulations will continue to degrade the City's ability to fund core services.

134.45 → City of San Luis Obispo

The City of San Luis Obispo has a very comprehensive SWMP which was only recently approved in June 2009 and has components of the new DRAFT permit in it already like effectiveness assessments for BMP's. Our budget was just cut by almost 10% from \$866,350 to \$796,500. We are also bridging a \$5 million budget gap with about half of that coming from employee concessions. Looking over the new draft permit, costs are expected to more than double for the program as proposed currently. Huge progress has been made with over 1,000,000 pounds of sediment and debris having been removed from the stormdrain system in the past two years and with the intense winter storms experienced last winter, there were no reports of flooding. Progress is being made but in order to remain in compliance, the new permit will need to be implemented over a longer period of time.

134.46 → City of Santa Maria

The City of Santa Maria Utilities Department currently employs one Regulatory Compliance Assistant (RCA) who spends approximately three-fourths of her time running the Storm Water Program. Additionally, the Utilities Department funds one Senior Code Compliance Officer (SCCO) who dedicates approximately one-fourth of his time enforcing the City's Storm Water Ordinance. Both the RCA and the SCCO have dedicated vehicles that are used three-fourths and one-fourth respectively on Storm Water Program issues.

Under the new Draft Permit, the City would be required to have an "overarching Program Management element" to run the Storm Water Program that will require a Program Manager, a full-time Compliance Officer, and at least one and maybe two Inspectors. One or two more vehicles will be required for the inspector(s), who will be in the field for most of the day seeking illicit discharges, inspecting construction sites, and facilitating an industrial/commercial facility runoff control program.

The technical aspects of the post-construction storm water management program will require an Engineer and probably a Planner.

Required receiving water monitoring, TMDL compliance, and program effectiveness assessments will require the expertise of a chemist and a laboratory either be hired or contracted.

The higher level of service required under the storm drain system maintenance program will require regularly scheduled inspections, labeling, maintenance, and cleaning of all catch basins that are found to be one-third full. Since the City's vector trucks and drivers are engaged in sanitary sewer maintenance, another vector and one or two additional drivers would have to be employed and dedicated to just storm drain cleaning.

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134.47 → City of Sonoma

The City's current Stormwater budget is \$35,000, a \$15,000 increase from last year's budget. In order to comply with the draft Permit the City will be required to increase the annual budget to \$115,497 with an additional \$37,215 in one-time costs, essentially tripling the existing stormwater budget. Given the City's current population of 10,648 this would result in an average annual program cost of \$23.32 per household (based on 2.15 persons per household). This amount far exceeds the U.S. EPA estimated costs of \$9.16 per household¹, as suggested on page 10 of the Fact Sheet. As you know many cities in California are facing incredible budget shortfalls and the City of Sonoma simply does not have the resources available to implement the draft Permit in its current form. The City of Sonoma is on the third year of using reserves to balance the budget—we don't have any other money to pull from.

134.48 → City of Tracy

With the City of Tracy near in size to that of Roseville, cost estimates prove similar in enormity as that cited for them. The City of Tracy is currently bridging a \$5 million budget gap with three-quarters of that coming from employee concessions and attrition in the form of Golden Handshakes. Significant reductions in general fund revenues over the past two years have forced the City to such drastic measures as layoffs and reductions to City Services. The City does not anticipate that these revenues will increase in the near future and therefore to expect compliance with the Draft NPDES Phase II permit as it is currently written is not possible for the City of Tracy nor any other Phase II Municipality under this permit. Costs to implement these mandates need to be studied by the Waterboard and incorporated into the final draft of the permit with realistic expectations and timeframes to implement.

134.49 → City of Woodland

In 2007, anticipating an extreme shortfall in funds needed to repair, maintain, and operate the stormwater system, the City of Woodland attempted to obtain voter approval to raise monthly storm drain fees from 48 cents to 5 dollars. The extensive public education and outreach campaign included a citizen's Storm Drain Advisory Committee representing a broad cross-section of the community, including traditional opponents of tax and fee increases. The proposed fee increase was voted down despite committee advocacy for the increase and several months of concerted efforts at community education. Consequently, the City has had to continue to rely on General Fund subsidies of storm drain operations ever since.

In the last three years, the City of Woodland has had to eliminate approximately 100 staff position, or one-fourth of its staff, to reduce General Fund costs in the face of severe revenue reductions. Positions have been eliminated in all departments and most divisions, including the fire and police departments, code enforcement, parks maintenance, senior center and recreation, planning, and library.

The City estimates that fully meeting the draft Permit requirements would require one-time capital, consulting, and legal costs of approximately \$550,000 and approximately 1,500 staff hours for one-time start-up efforts; the addition of 4-5 full-time equivalent staff positions; and additional annual costs of approximately \$600,000 for consulting services, monitoring and lab test fees, and outreach and education materials and activities.

¹ Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and regulations. P. 68791-68792.

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The City does not foresee a way to meet these requirements.

134.50 → Placer County

The County of Placer anticipates cost and resource impacts similar to those described below for the Cities of Roseville and Rocklin. Placer County's current water quality program administration budget is \$1.2M. This program includes administration and implementation of two municipal Phase II permits, and one Phase I permit within the unincorporated County area. The noted budget does not include the full cost of program implementation, as the program relies on numerous other County departments and agencies to assist with implementation. Most of these other departments and agencies do not budget separately for those additional stormwater responsibilities, so determining associated program cost is difficult. Because the draft permit language is much more prescriptive and includes extensive new requirements, such incidental program support from other departments may no longer be feasible. It is anticipated that the new permit will likely triple the level of effort and cost on the already overburdened County resources.

134.51 → San Luis Obispo County

In 2007, the cost of implementation of the entire Stormwater Management Program (SWMP) across all involved County Departments was estimated to be 1.6 million. To incorporate the draft permit into our current program is estimated to cost a minimum of \$1,062,720 including an increase in annual implementation by \$549,775. Based on recent Census household population of 24,680 within permit coverage areas, results in an estimated annual average increase per household of \$30.89.

General fund revenues for San Luis Obispo County continue to dwindle. For the past four (4) consecutive years the SWMP coordination budget has received 5%-10% reductions. Requesting the budget to be doubled at this time will impact the County's ability to fund key services.

134.52 → Stanislaus County

The two primary concerns that Stanislaus County has deals with: "Cost" and "Funding". The Draft Permit imposes substantial, unavoidable hard costs on the County. Based on preliminary cost studies, we estimate our costs to comply with the Draft Permit may increase by more than three to four hundred percent.

To comply with the new mandates and higher level of services, Stanislaus County must find funding to hire consultants and new staff. We must buy new capital equipment. The state demands for local spending come at the same time the County is laying off staff because they lack funds to pay salaries and maintain existing infrastructure.

Stanislaus County can't afford the cost to comply with the Draft Permit. Stanislaus County lacks adequate fee authority to pay for the state mandated new programs and higher levels of service. Under the current interpretation of Proposition 218, our local agency does not have authority to impose the fee without the consent of the voters or property owners.

Unless the State Board provides a mechanism to fund the proposed new programs and higher level of services, they should not be included in the new Draft Permit. If the state elects to impose new unfunded mandates, the state must constitutionally provide the funding. If no funding can be

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provided, the State Board should not require the new mandates and higher levels of services in the Draft Permit. The Draft Permit would require the County to make costly changes – in a declining and uncertain economy. The Draft Permit would pile on new requirements to County departments to provide employee training, trash capture, retrofitting, maintenance, GIS layers for storm water related inventories, specific annual reporting requirements, and other new unfunded mandates.

Based on the requirements on the Draft Permit, Stanislaus County anticipates its storm water program costs to experience a very large increase associated with compliance costs and managing an “overarching Program Management element” (300%-400% increase).

General fund revenues for Stanislaus County continue to dwindle downwards. The current budget reflects a reduction of approximately \$24.5 million from the previous fiscal year. The County has implemented employee reductions through early retirements and layoffs, service level reductions and employee salary reductions to address ongoing and recent financial deficits. The existing deficit in the County’s budget is expected to continue in future years. The impact of expanded and new state regulations will continue to degrade the County’s ability to fund core services.

Under the new Draft Permit, the County would be required to have an “overarching Program Management element” to run the Storm Water Program. The new program will most likely (at a minimum) require a Program Manager, a full-time Compliance Officer, and at least one and maybe multiple Field Inspectors. Vehicles will be required for the inspector(s), who will be in the field for most of the day seeking illicit discharges, inspecting construction sites, and facilitating an industrial/commercial facility runoff control program. The technical aspects of the post-construction storm water management program will require an Engineer and a Planner. Required receiving water monitoring, TMDL compliance and program effectiveness assessments will require the expertise of a chemist and a laboratory to either be hired or contracted. Additional administrative staff may also be needed in order to file the annual reports on the numerous mandated elements.

The higher level of service required under the storm drain system maintenance program will require regularly scheduled inspections, labeling, maintenance, and cleaning of all catch basins that are found to be one-third full. The County’s vector trucks and drivers engaged in flood control and general street maintenance may require an additional vector truck and one or two additional drivers dedicated to the proposed storm drain maintenance requirements as mandated by the Draft Permit.

As previously stated, the costs have been estimated to increase as high as three to four hundred percent to implement the Draft Permit. This increase is not only dramatic, but most of the initial cost will take place during the first year of implementation. Stanislaus County is not able to obtain additional funding or staffing due to economic constraints that have already resulted in furloughs, layoffs, and hiring freezes. The State/Regional Boards must provide adequate funding or a legal mechanism to fund the new mandates and higher level of services imposed by the Draft Permit.

134.53 → Yolo County

In 2003 when the NPDES Phase III small MS4 Permit was issued Yolo County wholeheartedly embraced its requirements and put forth our best efforts to do our part to insure cleaner water for our residents today and into the future.

The estimated cost for implementation of the county’s Stormwater Management Plan (SWMP), accepted by the Board in October 2004, was \$282,000 with a highest one-year cost of \$73,200

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(prior to implementation of the permit). However, actual costs paid by county funds for the first two years were much higher than the initial estimates.

In year three the county began collecting a storm water administration fee for oversight of private permitted construction projects over one acre in size. Even with the fee in place, the county was only able to recover less than half of the storm water administration costs per year.

A conservative estimate for the proposed MS4 permit as written, the cost of implementation for Yolo County is over \$1,200,000, with the first year of implementation being the highest year at about \$400,000. This conservative estimate shows that the cost of the new MS4 permit will essentially be greater in the first year than the entire seven years of administering our current storm water program.

There is nothing in the Draft MS4 permit that addresses the consequences when the requirements of the permit are not feasible due to costs. Yolo County respectfully requests that the Board consider extending the conditions of the current MS4 Permit and our own SWMP with a few additional requirements that have demonstrated increased water quality, instead of making the drastic and expensive changes based on speculative and impractical requirements that will not significantly improve storm water quality reflected in this Draft Permit.

Yolo County is concerned, given the estimated cost increases, that if the Draft Permit is adopted as it is currently written, the County will be out of compliance in the first year of implementation. When faced with additional financial burdens, the county, like many other jurisdictions, will fund health and safety improvements rather than to monitor and enforce unfeasible, speculative and ineffective regulations that do not add value to the county's residents.

Given the current economic conditions the county does not have the discretionary funds to enforce unfunded mandates on third parties as proposed in the draft Permit. A more effective and equitable option for all parties, is to have the staff from the State Water Resources Control Board enforce the Permit as they see fit, rather than impose upon local agencies to administer the state's unfunded mandates.

ATTACHMENT C

Water Quality Matrix

ATTACHMENT C - WATER QUALITY MATRIX

NOTES:

- 1 Where a **YES** is indicated, it does not mean that we agree with how or the extent to which the permit asks the item be implemented. We are just acknowledging that **the activity does have a direct WQ benefit.**
- 2 Where a **NO** is indicated, it mean we find **the activity does not have a direct WQ benefit.**
- 3 Where **NOT SURE** is indicated, it means **the activity could have direct water quality benefit depending on how the activity is performed.**

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
E.4 - PROGRAM MANAGEMENT ELEMENT				
E.4.a	Legal Authority	2013	Yes	
E.4.b	Certification	2013	No	Certification in and of itself does not benefit water quality.
	Reporting - Adequate legal authority		No	This reporting activity does not directly protect or improve WQ.
E.4.c	Enforcement Measures and Tracking	2013	Yes	MS4s need citation authority.
	Reporting - Annual ERP reporting enforcement activities		No	This reporting activity does not directly protect or improve WQ.
E.4.d	Ensure Adequate Resources to Comply with Order	2013	No	This is a "bean-counting" exercises that does not benefit the MS4 and does not protect WQ.
	Reporting - Fiscal analysis (staffing, resources, CIPs, O&M, public outreach etc)		No	This reporting activity does not directly protect or improve WQ.
E.5 - PUBLIC OUTREACH AND EDUCATION PROGRAM				
E.5.a	Compliance Options	2013	Yes	
	Reporting - indentify compliance option and provide documentation to support such as agreements		No	This reporting activity does not directly protect or improve WQ.
E.5.b	Public Outreach and Education	2013	Yes	
	Reporting - Report on outreach strategy and general program development and progress. Including reporting on CBSM strategies and behavior change survey results			This reporting activity does not directly protect or improve WQ.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
E.5.c	Industrial / Commercial Outreach and Education Program	2013	Yes	
	Reporting - program progress, facility inventory, CBSM outreach strategy		No	Doing inventories does not protect WQ. However, we should be aware of what we have throughout our jurisdictions so we can determine potential areas for Illicit discharges.
E.5.d	Construction Outreach and Education Program	2013	YES	Outreach to contractors is very helpful. However, most contracts are already familiar with water quality protection issues as a result of the Construction General Permit.
	Reporting - program progress including measureable increase in knowledge of construction community, inventory of high priority construction sites, CBSM outreach strategy		No	Construction Contractor training should be provided at the State level in the Contractor's Licensing program. Locals should not have to do it.
E.6 - PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM				
	Citizen Advisory Committee		Not Sure	Sometimes bringing in the public helps to determine how to change a program.
	Reporting - describe public involvement program and efforts to facilitating public involvement.		No	This reporting activity does not directly protect or improve WQ. Haven't been able to show a direct link between public involvement and increased WQ.
E.7 - ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM				
E.7.a	MS4 Mapping	2014	Yes	Good IDD reponse tool.
	Reporting - submit annual GIS stormdrain map		No	This reporting activity does not directly protect or improve WQ.
E.7.b	Identifying Priority Areas	2014	Not Sure	While knowing where your priority areas are is important, it's the activities to educate those in the high priority areas that water directly improve water quality.
	Reporting - basis of selecting areas and list of priority areas	2014	No	This reporting activity does not directly protect or improve WQ.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
E.7.c	Field Screening to Detect Illicit Discharges	2015	Not Sure	This is only beneficial if you can link illicit discharges to an actual source. Chasing illicit discharges up-stream is very difficult.
	Reporting - report summarizing the field screening and analytical monitoring program procedures and field screening and illicit discharge investigation results.		No	This reporting activity does not directly protect or improve WQ.
E.7.d	Illicit Discharge Detection and Elimination Source Investigations	2016	Yes	If you can locate a source.
	Reporting - narrative reporting on all tracked investigations (what, when, where and how etc)		Not Sure	This could potentially help with trending so MS4s can know what to focus on in their communities.
E.7.e	Spill Response Plan	2013	Yes	
	Reporting - submit spill response plan and report on any spills and spill activities		No	This reporting activity does not directly protect or improve WQ.
E.7.f	Illicit Discharge Education & Training	2015	Yes	
	Reporting - document and maintain records of annual staff training	2015	No	Having documentation does not indicate effective training; audits do. Also, don't need annual training, suggest every 3 years.
E.8 - CONSTRUCTION SITE STORM WATER RUNOFF CONTROL PROGRAM				
E.8.a	Construction Site Survey	August 15, 2012	No	Maintaining an inventory in and of itself does not protect or improve WQ.
	Reporting - provide up to date construction site inventory		No	This reporting activity does not directly protect or improve WQ. State should be keeping this for CGP projects.
E.8.b	Construction Plan Review and Approval Procedures	2013	Yes	
	Reporting - submit summary of review procedures		Yes	This can be helpful from a staff-training perspective.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
E.8.c	Construction Site Inspection and Enforcement	2014	Yes	
	Reporting - summarize construction inspection information (number of sites, number of inspections, violations, type of enforcement actions taken, sites with discharges, number of corrected violations prior to rain event and not corrected, number of follow up inspections). Data provided in a database or tabular format.		No	This reporting activity does not directly protect or improve WQ.
E.8.d	Permittee Staff Training	2014	Yes	Knowledge is key.
	Reporting - training topics, dates of trainings, number and percentage of staff attending, awareness survey results		No	This reporting activity does not directly protect or improve WQ.
E.8.e	Construction Site Operator Education	2015	Yes	Construction Contractor training should be provided at the State level in the Contractor's Licensing program. Locals should not have to do it.
	Reporting - training topics, dates of trainings, number and percentage of staff attending, awareness survey results		No	This reporting activity does not directly protect or improve WQ.
E 9 - POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR PERMITTEE OPERATIONS PROGRAM				
E.9.a	Inventory of Permittee-Owned and Operated Facilities	2013	No	Maintaining an inventory in and of itself does not protect or improve WQ.
	Reporting - submit inventory		No	This reporting activity does not directly protect or improve WQ.
E.9.b	Map of Permittee-owned or Operated Facilities	2013	No	This reporting activity does not directly protect or improve WQ.
	Reporting - submit map of facilities including drainage system, receiving waters, facility manager and contact information		No	This reporting activity does not directly protect or improve WQ.
E.9.c	Facility Assessment	2014	Yes	Assessing high pollutant discharge potential facilities such as maintenance yards is beneficial, not so for a library.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
	Reporting - submit results of facility assesments including deficiencies, corrective actions, hot spots		No	This reporting activity does not directly protect or improve WQ.
E.9.d	Stormwater Pollution Prevention Plans	2015	Yes	But SOPs should be allowable instead of SWPPs.
	Reporting - summary of SWPPPs developed for hot spots		No	This reporting activity does not directly protect or improve WQ.
E.9.e	Inspections, Visual Monitoring and Remedial Action	2016	Not Sure	This could be benficially for areas with high-pollutant-discharge-potential.
	Reporting - summarize facilities required to be inspected, number inspected (visual and comprehensive inspections, frequency of inspections, summary of spills and corrective actions, results of quarterly visual observations of discharges.		No	This reporting activity does not directly protect or improve WQ.
E.9.f	Storm Drain System Assessment and Prioritization	2015	Yes	Knowing where your trouble spots are in order to prioritize maintenance activities can be beneficial in protecting WQ. Prioritizing all of them is excessive.
	Reporting - submit procedures and proritization list		No	This reporting activity does not directly protect or improve WQ.
E.9.g	Maintenance of Storm Drain System	2016	Yes	
	Reporting - summarize maintenance schedule, priority assignments, documentation of all maintenance logs, documentation of waste disposal procedure		No	This reporting activity does not directly protect or improve WQ.
E.9.h	Permittee Operations and Maintenance Activities (O&M)	2014	Yes	This is benficial for activities with high-pollutant-discharge-potential.
	Reporting - list of BMPs and associated pollutants with each O&M activity, BMPs applied during O&M activities, log of inspections		No	This reporting activity does not directly protect or improve WQ.
E.9.i	Incorporation of Water Quality and Habitat Enhancement Features in Flood Management Facilities	2014	Not Sure	This probably does help protect WQ but it is unreasonabe to expect small MS4s to perform.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
	Reporting - submit summary of development and implementation process to incorporated water quality and habitate enhancement design into new and retrofitted flood management projects			This reporting activity does not directly protect or improve WQ.
E.9.j	Pesticide, Herbicide and Fertilizer Application and Management	2013	Yes	
	Reporting - provide evaluation of materials used,activites performed and list of practices implemented to minimize pesticide and fertilizer use. Identify meausres to be used to demonstrate reduction in applications.		Yes	This can be a beneficial exercise.
E.9.k	Training and Education	2013	Yes	
	Reporting - summarize oversight procedures and identify and track all personnel requiring training, assessment and records.		No	This reporting activity does not directly protect or improve WQ.
E.10 - TRASH REDUCTION PROGRAM				
	Reporting - submit trash abatement plan with ordinance and summary of sites with trash capture structural controls		No	This reporting activity does not directly protect or improve WQ.
E.11 - INDUSTRIAL/COMMERCIAL FACILITY RUNOFF CONTROL PROGRAM				
E.11.a	Industrial/Commercial Inventory	2013	No	Maintaining an inventory in and of itself does not protect or improve WQ.
	Reporting - none listed. Assume the inventory must be submitted along with prioritization of sites		No	This reporting activity does not directly protect or improve WQ.
E.11.b	Industrial/Commercial Stormwater BMPs	2014	Yes	But retrofitting requirements are not acceptable.
	Reporting - submit list of sites notified of BMP requirements		No	This reporting activity does not directly protect or improve WQ.
E.11.c	Industrial and Commercial Facility Inspections	2016	Yes	When focused on high discharge potential sites, this can be beneficial.
	Reporting - submit update on program and inspection plan		Not Sure	This reporting activity does not directly protect or improve WQ.
E.11.d	Inspection Requirements	2016	No	
	Reporting - list facilities and inspection frequencies		No	This reporting activity does not directly protect or improve WQ.

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
E.11.e	Scope of Inspection	2016	Not Sure	
	Reporting - none listed. Assume database of inspections performed and findings.		No	This reporting activity does not directly protect or improve WQ.
E.11.f	Staff Training		Yes	
E.11.f	Reporting - document records of staff trainings and results of surveys conducted. Demonstrate change in staff awareness and potential behavioral changes. Report qualifications, certifications or training rec'd for consultants conducting inspections	2016	No	This reporting activity does not directly protect or improve WQ.
E.12 - POST CONSTRUCTION STORMWATER MANAGEMENT PROGRAM				
E.12 .a	Permittee located within a Phase I MS4 permit area	2013	Yes	
	Reporting - Submit summary report		Yes	
E.12.b.1	Watershed Baseline Characterization	2015	Not Sure	
	Reporting - submit watershed characterization study		No	This reporting activity does not directly protect or improve WQ.
E.12.b.2	Development of Watershed Sediment Budgets	2015	Not Sure	
	Reporting - submit sediment budgets for each watershed		No	This reporting activity does not directly protect or improve WQ.
E.12.b.3	Water Quality Runoff Standards	2014	Yes	
	Reporting - for each regulated project provide detailed information		No	This reporting activity does not directly protect or improve WQ.
E.12.b.4	Interim Hydromodification Management	2014	Yes	But may not be an effective use of MS4 resources.
	Reporting - submit verification that interim procedures are being used		No	This reporting activity does not directly protect or improve WQ.
E.12.b.5	Long-Term Watershed Process Management	2016	Yes	
	Reporting - submit numeric criteria for development projects		Not Sure	Hasn't really been proven yet.
E.12.b.6	Implementation Strategy for Watershed Process Management	2017	Not Sure	
	Reporting - submit strategy for implementing numeric criteria. Report on measureable goals including schedules, outreach, enforcement mechanisms, thresholds, BMP design etc		Not Sure	
E.12.b.7	Watershed -Based Storm Water Management	2017	Not Sure	

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
	Reporting - submit plan with NOI including gaps and impediments and how regulations will be adjusted		Yes	Doing a gap analysis to determine any barriers to LID implementation is good.
E.12.b.8	Operations and Maintenance of Storm Water Treatment Systems		Yes	
	Reporting - report detailed information on the inspection of each stormwater treatment system constructed, reporting to RB and vector control agencies on BMP locations, and HM controls, inspection findings, effectiveness of O&M program	2014	No	This reporting activity does not directly protect or improve WQ.
E.13 - RECEIVING WATER MONITORING				
E.13	Receiving Water Monitoring		No	Monitoring in and of itself does not directly protect WQ.
	Reporting - water quality exceedances, follow up analysis and action, monitoring program		Not Sure	We have yet to establish a link between outfall monitoring or receiving water monitoring and protection of WQ due to the stormwater program.
E.14 - PROGRAM EFFECTIVENESS ASSESSMENT				
E.14.a	Program Effectiveness Assessment and Improvement Plan	2013	Not Sure	
	Reporting - submit plan summarizing short and long term progress of the program, changes to MEP, and document compliance with permit conditions.		Not Sure	Determining "measured" program effectiveness is a long-term process. We should evaluate our programs. Do they protect WQ? Not sure. Still have Copper in brake pads, etc.
E.14.b	Best Management Practice Condition Assessment	2015	Not Sure	
	Reporting - submit summary of methodology including results and scheduled activities		No	This reporting activity does not directly protect or improve WQ.
E.14.c	Municipal Watershed Pollutant Load Quantification	2015	No	This seems to be a "bean-counting" type of exercise. This can be very difficult to do correctly. Especially for MS4s that are surrounded by Ag and have no control over their "contribution".
	Reporting - submit quantification report of annual subwatershed pollutant loads		No	
E.14.d	Storm Water Program Modifications	2016	Not Sure	

ATTACHMENT C - WATER QUALITY MATRIX

PERMIT ELEMENT		PERMIT COMPLIANCE YEAR	DIRECT WQ BENEFIT?	COMMENT
	Reporting - summarize maintenance activities of high priority BMPs, report on necessary program modifications		No	This reporting activity does not directly protect or improve WQ.
E.15 - TOTAL MAXIMUM DAILY LOADS COMPLIANCE REQUIREMENTS				
E15.a	Comply with all approved TMDLs	2012	Not Sure	
E15.b	Waste load allocations		Not Sure	
E15.c	State Board revise listings in Attachment G as needed		Not Sure	
E15.d	Reports status of implementation via SMARTS	2012	No	This reporting activity does not directly protect or improve WQ.
	Reporting - report on status of TMDL implementation		No	This reporting activity does not directly protect or improve WQ.
E15.e	Comply with Clean Water Act Sections 303d,306b and 314	2012	Yes	
Attachment G-Pg 34	Dischargers not meeting waste load allocations	2010	Not Sure	
E.16 - ONLINE ANNUAL REPORTING PROGRAM				
E.16	Annual Reporting	September 15, 2013	No	Reporting does not directly protect or improve WQ.