



GALLINAS WATERSHED COUNCIL

104 Mabry Lane, San Rafael, CA 94903



Sept. 8, 2011

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

Subject: Comment Letter – Phase II Small MS4 General Permit.

Dear Ms. Townsend:

The Gallinas Watershed Council is a nonprofit organization dedicated to restoring and protecting the Gallinas Creek Watershed in San Rafael, CA. Both the City of San Rafael and County of Marin, where our watershed is located, are subject to Phase 2 stormwater protection regulations. Having read over this permit, we have the following comments to make, as there are several very troubling pieces in this new permit that we feel violate the spirit of regulations, which should be designed to protect waters of the state. In fact, some of these new rules we believe will result in the opposite action.

In general, we feel that this permit is written too restrictively, prescriptively and inflexibly. While Phase 1 communities were encouraged to develop and then implement their own watershed plans, based on local conditions and priorities, the Phase 2 permit seeks to make a "one size fits all" solution pattern, resulting in an onerous set of reporting requirements, duplicative or unnecessary studies, and monitoring that could divert scarce local resources away from more effective stormwater pollution prevention programs.

The draft permit is an attempt to detail how to supervise and document stormwater management. It is so successful at specifying details that it obscures (at best--and at worst, frustrates) the central purpose of the program: the implementation of "best management practices." There are 93 pages of procedures, but only incidental reference to the substance. It is not clear who decides what the BMPs are, and, if they cannot all be feasibly implemented, what priority each has. Where are the criteria by which these decisions are made? Likewise, who determines whether the permittee is applying the BMPs to the "maximum extent practicable"? What are the criteria for deciding this? Is "practicable" judged by engineering standards, or by fiscal standards?

These are the big questions of public concern. Administrative details must be adequate to ensure that polluters can be deterred, or held accountable, and to encourage improved practices; but over-weighty details can have the opposite effect, by obscuring the essence of the process. That appears to be what is happening here.

For example, the permit **requires** certain tests (illicit discharge monitoring) to take place in order to set baselines for future reporting to show that work done was effective. In our area, we know that our creek, trapped in its trapezoidal flood control channel, is in horrible shape: colonies of algae live in the warm water, populated by invertebrate organisms indicating impacted water, often filled with trash going into the bay. We do not need additional studies to tell us this water is unfit for fish and that something needs to be done. Requiring this study may take away funds needed to get work done and may lead the city to delay actual work, citing the state requirement for monitoring first. This is counter to what these regulations should be designed to do. In our area, much monitoring has already been done and we would prefer that our agencies to spend our scarce resources on implementing solutions.

Conversely, on the other side of the hill is Miller Creek, a beautiful free flowing year round creek with its own population of steelhead. This creek would benefit from baseline study work, to support it against adverse activity in the corridor. These two extremely different corridors indicate how a flexible planning process is needed, written to fit local conditions and priorities.

We find it laudable that "harvesting" stormwater is put forth first, even before pollution, as a driver for runoff control policy. This is an important area of water policy that has traditionally been neglected by all levels of government in California. The benefits of implementing large-scale stormwater harvesting would be vast, and could solve serious supply problems in a number of areas, as well as relieving the stress on stormwater disposal systems. But in the rest of the draft there are no policies for implementing this goal. Where are the drainage swales, vernal pools, infiltration and reclamation basins that should be replacing culverts and concrete-lined creek beds? While new construction and renovation are addressed, this permit should encourage agencies to replace old-fashioned stormwater conveyance systems with these green solutions as well.

Trash is a big problem in our watershed and we are very glad to see this issue being addressed. In the section on general trash, the regulations require by May 2016, "the installation of trash capture structural controls." We believe that May 2016 is too late for an effective implementation date. There is also an unspecificity (as a member of the general public) to know what "trash capture structural controls" really means. We would appreciate greater definition on this.

The permit also requires Community Based Social Marketing (CBSM), with monitoring to take place to determine its effectiveness. While we believe outreach is necessary and worthwhile, and that this approach is a very good one in that it is designed to change public behaviors, we also believe that requiring full implementation of CBSM may be financially prohibitive. We would prefer to see a CBSM approach encouraged, but require permittees to select from a few of the many program components to implement. Additionally, while it would be nice to gauge the effectiveness of the outreach with surveys, these are costly. While tax monies are so tight, we would prefer to engage in actual work restoring our creek than in studies to determine the effectiveness of social outreach. At the very least, we would prefer the recurrence of these tests to be reduced to something on the order of once every ten years, rather than every three years.

The County of Marin has begun gathering partners and funds to begin the process of creating a full watershed study plan for our area. The Gallinas Watershed Council is a committed partner to this work and we have been actively engaged with Marin County and City of San Rafael to get this in motion. We respectfully ask that Phase 2 permits be written to give greater flexibility to communities to develop their own plans and priorities for stormwater protection as was done in the Phase 1 communities, overseen and tracked by the state, to make sure substantial progress is made in protecting our precious waters while retaining enough local control to be adaptive to the unique environment of every creek, stream and waterway.

We would also appreciate the opportunity to comment on the Final Draft. Two contact emails are below, as well as our address.

Thank you for taking our comments on this very important document. Please add the emails below to your interested parties list.



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Specific comments of the Phase 2 Regulations

Local entities affected:

Marin County — Traditional Small MS4 Permittee
 Lucas Valley-Marinwood CDP — Traditional Small MS4 Permittee
 San Rafael City — Traditional Small MS4 Permittee
 China Camp SP — Non-Traditional Small MS4 Permittee

COMMENTS:

p. 8, ¶ 21: **"Only Traditional Small MS4s with a population greater than 5,000 will be designated as a Regulated Small MS4 by application of the criteria specified under (d). Criteria (a) through (c) will be applied to Small MS4s of any size for designation as a Regulated Small MS4."**

- First (only for the purpose of clarification), this is terrible syntax. The following would be more understandable:

"Criteria (a) through (c) will be applied to Small MS4s of any size for designation as a Regulated Small MS4. Criteria specified under (d) will apply only to Traditional Small MS4s with a population greater than 5,000."

- Assuming that this is the intended interpretation of the paragraph, the provision is counter-intuitive. Small entities should be regulated **more** carefully if they are discharging to a salmon-spawning habitat, for example, rather than just because they are growing quickly. This item seems to be recapitulating existing regulations rather than drafting new ones, but the question deserves to be revisited.

P. 9, ¶ 28: **"California Small MS4 Permittees face highly variable conditions both in terms of threats to water quality from their storm water discharges and resources available to manage those discharges. Therefore, one set of prescriptive requirements is not an appropriate regulatory approach for all Regulated Small MS4s. This Order contains Compliance Tiers with specific provisions to address differences between Traditional and Non-traditional Small MS4s."**

- The drafters have done well to acknowledge the complexity and variability of the regulatory situation. From what I see in Table 1, assigning responsibilities to permittees commensurate with the "threats" posed by their discharges has been addressed with basic common sense. It's not so clear, however, where the "resources available" to the permittee might be considered. Indeed, it seems terribly ironic that one of the first things the permittee is required to do (§ E.4.d) is to figure out how to fund its own compliance with the order. At a time when municipal

budgets are being slashed to the bone, this is an onerous challenge. Where are state parks, for example, going to find personnel to do this?

Part of the answer might be in the "separate implementing entity" suggested in § E.3. Obviously, a town of 5,000, for example, will not be able to assign its own personnel to the complex, time-consuming tasks required by this order. An independent regional agency specializing in water runoff issues could manage the tasks far more efficiently. But who will pay for this, in the present (and foreseeable future) budget crunch? Some provision must be made.

P. 9, ¶ 34: If the intention is to "allow the public to more easily assess each Permittee's compliance", the order as a whole is far too complicated. First, there has to be a public source listing BMPs. "Maximum extent practicable" is a very fuzzy concept. The number and variety of reports seems virtually endless, making compliance difficult for the permittee, much less transparent to the public.

It might be useful to return to the basic purpose here. What do we need to know? The key questions (referring to the main Findings) would seem to be:

- What would be the ideal destination for this runoff? (reclamation, re-use, irrigation, natural waterways?)
- How do we get it there cleanly? (local capture, catch-basins, soil percolation?)
- What resources are available to implement the best result?

Attention to these fundamentals could provide a unifying theme both for the formatting and the interpretation of the necessary reports.

p. 14:

b. Non-traditional Small MS4s Outside an Urbanized Area
(1) State parks with an average of 5,000 visitors per year.

- This is an error in drafting. It would be odd indeed to exempt parks with an average of **exactly** 5,000 visitors, rather than "**5000 or fewer.**"

p. 16:

"In considering an exception, the State Water Board must determine that the exception will not compromise protection of ocean waters for beneficial uses, and, the public interest will be served."

- This appears to give complete discretion to the Board, with no standards for determining the "public interest," nor even a requirement to make findings explaining the decision. This exempts the Board from any accountability whatsoever, even if the exception is arbitrary and capricious or otherwise contrary to public policy. What's the point of having 93 pages of rules if a board can set them aside

with no accountability? [perhaps this is covered in existing statutes, but if so a citation should be made here.]

p. 18, footnote:

"8 Does not apply to New Traditional Small MS4 Permittees in unincorporated areas where the local County has a population greater than 5,000."

- This language is ambiguous. Does it mean that such permittees are exempt for this section, and need only report to the County? Or that they must comply with all the requirements without regard to Table 1? (The language in the fact sheet clarifies this—it's the former).

§ E.4.a

- Bravo. It's good to have each system clearly empowered to enforce its standards. [Now all they need is funding.]