

July 23, 2012

Charles R. Hoppin, Chair
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000

Re: Comment on the Draft Phase II Small MS4 General Permit

Dear Chair Hoppin:

On behalf of the California State Association of Counties (CSAC), the Regional Council of Rural Counties (RCRC), and the League of California Cities (LCC), we once again appreciate the opportunity to comment on the State Water Resources Control Board's (Board) Phase II Small MS4 General Permit (draft Phase II permit).

Collectively, our organizations represent all of California's 483 cities and 58 counties. CSAC, RCRC and the LCC would remind the Board that we are in the somewhat unique position of viewing stormwater regulation from two perspectives—first, as enforcers of local water quality objectives and, secondly, as regulated dischargers. Cities and counties are committed to helping the state achieve its water quality goals, and we want to continue working with the state to adopt stormwater regulations that balance stormwater quality objectives with the operational and economic realities of stormwater management in the public and private sectors.

Our organizations recognize the work that Water Board staff has done to consult stakeholders in order to redraft the Phase II Permit, and we value their efforts. However, we continue to have serious concerns with a number of the requirements included in the redrafted Phase II permit, and the overall fiscal impact this draft poses on the Phase II community.

Once again, our overarching concern is related to the associated cost implications of the new permit. We understand and support the need to move forward with an updated permit. However, the redrafted Phase II permit is still overly

prescriptive, and would necessitate that most cities and counties hire additional staff in order to meet the requirements. Thus, the cost of implementing the redrafted permit still presents a significant burden to local governments at a time when nearly every revenue stream (property tax, sales tax, and state funding) has fallen precipitously, and almost every city and county has already implemented or is strongly considering deep cuts and widespread layoffs.

In addition, cities and counties must comply with Proposition 218, which requires local governments to meet the two-thirds voter approval requirement for increasing property-related fees. This presents a significant challenge particularly in our current fiscal climate, where voter tolerance for increased fees is close to zero. As a result, local governments will have to reach into their general funds and decide which core services to cut in order to implement the new storm water permit. For this reason, we still maintain that the draft permit constitutes an unfunded mandate.

Beyond cost, our biggest concern is the new language contained in Section E.12.j, "Planning and Building Document Updates." The section requires a general plan update within the first year of the permit, and prescribes specific updates of planning and building requirements. We feel that most of the requirements in this section are inappropriate, and that the Water Board lacks the authority to compel local governments to comply. Our suggested changes to this section are attached.

Land use is an issue of local control. The state has very limited authority to require any specific components in a planning document unless done legislatively, particularly in a general plan. In addition, general plans do not include the type of specific information required in the redrafted permit, making compliance with the proposed draft infeasible. Finally, the act of updating a general plan is a major undertaking, and imposing such a mandate would cause the cost of complying with the permit to skyrocket. General plan updates, as you know, must go through the CEQA process. Each plan update can take years to complete, and opens the local government up to legal actions that bring even greater costs. Ultimately, we ask that all references to general plans be stricken from the draft Phase II permit.

In addition, we also question the Water Board's authority to mandate such items as parking lot ratios. Under current law, local jurisdictions determine the parking standards for their communities based upon numerous factors that are unique for each neighborhood. Prescribing parking standards or a reduction based upon a one-size-fits-all mandate would be opposed by local governments because it doesn't allow enough flexibility to address individual projects or other competing statewide interests such as affordable housing, infill development, transit or other factors that must be taken into consideration when determining parking standards. We believe the expertise in this area should be left to local jurisdictions that have to answer to their communities' needs. However, many jurisdictions are moving in the direction of reducing parking standards. To the extent that models or incentives to reduce parking can be supplied, jurisdictions

might find this useful. Our organizations would be happy to facilitate a meeting between Water Board staff and local experts on the parking issue to discuss some alternatives to including these requirements in the final permit.

Our organizations are also still concerned about the overly prescriptive nature of the permit. While some flexibility has been added, we still feel that the permit alienates municipalities that have crafted extremely successful storm water programs under the current permit, and are seeing good results from their BMPs and water quality improvement efforts. This draft still prevents municipalities from customizing their programs, and will interfere with some of the programs currently in place due to the costs of implementing new requirements.

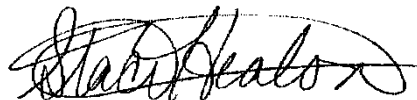
Finally, our organizations are members of the Statewide Stormwater Coalition, and we fully endorse their comment letter. We also echo their specific comments and request that the Board accordingly revise the receiving water language and language to align with the federal Clean Water Act, eliminate over-specific requirements, allow Central Coast MS4s to comply with the general order post-construction standards, and provide clear guidance to Regional Board Executive Officers for direction to Permittees and enforcement of the Order. By extension, we also endorse the technical comments submitted by the California Stormwater Quality Association (CASQA) and the legal comments submitted by Best Best & Krieger.

Local governments are committed to working with the Board to create a better permit that will achieve water quality benefits for all Californians. We thank you for your consideration of our input in this matter. Please feel free to contact us if you have any questions.

Sincerely,



Karen Keene
CSAC Senior Legislative Representative



Staci Heaton
RCRC Regulatory Affairs Advocate



Kyra Ross
LCC Legislative Representative

CC: Matthew Rodriguez, Secretary, California Environmental Protection Agency
Members of the State Water Resources Control Board
Tom Howard, Executive Director, State Water Resources Control Board
Senator Roderick Wright
Senator Sam Blakeslee
Assembly Member Luis Alejo

Suggested Changes to Section E.12.j. of the Draft MS4 Permit

E.12.j. Planning and Building Document Updates

(i) **Task Description** – The Permittee shall modify, at a minimum, ~~general plans, specific plans, policies, zoning, codes,~~ regulations, standards, and/or specifications to ensure watershed process protection is fully considered in land planning decisions that impact stormwater management of existing and future development.

(ii) **Implementation Level** –

a. Within the first year of the effective date of this Order, the Permittee shall complete each action item listed below to revise planning and building requirements for development projects subject to the post-construction requirements in Section E.12.

i. The Permittee shall conduct an analysis of all applicable codes, regulations, standards, and/or specifications to identify modifications and/or additions necessary to correct gaps and impediments impacting effective implementation of post-construction requirements.

ii. The Permittee shall modify codes, regulations, standards, and/or specifications as applicable to fill identified gaps and remove identified impediments to effective implementation of post-construction requirements.

1. The Permittee shall review and modify planning and building requirement language so that it includes, at a minimum:

- a. Provisions for protecting and/or utilizing groundwater recharge zones;
- b. Maintenance agreements or easements for stormwater management-related landscaping features;
- ~~c. Reduced parking ratios from existing Permittee standards to take advantage of shared parking opportunities and mixed use;~~
- ~~d. Parking allowed in building setbacks; and~~
- ~~e. Reduced parking requirements for any assisted living, low income housing, or other housing units likely to have lower parking demand.~~

2. The Permittee shall review planning and building requirement language and include:

- a. Language that allows alternatives to conventional curb, gutter, and subgrade enclosed pipe runoff conveyance as required improvements;
- b. Language that allows shared drainage among properties and shared public/private drainage handling and treatment;

- c. Language that allows pervious alternatives to driveway paving materials such as asphalt, Portland cement, or some other highly impervious material;
- d. Language that allows flexible building setbacks;
- e. Landscaping requirements that promote infiltration, in lieu of elevated landscaped beds, compaction specifications, or required materials; and
- f. Language that promotes narrower rights of way and the use of LID techniques in rights of way.

b. ~~By year three of the Permit effective date, the Permittee shall evaluate their policies for approval of general plan updates and specific plans, or other master planning documents, and zoning, to:~~

- i. ~~Identify barriers to using development methods that protect watershed processes;~~
- ii. ~~Identify gaps in development methods for the promotion of watershed process protection; and~~
- iii. ~~Identify how the following design principles can be incorporated into their policies and zoning:~~

1. ~~Natural Systems and Green Infrastructure~~
2. ~~Infill and Redevelopment~~
3. ~~Compact Design~~
4. ~~Use Mix~~
5. ~~Streets and Mobility~~
6. ~~Parking~~

iv. ~~By year four of the Permit effective date, the Permittee shall revise their policies for approval of general plan updates and specific plans, or other master planning documents, and zoning, to remove barriers and fill gaps and incorporate design principles identified by the Permittee.~~

(iii) Reporting—

a. ~~By the first year Annual Report, the Permittee shall submit documentation to demonstrate they modified all applicable codes, regulations, standards, and/or specifications pursuant to E.12.j.ii.a.~~

b. ~~By the third year Annual Report, the Permittee shall submit a proposal for modifying their policies for approval of general plan updates and specific plans, or other master planning documents, and zoning.~~

c. ~~By the fourth year Annual Report, the Permittee shall submit documentation to demonstrate they have modified all applicable policies for approval of general plan updates and specific plans, or other master planning documents, and zoning.~~