

## Attachment A: Policy Purpose

### Comment 2.1

Issue #1: It is essential for the Draft Policy's objective to be unequivocal, with the gathered data closely mirroring this objective.

The preliminary intent of the Draft Policy, as laid out in Section 1, revolves around ensuring that all entities operating Municipal Separate Storm Sewer Systems (abbreviated as MS4 or sometimes referred to as Municipal) in California consistently estimate, track, and report annual expenditures related to MS4 permit implementation. While ACCWP is broadly in agreement with this stated goal, we believe there is room for refining its clarity and ensuring other facets of the Draft Policy resonate with this central objective.

A point of contention arises from the Draft Policy's stipulation of reporting certain data that does not seamlessly dovetail with its central purpose. For example, Section 5.3 calls upon each Phase I Permittee to share the details for every individual structural stormwater BMP. This encompasses the BMP's location (both its physical address and GPS coordinates), type, surface coverage, loading rate, the drainage zone it treats, and the final expense of the project. In a parallel vein, Section 7.4 directs Permittees to furnish details about their street-cleaning efforts. This includes the area covered, the specific machinery utilized, and the aggregate volume of debris collected. What further complicates matters is the indication in the preliminary Staff Report that suggests a detailed disclosure of street cleaning initiatives, mirroring the depth of Section 7.4, will be obligatory once the associated costs are shared.

These mandates, especially those in Sections 5.3 and 7.4, not only veer off from the primary goal of the Draft Policy but also risk clashing with current reporting norms set for stormwater permits. In essence, they add a layer of reporting that does not focus on costs. If such data are important, then it should be subject to a separate data gathering effort distinct from the cost reporting policy.

A concluding note worth stressing is the non-uniformity of MS4 permit mandates across California. As such, the Draft Policy's core message should underscore that the costs reported are inherently tethered to the specific permit requirements that a given municipality adheres to.

### **ACCWP Recommendations:**

1. Modify the purpose of the Draft Policy in Section 1.1 as follows:

1.1 The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure that municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track, and report annual expenditures ~~related to the implementation of MS4 permits~~ in a consistent manner to determine the municipal costs to implement each municipal stormwater program as required by the applicable permit.

2. Remove requirements to report on data that are not specific to costs the Draft Policy, including, but not limited to Sections 5.3 and 7.4 and corresponding sections in the Draft Staff Report.

#### Comment 4.1

1.2 The Draft Policy describes the cost categories that Phase I MS4 Permittees and Traditional Phase II permittees shall use to track their Permit implementation costs, including **true costs that can be tracked as well as estimates for items for which true costs cannot be calculated** ~~best practices for accounting.~~

#### Comment 5.1

However, the members of the Los Cerritos Channel Watershed Group do have several concerns with the Proposed Draft Policy. Several of our concerns have been expressed by other municipalities and by CASQA. However, one major concern we have with the Policy has not received sufficient attention. I brought it up with STORMS staff during the presentation at the CASQA Conference, but it does not appear to have been given widespread attention. The important element missing from the *(Draft) Water Quality Control Policy for Standardized Cost Reporting in Municipal Stormwater Permits* is reporting of unnecessary expenditures.

#### Comment 8.1

The Partnership recommends the continuation of the work that the Strategy to Optimize Resource Management of Stormwater (Storms) Unit has started in the beta-test process to work with stakeholders to trial reporting methodology. Furthermore, utilizing this process to develop more specific data objectives would better ensure that that the costs being requested meet the objectives.

#### Comment 9.1

Ability to Obtain and Compile Public Financial Data for Stormwater Program Reporting Purposes

The Draft Policy requires agencies to compile and report financial data based on stormwater program activities, which is not the manner in which financial data is tracked or reported for public finance accounting purposes. Thus, the Draft Policy will fundamentally require agencies to reconfigure how agency-wide finances are tracked and compiled, or develop a separate tracking system, in order to report in the proposed manner. These conflicts will affect the confidence and certainty of the data provided and appear to prescribe the means and methods of compliance. ***The Draft Policy needs to define the required data request more clearly without prescribing the means and methods of compliance and explicitly recognizing the approach to generate this information may require estimations and ranges of costs instead of one “true cost”.***

#### Comment 10.1

### **DETERMINING THE COST OF MS4 PERMIT IMPLEMENTATION**

The first and most important step is to clearly define the goal (e.g., what is the policy trying to achieve?). While the Draft Policy includes a purpose statement (Section 1.1), it does not clearly define a goal other than to collect standardized data. The Draft Policy later provides three ways to use these data (Section 4):

- Section 4.1: Inform permitting decisions

- Section 4.2: Justify proposed stormwater funding measures
- Section 4.3: Address environmental justice issues

Each of those uses of data is essentially a different goal, which would impact what type of data are collected and reported and, therefore, the overall structure and intent of the cost reporting policy. Cumulatively, those goals require many different data types and significantly expand the scope beyond determining the cost of MS4 permit implementation.

We therefore recommend focusing first on determining the cost to implement a stormwater program as required by the applicable permit. This goal will provide many benefits and is a foundational building block for other goals (including the uses of data identified in the Draft Policy). Focusing on the cost to implement a permit also directly aligns with the State Auditor’s Report<sup>2</sup> that recommends that the regional water boards obtain adequate and consistent information on the stormwater program management costs.

***CASQA Recommendation:***

- In the Draft Policy, modify the Purpose (Section 1.1) as follows: The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure that municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track, and report annual expenditures ~~related to the implementation of MS4 permits~~ **to determine what it costs to implement each municipal stormwater program as required by the applicable permit.**

Comment 11.1

**Primary Comment #1: The purpose of the Cost Reporting Policy should be clear, and the data collected should be aligned with the purpose.**

The stated purpose of the draft Cost Reporting Policy in Section 1 is to ensure that Municipal Separate Storm Sewer System (MS4) permittees in California consistently estimate, track, and report annual expenditures related to MS4 permit implementation. The City generally supports the stated purpose but requests some clarifications to the language related to purpose and better alignment of certain aspects of the draft policy with its stated purpose. The purpose of the policy should also acknowledge that a municipality’s reported costs will be specific to the permit requirements to which it is subject.

The draft policy contains requirements to report project and program specific information unrelated to costs that do not align with the purpose of determining the cost of implementation. For instance, Section 5.3 of the draft policy mandates that each Phase I Permittee provide details for every “structural stormwater BMP,” including its location (address and GPS coordinates), BMP type, surface area, loading rate, drainage area, and the total cost of the completed project. Additionally, the collection of this type of data (e.g., requirements in Sections 5.3) can present potential conflicts with existing reporting obligations, as MS4 permit requirements vary across the State. In some cases, this may result in an additional layer of reporting on top of existing reporting requirements in the City’s MS4 permit.

***Recommendations:***

1. Clarify the purpose of the draft Cost Reporting Policy in Section 1.1 to focus on determining the costs to implement requirements as required by the applicable MS4 Permit.

2. Remove requirements to report on data that are not specific to costs, including, but not limited to Sections 5.3 and corresponding sections in the Draft Staff Report.

The City supports related revisions to the draft policy language as proposed by the California Stormwater Quality Association (CASQA) in their comment letter.

Comment 13.2

**CLARIFY THE PURPOSE OF THE COST REPORTING POLICY:** The Draft Policy should establish a clear and explicit goal beyond only the collection of standardized data. While the Draft Policy mentions three distinct goals—informing permitting decisions, justifying proposed stormwater funding measures, and addressing environmental justice issues—these goals can lead to varying data needs, significantly expand the scope beyond determining the cost of permit implementation, and impact the policy's intent. We recommend first giving priority to establishing the cost of implementing a stormwater program in accordance with the requirements of the relevant permit. This objective would serve as a fundamental cornerstone for the other goals included in the Draft Policy. Prioritizing the assessment of permit implementation costs also directly aligns with the State Auditor's Report, which advises the Regional Boards to obtain sufficient and consistent information regarding the management expenses of stormwater programs.

*Request: Revise the existing Draft Policy purpose statement to: "The purpose of the [Draft Policy] is to ensure MS4 permittees estimate, track, and report annual expenditures in a consistent manner to determine the costs to implement each municipal stormwater program, as required by the applicable permit."*

Comment 15.1

Comment 1: The Draft Policy should be revised to require a level of expenditure reporting detail that more appropriately aligns with the purpose of the policy and should clearly define how Permittees' expenditure data will be utilized to achieve its purpose.

In Section 1.1 it is stated that the purpose of the Draft Policy is to ensure that MS4 permittees "estimate, track, and report annual expenditures related to the implementation of MS4 permits in a consistent manner." LASAN agrees with this overall purpose but believes that the Draft Policy contains requirements that are not aligned with this purpose and require a greater level of detail than is necessary to achieve this purpose. It should also be noted that a purpose of the Draft Policy should be to support MS4 Permittees in reporting expenditures by providing clear, consistent direction.

The Draft Policy contains many requirements, further discussed in Comment #3 below, for routine MS4 activities which are extraneous to the stated purpose in Section 1.1. For example, Section 7.4 of the Draft Policy requires "relevant details of street sweeping, including area swept, type of sweepers, and volume of debris collected." This type of requirement is not only resource intensive to collect but reaches beyond the scope of reporting cost data pertinent to the purpose of the Draft Policy. It is unclear why this type of tangential data is needed or how will be used to consistently estimate, track, and report MS4 expenditures.

The Draft Policy also does not provide a clear linkage between how the submitted data will be utilized and the purpose of the policy. Section 4 of Draft Policy states the standardized cost data will be used to “inform regulatory steps necessary to implement state and federal water quality laws [...] including consideration of economic information in the development of new Permits and Permit reissuances”, encourage the use of “standardized cost data as a tool to seek and justify proposed stormwater funding measures”, and “identify and address environmental justice issues in stormwater management”. These stated uses are vague and do not specify concrete actions that the State Water Board and regional water quality control boards (regional water boards) will undertake with the required cost data. To complete the requirements established by the Draft Policy, a significant amount of resources will be required to develop and implement new municipal accounting processes. As currently written, the purpose of the Draft Policy does not justify the level of detailed information required in reporting expenditures and no framework is established to connect such efforts to the desired outcomes. The level of information required in the Draft Policy should be more appropriately balanced to meet the level of information required to achieve the purpose of the Draft Policy.

Requested Action:

- Revise the Draft Policy language to clarify the linkage between the stated purpose of the policy and how the data will be used to achieve that purpose. Define concrete actions the State Water Board and regional water boards will undertake with the expenditure data reported by Permittees.
- Revise Section 1.1 of the Draft Policy as follows:

*The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure ~~that~~ support municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track and report annual expenditures related to the implementation of each municipal stormwater program’s applicable MS4 permits in a consistent manner.*

## Attachment B: Cost Categories and Sub-categories

### Comment 1.4

The Cost Categories for Permittees should provide flexibility such that only primary categories (not sub-categories) are required for each major program area/permit provision.

The Draft Policy currently requires that every Phase I municipality in the State report annual expenditures based on a prescriptive set of Cost Categories and Sub-categories inconsistent with the Phase I permits.

The ORPP Guidance appropriately noted and accounted for the necessary differences amongst the Phase I municipal permits and included the Cost Categories as “suggested”, to be applied as they pertain to each permit. The following language from the ORPP guidance allows for the necessary flexibility that is being requested:

- “This guidance is necessarily general”;
- “Standardized, statewide guidance on select Minimum Control Measures does not exist”;
- “There are appropriate grounds for differences among municipal storm water permits”; and
- “While the guidance is specific where possible, particularly for issues common to many municipalities, the categories cannot account for every community-specific situation and remain broadly usable for MS4 permits across the state.”

However, the Draft Policy does not recognize the need for and allow the same flexibility as the ORPP Guidance and instead states that [emphasis added] “Phase I MS4 Permittees covered by a Phase I MS4 Permit **shall report** all expenditures incurred while implementing Permit-required activities **using all cost categories described below**. Permittees **shall further itemize expenditures using various sub-categories** as shown in Table 1.”

Although the primary categories identified within the Draft Policy are largely the same as the ORPP Guidance and similar to what many municipalities currently report, the Draft Policy should not require reporting at a sub-category level. Sub-categories deviate significantly from both ORPP Guidance language and standard permit language and significantly complicate the cost reporting effort, with no commensurate or identified benefit within either the Draft Policy or the Draft Staff Report. Instead, the Policy should be reviewed in the future, after it has been fully implemented for several years, to determine if any modifications should be made and/or if any sub-categories are warranted to achieve the Policy’s purpose.

### **CCCWP Recommendations:**

- *Modify Section 5.1 as follows: “Phase I MS4 Permittees covered by a Phase I MS4 Permit shall report all **municipal agency-related** expenditures incurred while implementing Permit-required activities using **the applicable all** cost categories described below **and as**. Permittees shall further itemize expenditures using various sub-categories as shown in Table 1.*
- *Modify Table 1 as follows: a) “Table 1: List of standardized categories and sub-categories for reporting the cost of Phase I implementation”; b) delete the Sub-categories column.*

### Comment 2.3

The Draft Policy should focus on category-level reporting. Furthermore, to facilitate uniformity in reported data, it is essential to offer comprehensive guidance materials.

The ACCWP collaboration with BAMS Collaborative offered insights into the adaptability of ACCWP members' current systems for collecting cost data, in line with the overarching objectives of the Draft Policy highlighted in Issue #1. This collaboration allowed ACCWP members to assess the practicalities of data collection and pinpoint areas where procuring specific data might be difficult or unfeasible due to system constraints.

This exploration revealed that present accounting methodologies in most agencies are designed to produce data at broader category levels. Extracting data at the nuanced sub-category levels, as prescribed in the Draft Policy, proves challenging. For instance, Section 5.2 delineates certain line items which might not correspond to every cost category and might be incongruent with established accounting systems.

Although the primary categories in the Draft Policy are similar to those in MRP Provision C.20, it would be prudent that the Draft Policy does not mandate sub-category reporting. The inclusion of sub-categories, which are not a part of MRP Provision C.20, would add undue complexity to the cost-reporting procedure. Neither the Draft Policy or Draft Staff report justify this complexity with an explanation of the need for benefits of reporting at the sub-category level. Instead of requiring this complexity at the outset, it would be more beneficial through adaptive management to evaluate the policy after its several years of implementation to revisit it and any need to further break down costs to ensure the policy aligns with its original purpose. For context: Different agencies have distinct accounting system constraints. For the vision of uniform cost reporting to come to fruition, the Draft Policy must be tailored to suit the operational capacities of these agencies. Established accounting procedures inherently set boundaries on the granularity of cost data that can be presented.

Echoing the issues noted in Issue #2, clear guidelines on cost reporting are paramount. This includes clarifications on topics such as reporting capital expenditures spread over multiple years, capturing multi-year projects, among others. Lacking such guidelines would invariably hinder the objective of achieving consistent permit implementation cost data.

Finally, the Draft Policy includes asset management as a sub-category in program management costs. In the MRP, asset management is its own provision and as such it should be reported at the category level. Given that this requirement is not in many stormwater permits to-date, it could be reported as a Special Program.

#### **ACCWP Recommendations:**

1. Modify the Draft Policy to require municipalities to report costs at the **category level** and provide a narrative describing the sub-category costs summarized in each category. Sub-category levels and expenditure line-items identified in Section 5.2 should be framed as examples that one can include in the category, but reporting at that level of detail should be optional.
2. Develop guidance and tools to accompany the Draft Policy to provide clear guidance on how to report costs to promote the goal of gathering consistent cost data.

3. Place Asset Management at the category level within the Draft Policy.

Comment 3.1

**The Draft Policy Should Only Require that each Municipality Report out the Annual Expenditures Based on Primary Cost Categories (not Sub-Categories) that are Consistent with the Applicable Stormwater Permit. [Draft Policy Section 5.1 and Table 1]**

Comment 3.2

Not only do many of the sub-categories not apply to our permit-required stormwater program, but due to our current job coding, accounting processes, and breadth of the departments and staff that are involved in the implementation of the stormwater program throughout the City, we are not able to separate our annual expenditures by the sub-categories proposed by the Draft Policy.

Comment 3.4

Over the past 20+ years, the City has developed a cost-efficient water quality monitoring program that satisfies several different permit requirements using the same sampling and analysis plan, quality assurance project plan, staff, contracts, and analytical labs. As such, the City is not able to distinguish costs for water quality monitoring that is conducted as a part of the monitoring and reporting program portion of the permit versus the total maximum dally load (TMDL) portion of the permit. The Draft Policy should allow the flexibility that is necessary In order to holistically report the monitoring costs.

Comment 4.1

Phase I MS4 Permittees covered by a Phase I MS4 Permit shall report ~~all~~ expenditures incurred while implementing Permit-required activities using all cost categories described below. including tracked costs of permit implementation as well as cost estimates for actions that support permit implementation but are not directly tracked. ~~Permittees shall further itemize expenditures using various sub-categories as shown in Table 1.~~

Comment 4.2

~~Table 1: List of standardized categories and sub-categories fur reporting cost of Phase I Permit implementation (Delete Table 1)~~

Comment 6.2

The Draft Policy should only require reporting of municipal stormwater program costs by main cost categories and line items. Reporting of costs at the subcategory level should be removed. The current level of detail required in the Draft Policy (11 categories and 22 subcategories, reported by seven cost line items) would make the report overly complicated to prepare. Apportioning costs by subcategory will not be feasible using the current Bay Area Cost Reporting Framework. If a subcategory is important to quantify to meet the goals of the Policy (e.g., Asset Management), it should be listed as a category.

***Requested Change:*** Remove the requirement to report at the subcategory level by making the following changes to the Draft Policy:

o Modify Section 5.1 as follows: “Phase I MS4 Permittees covered by a Phase I MS4 Permit shall report all municipal agency-related expenditures incurred while implementing Permit-required activities using the applicable ~~all~~ cost categories described below and as. ~~Permittees shall further itemize expenditures using various sub-categories as shown in Table 1.~~

*Modify Table 1 as follows:*

- “Table 1: List of standardized categories ~~and sub-categories~~ for reporting cost of Phase I implementation.”
- Delete the Sub-categories column.

Comment 8.2

Additionally, the State Water Board should implement a cost reporting program at an initially low resolution to meet stated data goals and further define granularity or different cost categories as data quality and usefulness are demonstrated at the lower resolution. Where categories are not consistent across permits, special case studies may be more suited to gathering specific data.

Comment 8.4

The Partnership recommends that in the interim hybrid or initial phase of Cost Reporting Policy implementation, reporting should allow additional fields to specify when the cost estimate is not available and may be non-zero. The Partnership also recommends that a field be allowed for all costs reported to notate specific circumstances.

Comment 9.5

The Draft Policy Should Only Require Annual Reporting of Expenditures Based on Primary Cost Categories (not Sub-Categories) that are Consistent with the Applicable Stormwater Permit(s) Requirements. [Draft Policy Section 5.1 and Table 1]

Comment 10.2

**Cost Categories and Sub-Categories:** Given the variation of MS4 permit requirements throughout the state, the Cost Reporting Policy should require reporting at the category level and allow optional reporting at the sub-category level.

o Modify Section 5.1 as follows:

- “Phase I MS4 Permittees covered by a Phase I MS4 Permit shall report all ~~municipal agency-related expenditures~~ incurred while implementing Permit-required activities using ~~the applicable~~ all cost categories described below and as-Permittees shall further itemize expenditures using various sub-categories as shown in Table 1.

Modify Table 1 as follows:

- “Table 1: List of standardized categories ~~and sub-categories~~ for reporting cost of Phase I implementation”
- Delete the Sub-categories column.

Comment 11.2

The Cost Reporting Policy should only require reporting at the category level with sub-category reporting being optional.

The City's involvement as a beta tester provided City staff the opportunity to closely examine the alignment of current systems and processes with the aims of the draft Cost Reporting Policy and

to evaluate how much effort would be necessary to accurately capture cost data at the level of detail requested. This process has helped us identify potential hurdles or areas where procuring such data may be particularly challenging, or even unattainable, due to the limitations of our existing systems.

One of the lessons learned from the beta testing process is that reporting at the category level is preferable and appropriate. Reporting at category levels (e.g., public education, outreach, involvement, and participation; illicit discharge detection and elimination; planning and land development) aligns directly with MS4 permit requirements across the state, providing the most consistency in the way costs are reported and supporting interagency comparability. Reporting at this level provides enough flexibility to account for differences in requirements between permits and in how programs are implemented from agency to agency, while providing a structure based on common elements in MS4 permits. This approach directly supports the purpose of the policy to determine what it costs to implement each municipal stormwater program as required by the applicable permit.

In contrast, reporting at the detailed sub-category requirements proposed in the draft policy will trigger an overhaul of the City's existing accounting systems, as current mechanisms are not designed to meticulously track costs in the manner the draft policy outlines. For a more detailed understanding of the challenges and nuances associated with subcategory-level cost reporting refer to Section 5.2 in Attachment A.

For these reasons, the City recommends that the draft policy requires reporting at the category level only and includes examples of specific sub-categories that agencies should consider when compiling costs for a specific category. This approach will provide consistency in how costs are compiled and reported, while offering the flexibility necessary to account for differences in programs.

As the cost reporting matures, it may be beneficial for the Board to engage with permittees to develop supplemental guidance to support consistency across programs and comparability of costs. A phased, adaptive approach will improve implementation of the policy in the long term by building on the experience of the group. After a few years of implementation, permittees will have a better understanding of agency specific nuances within each category and the level of detail that is practical to be reported. The guidance could address a range of potential issues such as reporting on appropriate subcategories, accounting for projects spanning multiple years, allocating costs when an activity is a subset of a broader project, and handling expenditures linked to regional programs.

***Recommendation:***

*3. The draft Cost Reporting Policy should be modified to require municipalities to report costs at the category level and provide a narrative describing the sub-category costs that may be summarized in each category. Subcategory levels and expenditure line-items identified in Section 5.2 should be framed as examples that one should include in the category but reporting at the sub-category level should be optional.*

Comment 13.3

## The Data Required To Be Collected Should Align With The Objective Of Improving Receiving Water Quality

The Draft Policy currently mandates 103 separate reporting items, which may not align with actual MS4 permit implementation costs or lead to improvements in stormwater quality. Justification for this level of detail should be provided to ensure that the effort and time invested in calculating and reporting these detailed costs leads to measurable improvements of stormwater quality. The increased detail in cost data requirements will also compromise data accuracy and hinder comparisons among Permittees.

Understanding and acknowledging the limitations of municipal agencies to accurately report embedded costs in day-to-day programs (e.g., parks, streets, operations and maintenance, etc.) is very important. Many stormwater program implementation costs are ingrained into operational budgets that do not have the capability for further granularity. Further, the financial information used to report costs comes from municipal finance departments, not from stormwater program managers. Financial reporting systems are limited and not designed to parse out data at the level of detail currently required by the Draft Policy, which will lead to inconsistencies between data sources. Cost reporting should not require an increased effort or replace financial systems for compliance and should be feasible using existing, established accounting methods. The most sensible option to address these limitations would be to revise the Draft Policy framework to require reporting of standardized categories for which data collection among programs is relatively reliable and allow optional reporting of sub-categories that can be selected based on the capabilities of individual operational and financial systems.

*Request: Given the diversity of MS4 permit requirements across the state, revise the Draft Policy to require cumulative cost reporting at the standardized category level, with optional sub-category reporting.*

### Comment 15.4

Draft Policy should only require cost reporting on primary categories and leave reporting costs in subcategories as optional

Section 5.1 requires that Permittees report all expenditures using all cost categories and further itemize expenditures using the sub-categories listed in Table 1 of the Draft Policy. The level of information required in the primary cost categories appears to be sufficient to meet the Draft Policy's stated purpose of standardizing cost reporting and informing regulatory steps to implement regulatory laws. The level of detail necessary to complete the cost reporting requirements at the primary category level will already require a significant level of staffing resources and modifications to existing accounting systems. To break down the costs at the subcategory level will require an even greater level of resources that does not appear to yield a significantly greater understanding of costs in line with the Draft Policy's purpose. LASAN requests that the sub-categories remain present in Table 1 to provide guidance but be revised to be an optional requirement.

Requested Action: Revise Section 5.1 of the Draft Policy as follows:

*Phase I MS4 Permittees covered by a Phase I MS4 Permit shall report all expenditures*

*incurred while implementing Permit-required activities using all cost categories described below. Permittees shall **may optionally** further itemize expenditures using various sub-categories as shown in Table 1.*

Comment 16.1

The Cost Reporting Form Contains Too Many Subcategories, Rendering Them Too Complex Without Concomitant Benefit

Comment 19.7

The State Water Board Should Require the Breakout Costs Associated with Non-Filer Investigations in Section 5.1(5).

CCKA was the Sponsor of SB 205 and SB 891 (Hertzberg) that required municipalities to include business license and certificate information to verify whether industrial facilities were in compliance with filing under the Industrial General Permit (IGP) or were otherwise exempt from the regulations. The development of that legislation led to back-and-forth negotiations between municipalities who were unwilling to take even the modest step of verifying IGP issuance as part of the municipalities' responsibility to investigate industrial compliance in their jurisdiction. That has led the Waterkeepers to assume that very little, if any, municipal resources and attention are being paid to investigate non-filers within their MS4 jurisdictions. While one would assume non-filer investigation would be helpful toward the municipalities' own Permit compliance, we have witnessed municipalities ignoring non-filer investigations for political and tax-generation reasons.

Therefore, it is critical that the State Water Board obtain data on whether municipalities are fulfilling their own MS4 Permit obligations by investigating industrial and commercial non-filers. We urge the State Water Board to include a breakout of costs associated with Non-Filer Investigations in Section 5.1(5) of the Cost Policy.

Include a Breakout of Costs Associated with Non-Filer Investigations  
Section 5.1(5)

5. Industrial and Commercial Facilities: Permit-required ***non-filer*** inspections, outreach, municipal oversight, and enforcement of industrial and commercial facilities.

## Attachment C: Line Items

### Comment 1.5

The cost “Line Items” or “types” should be simplified, clarified, and consistent.

In its current form, the Draft Policy requires that municipalities report the annual expenditures based on a prescriptive set of cost line items without any guidance on what expenditures should be included in each line item or identifying which line item(s) apply to which primary Cost Categories.

Although the cost “Line Items” or “Types” described in Section 5.2 of the Draft Policy are largely the same as the ORPP Guidance, it is unclear

- a. What expenditures are intended to be reported within each cost line item and
- b. Which line items apply to which Cost Categories (Section 5.1).

Neither the Draft Policy nor the Draft Staff Report guides as to what types of costs should be included in each of the line items, when the expenditures should be included if a project or line item is implemented over multiple years, how expenditures should be calculated when the activity is part of a larger project, and how expenditures to regional programs are accounted for. For example, it is unclear what should be reported for the following and/or how the categories are different:

- Staff wages, salaries, benefits – Can a fully loaded hourly rate be used to combine this line item with item 5.2.g (indirect costs)?
- New infrastructure/retrofit – What types of projects/costs are intended to be included for this category?
- Indirect costs – What types of indirect costs would be considered for all of the Cost Categories?

Regarding the applicability of the Cost Types to the various Cost Categories, the Draft Policy does not provide any guidance and, instead, indicates that every agency should address these complexities on its own. The Draft Bay Area Cost Reporting Guidance Workbook and Manual for Region 2 (see comment #2) should be used as a model and provided as guidance for permittees.

CCCWP Recommendations:

- Require the total expenditures by Cost Category by Cost Line Item / Type as Optional
- Modify Section 5.2 as follows “Phase I MS4 Permittees ~~may shall~~ track and report all expenditures in each cost category using the following line items:
  - Guidance, which are more intuitive and align with the range of costs incurred by municipal programs:
    - Personnel & Overhead
    - Combine Personnel and Overhead costs for agency staff into one line item (providing overhead values is not attainable and provides no known benefit to the State Water Board or insight into the implementation of the stormwater program)
    - External Professional / Other
    - Capital
    - Planning, Design, Permitting, Construction

- Land Acquisition
- Operation and Maintenance
- Provide guidance regarding the types of expenditures that should be included for each cost line item/type
- Identify which Cost Line Item / Type applies to which Cost Category

**Comment 3.5**

The Draft Policy Should Only Require that each Municipality Report out the Total Annual Expenditures Based on Primary Cost Categories and include the Breakdown of the Total Costs into the Cost "Line Items" or Types as Optional. [Draft Policy Section 5.2]

**Comment 4.4**

~~Phase I MS4 Permittees shall track and report all expenditures in each cost category using the following line item-~~

- ~~a. Costs associated with staff wages, salaries, and benefits.~~
- ~~b. Capital investments for Permit implementation, except for land costs.~~
- ~~c. Expenditures for land or right of way easement acquisition.~~
- ~~d. Cost of hiring private consultants to perform Permit implementation activities.~~
- ~~e. Costs associated with new infrastructure or retrofit that were not reported under capital expenditure or land costs.~~
- ~~f. Costs associated with Permit required day to day operation and maintenance activities.~~
- ~~g. Indirect costs associated with the costs reported under 5.2.a to 5.2.f~~

Comment 9.6

**The Draft Policy Should Only Require that each Municipality Report the Total Annual Expenditures Based on Primary Cost Categories and include the Breakdown of the Total Costs into the Cost “Line Items” as Optional. [Draft Policy Section 5.2]**

The Permittees recommend the Draft Policy only require that each municipality report the total annual expenditures for each of the primary cost categories. The Draft Policy can include the breakdown of the total costs into the various cost line items (5.2.a-g) as optional based on the ability of the Permittees’ current accounting processes and systems.

This recommendation is based on the following:

- i. The Line Items cannot be Calculated without Modifications to Agency-wide Accounting Processes and Systems - The main concern with the Draft Policy line items is that agency-wide job coding and accounting processes are not set up to track this level of detail such that it could be reported for each of the primary categories. This would be a significant, resource-intensive shift that would require a significant amount of time to implement, if it is even possible.
- ii. The Line Items do not Apply to each of the Primary Categories - The Cost Submittal Tool set-up incorrectly implies that each of the line items (in section 5.2) can apply to each of the primary categories (in section 5.1), however, that is not the case. For example, capital investments (5.2.b) would likely never apply to municipal costs associated with Public Education or Industrial/Commercial categories. In order to achieve the consistency that is desired by the State Water Board (even if this is optional within the Policy), the Cost Submittal Tool should explicitly identify which line items apply to which primary categories.

Recommendation

- Require reporting of the total expenditures by primary category, and make line items optional
- Align the optional line items to be more intuitive and reflect the range of costs incurred by municipal programs, such as:
  - Personnel & Overhead
  - External Professional / Other
  - Capital
  - Planning, Design, Permitting, Construction
  - Land Acquisition
  - Operation and Maintenance
- Identify which line items apply to which primary category within the Draft Policy and Cost Submittal Tool.
- Delete item 5.2.g and indicate line items include combined direct and indirect costs.

## Attachment D: Cost Line Items

### Comment 1.5

The cost “Line Items” or “types” should be simplified, clarified, and consistent.

In its current form, the Draft Policy requires that municipalities report the annual expenditures based on a prescriptive set of cost line items without any guidance on what expenditures should be included in each line item or identifying which line item(s) apply to which primary Cost Categories.

Although the cost “Line Items” or “Types” described in Section 5.2 of the Draft Policy are largely the same as the ORPP Guidance, it is unclear

- a. What expenditures are intended to be reported within each cost line item and
- b. Which line items apply to which Cost Categories (Section 5.1).

Neither the Draft Policy nor the Draft Staff Report guides as to what types of costs should be included in each of the line items, when the expenditures should be included if a project or line item is implemented over multiple years, how expenditures should be calculated when the activity is part of a larger project, and how expenditures to regional programs are accounted for. For example, it is unclear what should be reported for the following and/or how the categories are different:

- Staff wages, salaries, benefits – Can a fully loaded hourly rate be used to combine this line item with item 5.2.g (indirect costs)?
- New infrastructure/retrofit – What types of projects/costs are intended to be included for this category?
- Indirect costs – What types of indirect costs would be considered for all of the Cost Categories?

Regarding the applicability of the Cost Types to the various Cost Categories, the Draft Policy does not provide any guidance and, instead, indicates that every agency should address these complexities on its own. The Draft Bay Area Cost Reporting Guidance Workbook and Manual for Region 2 (see comment #2) should be used as a model and provided as guidance for permittees.

CCCWP Recommendations:

- Require the total expenditures by Cost Category by Cost Line Item / Type as Optional
- Modify Section 5.2 as follows “Phase I MS4 Permittees ~~may shall~~ track and report all expenditures in each cost category using the following line items:
  - Guidance, which are more intuitive and align with the range of costs incurred by municipal programs:
    - Personnel & Overhead
    - Combine Personnel and Overhead costs for agency staff into one line item (providing overhead values is not attainable and provides no known benefit to the State Water Board or insight into the implementation of the stormwater program)
    - External Professional / Other
    - Capital

- Planning, Design, Permitting, Construction
- Land Acquisition
- Operation and Maintenance
- Provide guidance regarding the types of expenditures that should be included for each cost line item/type
- Identify which Cost Line Item / Type applies to which Cost Category

### **Comment 3.5**

The Draft Policy Should Only Require that each Municipality Report out the Total Annual Expenditures Based on Primary Cost Categories and include the Breakdown of the Total Costs into the Cost "Line Items" or Types as Optional. [Draft Policy Section 5.2]

### **Comment 4.4**

~~Phase I MS4 Permittees shall track and report all expenditures in each cost category using the following line item-~~

- ~~a. Costs associated with staff wages, salaries, and benefits.~~
- ~~b. Capital investments for Permit implementation, except for land costs.~~
- ~~c. Expenditures for land or right of way easement acquisition.~~
- ~~d. Cost of hiring private consultants to perform Permit implementation activities.~~
- ~~e. Costs associated with new infrastructure or retrofit that were not reported under capital expenditure or land costs.~~
- ~~f. Costs associated with Permit required day-to-day operation and maintenance activities.~~
- ~~g. Indirect costs associated with the costs reported under 5.2.a to 5.2.f~~

Comment 9.6

**The Draft Policy Should Only Require that each Municipality Report the Total Annual Expenditures Based on Primary Cost Categories and include the Breakdown of the Total Costs into the Cost “Line Items” as Optional. [Draft Policy Section 5.2]**

The Permittees recommend the Draft Policy only require that each municipality report the total annual expenditures for each of the primary cost categories. The Draft Policy can include the breakdown of the total costs into the various cost line items (5.2.a-g) as optional based on the ability of the Permittees’ current accounting processes and systems.

This recommendation is based on the following:

- i. The Line Items cannot be Calculated without Modifications to Agency-wide Accounting Processes and Systems - The main concern with the Draft Policy line items is that agency-wide job coding and accounting processes are not set up to track this level of detail such that it could be reported for each of the primary categories. This would be a significant, resource-intensive shift that would require a significant amount of time to implement, if it is even possible.
- ii. The Line Items do not Apply to each of the Primary Categories - The Cost Submittal Tool set-up incorrectly implies that each of the line items (in section 5.2) can apply to each of the primary categories (in section 5.1), however, that is not the case. For example, capital investments (5.2.b) would likely never apply to municipal costs associated with Public Education or Industrial/Commercial categories. In order to achieve the consistency that is desired by the State Water Board (even if this is optional within the Policy), the Cost Submittal Tool should explicitly identify which line items apply to which primary categories.

Recommendation

- Require reporting of the total expenditures by primary category, and make line items optional
- Align the optional line items to be more intuitive and reflect the range of costs incurred by municipal programs, such as:
  - Personnel & Overhead
  - External Professional / Other
  - Capital
  - Planning, Design, Permitting, Construction
  - Land Acquisition
  - Operation and Maintenance
- Identify which line items apply to which primary category within the Draft Policy and Cost Submittal Tool.
- Delete item 5.2.g and indicate line items include combined direct and indirect costs.

## Attachment E: Policy Timeline

Comment 1.1

**The proposed timeline for adoption and implementation of the Draft Municipal Stormwater Cost Policy should allow appropriate time for review and revision.**

The CCCWP understands that the Strategy to Optimize Resource Management of Stormwater (STORMS) staff has two parallel processes that are underway that will be used to inform the development and final adoption of the proposed Policy:

- Beta Test – A beta testing process for Permittees to assess and report out the ease of use and applicability of the Draft Policy Cost Categories, Subcategories, and Cost Line Items as well as the use of the online reporting platform (referred to as the Cost Submittal Tool). It is understood that the beta testing will be completed by the end of October, with a report to be released in December 2023.
- Initial Public Review and Comment – A public review and commenting period for the Draft Policy and Draft Staff Report, with comments due October 3, 2023.

It is understood that a revised Draft Policy will be developed based on the information gained from the beta test and the initial public review and comment period and released prior to a public hearing. Given the precedential nature of the Draft Policy and the fact that it will materially impact every Phase I agency in the state, the CCCWP feels strongly that appropriate time and consideration should be taken by STORMS staff to assess and consider the feedback that is to be provided during the initial comment period and through beta testing of the Draft Policy and the Cost Submittal Tool.

Although no written timelines have been made available for the planned adoption and eventual implementation of the Draft Policy, it was noted at the State Water Board's Workshop that STORMS staff intend for the Draft Policy to be adopted in February 2024 with required reporting to begin in 2025. As far as the CCCWP is aware, the current timeline for adoption and implementation is estimated to be the following:

<b>Date</b>	<b>Description</b>
October 3, 2023	Comments Due from Initial Public Review and Comment Period
October 30, 2023	End of Draft Policy and Cost Submittal Tool Beta Testing
<b>December 2023</b>	<b>Beta Testing Report to be Transmitted</b>
<b>January 2024</b>	<b>Revised Draft Policy to be Transmitted for Second Public Review and Comment Period</b>
<b>February 2024</b>	<b>Adoption Hearing for the Draft Municipal Stormwater Cost Policy</b>
September 2025	First reporting year to require Standardized Cost Reporting

The CCCWP has concerns about the timeline for the items emphasized above in bold. During the development of the Bay Area Cost Reporting Framework and Guidance Manual, the Bay Area Municipal Stormwater (BAMS) Collaborative allowed time for two comment periods and associated revisions, spanning January to June 2023. At a total of six months, the comment and review period for the Bay Area Cost Reporting Framework and Guidance Manual allowed adequate time for the 79 Bay Area Permittees to review and provide comments. Likewise, given the impact this Policy will have on municipalities across the State, the CCCWP would like to suggest that the State Water Board reconsider the anticipated adoption timeline to allow enough time for thorough review and consideration of the feedback that is to be provided during the initial comment period and beta testing of the Draft Policy and Cost Submittal Tool. We feel strongly that the current anticipated timeline for adoption does not allow for enough time to make the necessary revisions to the Draft Policy. Furthermore, given the statewide impact of this Policy, an additional second public review and comment period would be appropriate.

#### CCCWP Recommendation

Delay the Draft Policy Adoption and Implementation timeline to allow either six months or a second public review and comment period.

#### Comment 8.2

##### Implement the Hybrid or Phased Option

The Draft Cost Reporting Policy Staff Report includes three options for implementation and recommends Option 1 as a higher resolution complete program immediately. The Partnership is concerned that this approach will generate significant amounts of data that that may not be consistent due to differences in permits and differences in municipalities organizational structure. In particular, internal municipal accounting systems may not provide the granular level of detail required because of differences in accounting conventions or levels of access to financial and personnel information.

Sub-categories such as emergency programs and integrated pest management may be better suited for case studies where the costs would be difficult to compare across municipalities without highly defined parameters.

The Partnership recommends that the State Water Board implement a hybrid or phased approach most closely described in Option 3. Additionally, the State Water Board should implement a cost reporting program at an initially low resolution to meet stated data goals and further define granularity or different cost categories as data quality and usefulness are demonstrated at the lower resolution. Where categories are not consistent across permits, special case studies may be more suited to gathering specific data.

#### Comment 9.3

##### Availability and Level of Effort to Provide Municipal Stormwater Program Implementation Cost Data

The Permittees have been compiling and providing fiscal analysis data as a part of the annual reporting process to the Santa Ana and San Diego Regions since 2003-2004, however, to date, this dataset has not been used in a manner envisioned by the Draft Policy. Although the Draft

Staff Report noted that staff evaluated the fiscal reporting requirements amongst the various permits, it appears that the fiscal reporting data has not been analyzed as a part of the beta testing process.

To provide this data, the Permittees currently, collectively spend approximately 650 hours each year compiling and submitting fiscal analysis data to the Santa Ana and San Diego Regional Water Boards and have been providing this data for almost 20 years. This effort requires that each agency collect data from numerous departments, most of whom have different financial tracking mechanisms and do not have stormwater program implementation as a primary part of their workload and thus do not track the work as separate line items.

Requiring additional cost data in the proposed sub-categories and line items would significantly increase the time and effort required to provide these estimates, and in some cases may be infeasible to meet these requirements.

***The State Water Board should use the currently available cost reporting data and information (e.g., Santa Ana Region, San Diego Region, Central Coast Region, and/or Los Angeles Region) to beta test the purpose, goals, and use of the data prior to adopting the Policy.***

Comment 10.11

**Should the Schedule for the Consideration of a Final Cost Reporting Policy be Modified?**

CASQA appreciates the question raised by State Water Board staff pertaining to the schedule for approving the Draft Policy and the time needed to incorporate the information gained from the beta testing process.

As the Cost Reporting Policy is novel (the first of its kind for the Water Boards), CASQA supports taking the time that is necessary to fully consider feedback received through the public workshop, written comments, as well as the beta testing process. The proposed schedule (consideration of adoption in Spring 2024) particularly constrains the time available to consider the outcomes of the beta testing, develop any potential modifications, and propose a modified policy.

In addition, there are potentially beta testers who would be willing to test any potential modifications prior to the development of a final policy. Again, given the significance of the Cost Reporting Policy, feedback on potential modifications and an additional workshop would be worth the time investment prior to the development of a final policy.

***CASQA Recommendations***

- Extend the current schedule to allow for sufficient time for the consideration of the beta testing process, additional public engagement, and as applicable, any proposed modifications to the Cost Reporting Policy.
- If beta testers are willing, test any potential modifications, and allow for additional public engagement (e.g., another public workshop) prior to the development of a final policy.

Comment 13.1

**EXTEND ADOPTION TIMELINE:**

The Program supports allocating additional time to thoroughly consider feedback received from public workshops, written comments, and the beta testing process. The current adoption schedule is rushed and limits the opportunity to consider the results of ongoing beta testing, including potential adjustments, and propose a revised (and final) policy that would better achieve the stated goals.

*Request: To ensure all concerns are adequately heard and addressed, extend the current schedule for adoption to a minimum of six months after completion of beta testing to allow for consideration of feedback from the beta testing process and allow additional time for public engagement.*

## Attachment F: Phase II or Small Phase I

### Comment 6.4

The cost categories and line items included in the Draft Policy should be consistent for Phase I and Traditional Phase II stormwater permits, where some cost categories may be allowed to be reported as not applicable to Phase II.

Permittees with a portion of their jurisdiction covered by a Phase I permit and another portion covered by a Phase II permit will benefit from consistency in cost reporting format, terminology, and classification of costs for both types of permits. In addition, Permittees that span more than one Regional Water Board region and/or are covered by multiple MS4 permits should only have to submit one set of cost data for each reporting period.

A case in point is the County of Santa Clara, where the northern part of the County is in Region 2 (San Francisco Bay Area RWQCB, MRP) and the southern part is in Region 3 (Central Coast RWQCB, Phase II permit). Under current requirements in the MRP and the Draft Policy, the County of Santa Clara would be required to prepare and submit three different reports on the costs associated with its municipal stormwater program, one following MRP specific requirements and two different reports for the statewide cost reporting program.

***Requested Change:*** Amend the Draft Policy to include consistent cost categories for Phase I and Phase II Permittees, as illustrated in the CASQA letter, Appendix A, Comment #2: Suggested Table for Cost Categories and Line Items. Provide clarification in the Draft Policy that a Permittee covered by a Phase I and a Traditional Phase II permit only needs to submit one cost report.

### Comment 7.1

The Draft Policy should recognize the challenges associated with being a small Phase I MS4 Permittee

As stated in Section 2.3.2 of the August 2023 Draft Staff Report ("Draft Staff Report"), Phase II MS4 Permittees have expressed concerns about the scope and objectives of a new cost reporting policy due to the smaller resources available to the Phase II Permittees, and that "*a requirement for itemizing permit implementation costs would create a significant burden in terms of necessary personnel and financial resources.*"

These same concerns also apply to the smaller Phase I MS4 Permittees, those with populations under 100,000. Those smaller Cities, though they are covered by Phase I permits, share with the Phase II Cities the same limitations on staff and resources able to collect, collate and report on stormwater permit costs.

For example, ten of the Riverside County Co-Permittees covered by the Phase I MS4 Permit issued by the Colorado River Basin Regional Water Quality Control Board for the Whitewater River region share similar circumstances with Phase II MS4 Permittees; none of the cities in the Whitewater region have a population greater than 100,000 and most of the Cities do not have a dedicated stormwater manager.

A number of other Riverside County Phase I MS4 Co-Permittees are also small cities with fewer than 100,000 residents, including seven Cities covered by the MS4 permit issued by the Santa Ana Regional Water Quality Control Board and one City covered by the permit issued by the San Diego Regional Water Quality Control Board. The rationale set forth in the Draft Staff Report for applying less detailed cost reporting requirements on Phase II Cities, that they are "*smaller municipalities with limited resources*", applies with equal force to these smaller Phase I Permittees.

These Phase I Permittees are *not* already subject to detailed cost reporting requirements in their existing permits. Such reporting is not required in either the Santa Ana or San Diego Water Board permits; the Colorado River Basin Water Board permit has not previously required a fiscal analysis or documentation of expenditures related to permit implementation. The requirements for cost reporting set forth in the Draft Policy thus represent a paradigm shift for these Cities in terms of collecting, accounting for, and reporting stormwater program expenditures.

In light of these facts, the RCFCWCD requests that the Draft Policy be amended to allow smaller Phase I Permittees the option to follow the simplified reporting requirements applicable to Traditional Phase II Permittees.

**Recommendation:** Allow Phase I Permittees with populations less than 100,000 to report their stormwater program costs in alignment with Section 6 of the Draft Policy, which currently provides cost categories for Traditional Phase II MS4 Permittees only. Please see Attachment A with recommendations for language changes in the Definitions and Sections 1, 5 and 6 in the Draft Policy. The RCFCWCD also agrees with Comment Nos. 2, 5 and 6 in the CASQA letter regarding additional suggested changes in language of those sections of the Draft Policy.

#### Comment 10.10

Based upon the Draft Policy as proposed, CASQA supports differentiating the cost reporting requirements for Phase I and Traditional Phase II Permittees. The Staff Report appropriately recognizes the resource limitations of Phase II programs, impacting staffing levels and the robustness of data collection systems in use in those communities.

As State Water Board staff evaluate potential modifications to the Draft Policy, CASQA will continue to engage with the Phase II community to provide additional feedback on feasibility.

#### Comment 12.1

We want to emphasize first and foremost that we appreciate and support the staff recommendation for a simplified cost reporting structure for Phase II communities as part of the Cost Reporting Policy. As a program with twelve member agencies representing populations

ranging from about 2,000 to about 66,000 people each (with six municipalities less than 10,000 people), we attest to the limitation of resources and available data in these small communities. Mandating cost reporting to the proposed Phase I category levels as a condition of compliance for small MS4s would be unreasonable, and under current funding conditions unsustainable. We understand the current effort is to establish a policy on cost reporting for municipal stormwater permits, but we also recognize the pending reissuance of the statewide Phase II permit makes it likely to be one of the first to include requirements from this policy. If cost reporting is to be included in the statewide Phase II permit, a simplified Phase II option must remain an available compliance pathway.

Comment 18.1

**Remove Phase II permittees from this draft policy.**

Federal stormwater regulations require Phase I Permittees to provide a fiscal analysis of the capital and operation and maintenance expenditures necessary to accomplish the activities outlined in their Phase I MS4 permits. However federal regulations do not require this of the Phase II MS4 Permittees. Requiring Phase II Permittees to incur significant cost to develop, track and then report data that does not already exist and does not directly improve stormwater quality and appears to be another unfunded mandate.

## Attachment G: Cost Accounting Guidance

Comment 1.3

**The Draft Policy should guide the Permittees regarding what types of costs should be reported and how they should be reported amongst the designated Cost Categories.**

The “Purpose” section of the Draft Policy states that [emphasis added] “...[the] Policy describes the cost categories that Phase I MS4 Permittees and Traditional Phase II Permittees shall use to track their Permit implementation costs, **including best practices for cost accounting**” (Section 1.2).

Although some general guidance is provided in both the Draft Policy and the Draft Staff Report about what is meant by each of the Cost Category titles, the current versions of the draft documents do not provide the much-needed, robust cost reporting guidance regarding what types of costs should be considered for each of the Cost Categories and Cost Types, which will have the unintended consequence of inconsistent cost reporting. If consistent cost reporting, to the extent that this is achievable, is desired by the State Water Board, then clear guidance should be provided to the Permittees prior to the adoption of the Policy.

Fortunately, the robust draft guidance document (the Guidance Manual) and an accompanying cost reporting tool (the Framework) that the BAMS Collaborative recently developed are available to inform a similar document for the State Water Board. The CCCWP significantly contributed to this work effort, and we wish to emphasize the value Bay Area Permittees have placed on the supporting Guidance Manual. It is an extensive 50-page stand-alone document that was developed by a team of consultants and Permittees, with input from the Regional Water Board staff, to help Permittees understand which costs are required, how to report each cost, and to preemptively attempt to tease out complex accounting costs that might fall into multiple Cost Categories (e.g., projects and associated costs that span both New Development/Redevelopment and Construction permit provisions). The Guidance Manual intends to allow the cost reporting process to be more consistent across agencies. Though cost classifications differ between the BAMSC Framework and Guidance Manual and the State Board’s Draft Municipal Stormwater Cost Policy (**see comments 3, 4**), we believe there is value in identifying this resource as a starting point for STORMS staff when revising the Draft Policy.

Lastly, the CCCWP does not believe that the Draft Policy intends to suggest “best practices” for municipal cost accounting and, instead, believes that this was intended to reference guidance that would be used by the municipalities when completing the cost reporting tables. Each permittee’s accounting practices are based on generally accepted accounting principles and other factors. They are not susceptible to modification based on cost reporting requirements in an MS4 permit.

### ***CCCWP Recommendations:***

- *Modify Section 1.2 to read “The Draft Policy describes the cost categories that Phase I MS4 Permittees and Traditional Phase II Permittees shall use to*

*track their Permit implementation costs, including best practices for cost accounting.” [note: this sentence may be better placed in a section other than “Purpose”]*

- *Review the Bay Area Cost Reporting Guidance Manual and accompanying Framework Tool developed by the Bay Area Municipal Stormwater (BAMS) Collaborative (dated June 2023) and develop similar guidance for public review before finalizing and adopting the Draft Policy.*

### Comment 2.3

The Draft Policy should focus on category-level reporting. Furthermore, to facilitate uniformity in reported data, it is essential to offer comprehensive guidance materials.

The ACCWP collaboration with BAMS Collaborative offered insights into the adaptability of ACCWP members' current systems for collecting cost data, in line with the overarching objectives of the Draft Policy highlighted in Issue #1. This collaboration allowed ACCWP members to assess the practicalities of data collection and pinpoint areas where procuring specific data might be difficult or unfeasible due to system constraints.

This exploration revealed that present accounting methodologies in most agencies are designed to produce data at broader category levels. Extracting data at the nuanced sub-category levels, as prescribed in the Draft Policy, proves challenging. For instance, Section 5.2 delineates certain line items which might not correspond to every cost category and might be incongruent with established accounting systems.

Although the primary categories in the Draft Policy are similar to those in MRP Provision C.20, it would be prudent that the Draft Policy does not mandate sub-category reporting. The inclusion of sub-categories, which are not a part of MRP Provision C.20, would add undue complexity to the cost-reporting procedure. Neither the Draft Policy or Draft Staff report justify this complexity with an explanation of the need for benefits of reporting at the sub-category level. Instead of requiring this complexity at the outset, it would be more beneficial through adaptive management to evaluate the policy after its several years of implementation to revisit it and any need to further break down costs to ensure the policy aligns with its original purpose.

For context: Different agencies have distinct accounting system constraints. For the vision of uniform cost reporting to come to fruition, the Draft Policy must be tailored to suit the operational capacities of these agencies. Established accounting procedures inherently set boundaries on the granularity of cost data that can be presented.

Echoing the issues noted in Issue #2, clear guidelines on cost reporting are paramount. This includes clarifications on topics such as reporting capital expenditures spread over multiple years, capturing multi-year projects, among others. Lacking such guidelines would invariably hinder the objective of achieving consistent permit implementation cost data.

Finally, the Draft Policy includes asset management as a sub-category in program management costs. In the MRP, asset management is its own provision and as such it should be reported at the

category level. Given that this requirement is not in many stormwater permits to-date, it could be reported as a Special Program.

**ACCWP Recommendations:**

1. Modify the Draft Policy to require municipalities to report costs at the **category level** and provide a narrative describing the sub-category costs summarized in each category. Sub- category levels and expenditure line-items identified in Section 5.2 should be framed as examples that one can include in the category, but reporting at that level of detail should be optional.
2. Develop guidance and tools to accompany the Draft Policy to provide clear guidance on how to report costs to promote the goal of gathering consistent cost data.
3. Place Asset Management at the category level within the Draft Policy.

Comment 3.3

The Draft Policy should explicitly identify the range of approaches that may be used by municipalities to conduct the annual fiscal analysis. For the City this included specific expenditures from some of the in-house stormwater staff and professional contracts in addition to best professional judgement estimates of time that various other department personnel spend on the implementation of the stormwater program.

Comment 4.6

Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program. Permittees may report all costs related to permit compliance, either prescribed or voluntarily implemented. Permittees shall only report costs for the Permit required frequency (costs incurred past the Permit required frequency shall not be included).

Comment 6.3

Specific guidance for cost reporting should be developed to explain what costs should be included and how they should be reported.

While the Draft Policy includes some general descriptions of the proposed cost categories, definitions for the line items are not provided. The Draft Policy Staff Report includes tables with example activities or expenditure per cost category, but additional clarifications are required, especially for projects with multiple benefits and Permittee activities that overlap multiple cost categories.

Throughout the development of the Bay Area Cost Reporting Framework, countywide programs and Permittees provided valuable feedback based on their specific organizational structures, accounting methods, and needs. This feedback led to the development of a robust Guidance Manual which includes: instructions for use of the tool; description of each cost category and line item; typical activities to be accounted for within each cost category; general assumptions; cost allocation guidance for activities/projects covering multiple stormwater permit provisions, activities or projects executed regionwide, and multi-benefit projects involving different municipal programs; and guidance on reporting sources of funds. The Santa Clara Program

requests that SWRCB staff use the Bay Area Guidance Manual (Attachment A) as an example and resource.

***Requested Change: Develop detailed guidance on the use of the STORMS Tool, for public review, similar to the Bay Area Cost Reporting Guidance Manual.***

Comment 7.5

**The Draft Policy should clarify how Permittees are to report on costs for municipal operation and maintenance activities that benefit both the MS4 and other municipal operations.**

The RCFCWCD has concerns about Sections 7.3 and 7.4 the Draft Policy, which relate to accounting for costs for activities required under an MS4 Permit but which also are performed for, or benefit, other municipal purposes or facilities. While these provisions allow Permittees to report certain of these costs, and to use BPJ to estimate them, there is no detailed guidance to assist municipal staff required to make such estimates and judgments. In particular, ascertaining how costs might be divided between MS4 Permit-required activities or frequencies and non-Permit activities often involves municipal staff who are not experts in MS4 requirements beyond the tasks that they are performing. An example would be a City building inspector who is primarily focused on code enforcement but may also inspect for items of stormwater compliance. How is the inspector to divide those costs? Since such a decision would be necessarily subjective, guidance would at least provide the municipality with a written basis on which to make that decision. That would assist the municipality in responding to an audit of the municipal stormwater program or in providing supporting documentation if requested.

The RCFCWCD agrees with Comment No. 5 in the CASQA letter requesting that the State Water Board issue guidance to promote consistent cost reporting. In addition to the guidance topics suggested in the CASQA letter, the RCFCWCD requests that such guidance address "mixed expenditure" situations involving non-MS4 Permit and MS4 Permit expenditures.

**Recommendation:** Provide guidance to MS4 Permittees regarding how expenditures which may meet both MS4 Permit and non-Permit obligations.

Comment 8.3

Provide Cost Category Guidance

Section 7.0 of Draft Cost Reporting Policy describes "Cost Accounting" but does not introduce specific guidance for categorizing allowable costs.

Partnership stormwater managers routinely are able to track the following permit implementation costs for the following categories and associated line items.

- Overall Program Management and Administration
  - Costs associated with staff time
  - Cost of hiring private consultants to perform Permit implementation activities
- Public Education, Outreach, Involvement and Participation
  - Costs associated with staff time
  - Cost of hiring private consultants to perform Permit implementation activities

- Municipal Operations and Maintenance [with additional clarification on what are direct costs for permit compliance]
  - Costs associated with staff time
  - Cost of hiring private consultants to perform Permit implementation activities
  - Costs associated with Permit-required day-to-day operation and maintenance activities (such as equipment costs)
- Trash Management
  - Costs associated with staff time
  - Capital investments for Permit implementation, except for land costs
  - Expenditures for land or right-of-way easement acquisition
  - Cost of hiring private consultants to perform Permit implementation activities
  - Costs associated with Permit-required day-to-day operation and maintenance activities (such as equipment costs)
- Water Quality Monitoring
  - Costs associated with staff time
  - Cost of hiring private consultants to perform Permit implementation activities

The Partnership recommends that the Draft Cost Reporting Policy be modified to provide clear guidance on any required cost categories, which will help support MS4s in creating an audit trail as part of the financial reporting. The continuation of the beta test will be helpful in developing clear guidance for the categories and associated line items.

Comment 10.5

**GUIDANCE IS NEEDED TO PROMOTE THE GOAL OF COLLECTING CONSISTENT COST DATA.**

While Section 5.5 in the Draft Staff Report provides some general guidance on best practices for cost accounting and reporting, a more robust cost reporting guidance is needed to promote the goal of gathering consistent data. Specific guidance on what data are reported in each category and line item are needed. This guidance is necessary prior to the adoption of the Cost Reporting Policy to ensure all stakeholders have the ability to fully understand the intent and have the opportunity to provide feedback and comment.

Examples of topics that should be addressed include when the expenditures should be included if a project is implemented over multiple years, how expenditures should be calculated when the activity is a part of a larger project, and how expenditures to regional programs are accounted for.

As a point of reference, a robust draft guidance document and accompanying cost reporting tool were recently developed by the BAMS Collaborative in compliance with the Region 2 Cost

Reporting requirements (C.20). This guidance could inform a similar document for the Cost Reporting Policy.

**CASQA Recommendations:**

- *Modify Section 1.2: “The Draft Policy describes the cost categories that Phase I MS4 Permittees and Traditional Phase II Permittees shall use to track their Permit implementation costs, ~~including best practices for cost accounting.~~” [note: this sentence may be better placed in a section other than “Purpose”]*
- *Guidance for Municipalities - Review the Bay Area Cost Reporting Guidance Manual and accompanying Framework Tool developed by the BAMS Collaborative (dated June 2023) and develop similar guidance for public review prior to the finalization and adoption of the Cost Reporting Policy.*

Comment 13.4

**PROVIDE EXPLICIT GUIDANCE FOR DATA COLLECTION METHODS**

Stormwater pollution reduction measures and their associated costs are challenging to standardize due to differing Minimum Control Measure (MCM) requirements in regional permits and various implementation methods. Existing standardized statewide guidance on MCM’s does not exist. These permit variations are expected due to differences in population, land use, hydrology, pollution sources, infrastructure, and water uses, among others; however, they lead to inherent differences in implementation of stormwater programs. The Draft Policy should include explicit guidelines on data collection methods, reporting intervals, and verification processes to enhance the reliability of collected information. This will help stakeholders understand the intent of the Draft Policy and provide more consistent data.

*Request: Include clearer, more robust guidelines for cost reporting to ensure consistent data collection. Specific instructions on what data to report in each category, sub- category, and line item are necessary before adopting the Draft Policy.*

Comment 14.3

**Additional Requests to Support Implementation of the Bay Area Cost Reporting Framework and MRP Cost Reporting Requirements**

In addition to the requested revisions in the CASQA comment letter and those stated above regarding developing a statewide cost reporting policy that supports permit-specific reporting requirements and is structured at the right reporting level to ensure a reliable and practical reporting process, we encourage the SWRCB to consider incorporating into the Draft Policy the specific terminology, cost categories, line items, and cost estimating procedures contained in the Framework and Guidance Manual. The Framework and the Draft Policy are, to a certain extent, already aligned in this regard; however, the specific cost categories, line items and estimating procedures in the Framework have been carefully vetted by a wide range of Permittees in the Bay Area, and we encourage leveraging this valuable institutional knowledge in the Draft Policy. We also feel strongly that the Draft Policy include specific guidance for each component of cost reporting as documented in the Guidance Manual to ensure accuracy and consistency in reporting as permits are implemented. Given the extensive effort put into the Framework and

lessons learned from that collaborative process among Permittees, Regional Water Board staff and SWRCB staff, we further respectfully request that SWRCB explicitly acknowledge that the Framework is equivalent to the guidance in the Draft Policy and to develop the STORMS MS4 Implementation Cost Survey Tool to be consistent with the reporting structure of the Framework. This will ensure Bay Area Permittees will have a clear and more streamlined cost reporting process at the regional and state level when the SWRCB adopts its final cost reporting policy.

Comment 15.5

**The Draft Policy should provide more detailed guidance to achieve the stated purpose of standardizing cost reporting.**

While the Draft Policy provides some guidelines, it does not contain sufficient details on what types of costs should be reported and how costs should be included in the numerous categories. For the Draft Policy to successfully achieve its stated purpose, clearer information in the form of cost reporting guidance is necessary. While the Draft Staff Report Section 5.5 contains general guidance on best practices, LASAN requests more detailed and robust cost reporting guidelines to ensure municipalities are reporting costs consistently across the state.

Requested Action: Provide MS4 Permittees with detailed guidance on what types of costs should be reported and how costs should be included in the Table 1 categories.

Comment 18.3

**Modify language to allow permittees to attribute all stormwater pollution prevention expenditures on page 9, section 7.4.**

The county of Napa is approximately 789 square miles and contains three major watersheds with Napa River watershed being the largest at 426 square miles. The Napa River watershed is the only of the three watersheds covered under the county's Phase II MS4 permit as the remaining 363 square miles of the county are not within the MS4 boundary. To ensure equitable treatment and improve stormwater quality across the county, the County of Napa chose to implement stormwater pollution prevention practices and policies countywide. As currently written the policy does not allow for the county to attribute any of these activities within these two watersheds as they are not required in our current MS4 permit. If portioning out the costs for these non-required stormwater pollution prevention activities were possible, the work involved to do so would be significant and would discourage the county in continuing to perform these extra stormwater pollution prevention activities. Just as the required stormwater educational outreach does not stay cleanly within the MS4 boundaries all stormwater pollution prevention activities done by the permittees should be allowable in any cost reporting.

Section 7.4 language also limits the reporting to routine activities that are a part of municipal operations and discourages permittees to actively maintain their stormwater systems since these extra costs are not seen. Additionally, as written it appears this section excludes any costs that may be incurred by permittees responding to spills and or releases which are not a routine activity but can be a significant cost to abate.

Comment 19.3

**The State Water Board Should Be Explicit that Legislative, Quasi-Legislative, and Regulatory Lobbying Shall Be Prohibited from Inclusion in the Costs Associated with Permit Compliance.**

Legislative, quasi-legislative, and regulatory lobbying is not necessary for Permit compliance and should be prohibited from cost reporting. During the State Water Board's Cost Policy "listening sessions," the Permittees were broken into groups where some Permittees made outlandish requests for cost reporting. One such request was to allow the costs associated with lobbying the state to weaken permits to be reported under the Cost Policy. Such an unreasonable request unfortunately aligns with Waterkeepers' experience on-the-ground. Permittees seem quick to complain that they do not have the resources to construct structural BMPs to improve water quality; yet those same Permittees seem very available, even eager, to spend hours and financial resources lobbying in Water Board-related functions to weaken MS4 permit requirements. Hours spent at lavish conferences, association meetings scheming on strategies to loosen permit requirements, and time spent pressuring State Water Board Members to roll-back compliance standards are all costs that could be better spent improving water quality instead of avoiding compliance with Water Quality Objectives and attaining beneficial uses. Thus, the State Water Board should be explicit that legislative, quasi-legislative, and regulatory lobbying shall be prohibited from cost reporting under any and all circumstances, since those costs are unrelated to substantive permit

Comment 19.6

**The State Water Board Should Retain Section 7.2 and Require Collaborative Costs to Be Reported Proportionally to Avoid Double-Counting.**

As we have seen in the Caltrans TMDL program, when municipal permittees work together on collaborative projects, there has been a tendency to double-count the total amount invested in a project by all collaborators leading to double counting. To prevent double-counting under the Cost Policy, we strongly encourage the State Water Board to continue to require each jurisdiction to only report their portion of the cost associated with collaborative projects, as outlined in Section 7.2. Therefore, we strongly encourage the State Water Board to retain Section 7.2 and require collaborative costs to be reported proportionally.

## Attachment H: Limitation of Standardized Data

### Comment 1.6

**The Draft Policy needs to explicitly recognize the inherent limitations associated with compiling and interpreting Cost Reporting data, even if consistent categories are used.**

The Draft Policy and Draft Staff Report do not identify the inherent limitations and complexities associated with the compilation and interpretation of cost reporting data, especially when the Draft Policy requests a mix of specific accounting values as well as estimations of percentages of expenditures.

The ORPP Guidance recognizes some of the limitations associated with compiling and interpreting cost reporting data. Since the Draft Policy is intended to be used as the standardized method for cost reporting throughout the State, we feel the Policy needs to include a similar acknowledgement of these complexities. For reference, the ORPP Guidance states the following (in part):

- *Stormwater pollution reduction measures and their costs are difficult to standardize.*
  - *Minimum Control Measures (called Program Elements in the Region 2 Permit) reflect differing requirements historically defined in individual and regional permits.*
  - *There are appropriate grounds for differences among municipal stormwater permits. What is practicable and prudent in one community may not work in other communities due to differences in population, hydrology, pollution sources, water uses, and municipal infrastructure, among other things.*
  - *There are various implementation approaches (in-house implementation versus sub-contracted or regional programs) and methods for tracking costs (asset and information data management system functionality and scope). Consequently, analysis of cost data supplied by permittees is complex and is not covered [in the ORPP Guidance].*

### Comment 2.4

The Draft Policy must delineate both the purposes and the intrinsic constraints of the data to prevent misinterpretation and misuse of the collected information.

Section 4 of the Draft Policy specifies multiple potential applications for the assembled data. Although uses highlighted in subsections 4.1 to 4.4 could indeed be beneficial, not all are congruent with the Draft Policy's main objective. Moreover, these suggested uses do not factor in the inherent limitations of the data, which are crucial for informed and judicious application of the accumulated cost data.

For instance, both subsections 4.1 and 4.3 suggest prospective applications of the data. Yet, they must acknowledge that the information amassed under this policy will not be exhaustive or definitive. While the data will offer a more unified perspective on yearly implementation expenses associated with current permit requirements, the Water Boards would require

supplementary details to comprehensively evaluate the financial ramifications of permit clauses during the formulation or renewal phases. Similarly, while subsection 4.2 does align with an auxiliary objective of the Draft Policy, stormwater permittees would need additional insights to substantiate any proposed financing initiatives. Subsection 4.4, on the other hand, lacks clarity in its intent, making it seem misaligned with the foundational goals of the Draft Policy.

The ACCWP firmly advises a revision of Section 4. It is paramount to ensure all involved parties possess an unambiguous, mutual comprehension of both the intended use and inherent limitations of the data. Such understanding is vital for making enlightened choices and guaranteeing the policy's successful execution.

**ACCWP Recommendation:**

1. Modify the items in Section 4 to include clear statements of the management questions that will be answered by the data collected under the Draft Policy and comprehensively outline, define, or otherwise constrain how to interpret and use the data provided by permittees.

Comment 6.1

The Draft Policy should explicitly recognize the inherent limitations associated with the compilation and interpretation of cost reporting data. Municipal permittees have worked hard over the years to integrate stormwater best management practices into the activities of multiple departments, which now makes it challenging to separate out stormwater-related costs from ongoing department activities and expenditures. A good description of these limitations is provided in the Bay Area Cost Reporting Guidance Manual, Appendix A “Cost Reporting Cover Sheet” (see the last page of Attachment A to this letter).

***Requested Change:*** *Add the language recommended by CASQA (Appendix A, Comment #4 of the CASQA letter) including the following text:*

*The cost reporting values are compiled from multiple, internal sources and different cost accounting programs and methods, and attempt to separate out duties and time that staff spend complying with the numerous requirements in the applicable municipal stormwater permit. As a result, the reported values are not auditable from an accounting perspective and may differ from the adopted budgets. However, supporting documentation for the cost reporting data submittals will be made available to the State Water Board and/or Regional Water Board, as needed. Given the diversity of the Permittee agencies in size, characteristics, and jurisdiction, the costs presented for various cost categories may or may not be comparable among Permittees.*

Comment 8.5

**Allow for Cost Estimation with Best Available Information**

The Draft Cost Reporting Policy includes at least three cases where actions are mandated by language that does not adequately reflect the uncertainty of some classifications. For example, Section 5.2 specifies that “Phase I MS4 Permittees shall track and report all expenditures in each cost category using the following line items”, and then lists seven types of costs categories. This wording that includes “shall” and “all” mandates a complete accounting in all categories, which may not always be possible. The category “Indirect costs associated with the costs reported under 5.2.a to 5.2.f.” is not well defined but essentially requires reporting associated costs that

may have uncertainty. In this case, it may not always be possible to identify “all” costs if they are unknown costs in another department (e.g., social services, legal, etc.) or difficult to quantify. There are similar cases in Section 6.2 and Section 7.

The Partnership recommends that the Draft Cost Reporting Policy be modified to recognize that some information may be incomplete or unavailable. The language could be modified to replace occurrences of “shall” with “shall estimate with the best available information” and remove “all” from “all expenditures”.

Comment 10.4

**THE USES AND INHERENT LIMITATIONS OF THE DATA SHOULD BE CLEARLY DEFINED IN THE COST REPORTING POLICY TO AVOID UNINTENDED INTERPRETATIONS AND USES OF THE COLLECTED DATA.**

At a broad scale, there will inherently be limitations associated with the compilation and interpretation of cost reporting data. These limitations are recognized in the *Guidance for Obtaining Phase I Municipal Separate Storm Sewer System (MS4) Permit Compliance Costs* (ORPP Guidance), which states (in part):

- *Storm water pollution reduction measures and their costs are difficult to standardize.*
  - *Minimum Control Measures reflect slightly differing requirements defined historically in individual Regional permits. Standardized, statewide guidance on select Minimum Control Measures does not exist.*
  - *There are appropriate grounds for differences among municipal storm water permits. What is practicable and prudent in one community may not work in other communities due to differences in population, hydrology, pollution sources, water uses, and municipal infrastructure, among other things.*
  - *There are various implementation approaches (in-house implementation versus sub-contracted or regional programs) and methods for tracking costs (asset and information data management system functionality and scope). Consequently, analysis of cost data supplied by permittees is complex and is not covered here.*
- *Permittees may consider additional storm water-related costs than this guidance does. For example, some storm water control measures may be integrated into multi-benefit projects serving many objectives (e.g., a public park whose mowing maintenance schedule is designed to maximize storm water retention).*

In addition, when the Bay Area Municipal Stormwater (BAMS) Collaborative developed the draft guidance document and cost reporting tool pursuant to the Region 2 Cost Reporting requirements (C.20), the inherent limitations associated with the compilation and interpretation of the data were discussed and summarized in Appendix A of the Guidance Manual.

**CASQA Recommendations:**

- *Modify Section 4.2 to recognize that this is an ancillary goal to the Draft Policy, but that the data and information obtained may be used by MS4 Permittees to*

*supplement other necessary data and information that would support potential stormwater funding efforts.*

- *Add a Limitations subsection to Section 4. Potential language is included in **Appendix A**.*
- *Guidance for State Water Board and Regional Water Board staff – Develop guidance for Board staff that addresses considerations such as (1) timely reviews of the cost data submitted by the Permittees (2) limitations associated with the interpretation of the cost reporting data, and (3) intended uses of the data (linking the uses of the data back to the identified management questions).*
- *Given the range of questions that may be asked statewide and the desire to obtain consistent cost reporting data, the State Water Board and Regional Water Board staff should issue guidance updates/clarifications on an annual basis for the first few years of implementation.*

### Comment 11.3

**The uses and inherent limitations of the data should be clearly defined in the draft Cost Reporting Policy to avoid unintended interpretations and uses of the collected data.**

Section 4 (Use of Standardized Cost Data) of the draft policy identifies a number of potential uses of the collected data. The City recommends that Section 4 be modified to ensure all stakeholders have a clear and shared understanding of the intended use and limitations of the data, supporting informed decision-making and effective policy implementation. For example, Sections 4.1 and 4.3 represent, included below, potential future uses of the data, but both uses need to recognize that the data collected under the draft policy would not be the only information needed for decision making.

4.1 The State Water Board and regional water boards (collectively Water Boards) shall use standardized cost data, collected in compliance with this Draft Policy, to inform the regulatory steps necessary to implement state and federal water quality laws for the protection of public health and the environment, including consideration of economic information in the development of new Permits and Permit reissuances.

4.3 The Water Boards plan to use standardized cost data, in the long-term, to identify and address environmental justice issues in municipal stormwater management, i.e., equitable stormwater management and investments in Disadvantaged Communities.

While data collected under this draft policy may provide more consistent information on annual implementation costs associated with existing permit limitations, additional information would be necessary (and may not be available) to allow the Water Boards to fully consider the economic implications of permit provisions when developing or reissuing permits. Similarly, Section 4.2, included below, is an ancillary goal of the draft policy, but other information would be needed for stormwater permittees to justify proposed funding measures.

2. The Water Boards encourage Permittees to use standardized cost data as a tool to seek and justify proposed stormwater funding measures.

**Recommendations:**

4. *The items in Section 4 should be modified to include clear statements of the management questions that will be answered by the data collected under the draft Cost Reporting Policy and comprehensively outline, define, or otherwise contribute to how the Waterboards should interpret and use the data provided in the system. The City supports related revisions to the draft policy language as proposed by the California Stormwater Quality Association (CASQA) in their comment letter.*
5. *Revise 4.2 as follows:*
  - 4.2 *The Water Boards encourage Permittees to use standardized cost data, along with other information, as a tool to seek and justify proposed stormwater funding measures.*

Comment 13.5

ADDRESS FUNDING CONSTRAINTS AND FUTURE ASSESSMENT

The Draft Policy should acknowledge existing funding limitations and allow for future assessments and refinements of data collection efforts. Insufficient funding within agencies hinders their ability to fulfill all of the requirements mandated by state and regional boards. The data to be collected as part of the Draft Policy does not reflect these funding and compliance challenges faced by all Ventura County Permittees. Continuous evaluation is essential to ensure the data collected serves its intended purpose and may lead to necessary policy modifications.

Request: Add a new section to the Draft Policy outlining a funding limitations assessment and data collection refinement process.

## Attachment I: Limitation of Standardized Data

### Comment 1.6

**The Draft Policy needs to explicitly recognize the inherent limitations associated with compiling and interpreting Cost Reporting data, even if consistent categories are used.**

The Draft Policy and Draft Staff Report do not identify the inherent limitations and complexities associated with the compilation and interpretation of cost reporting data, especially when the Draft Policy requests a mix of specific accounting values as well as estimations of percentages of expenditures.<sup>8</sup>

The ORPP Guidance recognizes some of the limitations associated with compiling and interpreting cost reporting data. Since the Draft Policy is intended to be used as the standardized method for cost reporting throughout the State, we feel the Policy needs to include a similar acknowledgement of these complexities. For reference, the ORPP Guidance states the following (in part).<sup>9</sup>:

- *Stormwater pollution reduction measures and their costs are difficult to standardize.*
  - *Minimum Control Measures (called Program Elements in the Region 2 Permit) reflect differing requirements historically defined in individual and regional permits.*
  - *There are appropriate grounds for differences among municipal stormwater permits. What is practicable and prudent in one community may not work in other communities due to differences in population, hydrology, pollution sources, water uses, and municipal infrastructure, among other things.*
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In addition, when the Bay Area Municipal Stormwater (BAMS) Collaborative developed the draft guidance document and cost reporting tool pursuant to the Region 2 Cost Reporting requirements (C.20), the inherent limitations associated with the compilation and interpretation of the data were discussed and summarized in Appendix A of the Guidance Manual.

**CASQA Recommendations:**

- *Modify Section 4.2 to recognize that this is an ancillary goal to the Draft Policy, but that the data and information obtained may be used by MS4 Permittees to*

*supplement other necessary data and information that would support potential stormwater funding efforts.*

- *Add a Limitations subsection to Section 4. Potential language is included in **Appendix A**.*
- *Guidance for State Water Board and Regional Water Board staff – Develop guidance for Board staff that addresses considerations such as (1) timely reviews of the cost data submitted by the Permittees (2) limitations associated with the interpretation of the cost reporting data, and (3) intended uses of the data (linking the uses of the data back to the identified management questions).*
- *Given the range of questions that may be asked statewide and the desire to obtain consistent cost reporting data, the State Water Board and Regional Water Board staff should issue guidance updates/clarifications on an annual basis for the first few years of implementation.*

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2. The Water Boards encourage Permittees to use standardized cost data as a tool to seek and justify proposed stormwater funding measures.

**Recommendations:**

4. *The items in Section 4 should be modified to include clear statements of the management questions that will be answered by the data collected under the draft Cost Reporting Policy and comprehensively outline, define, or otherwise contribute to how the Waterboards should interpret and use the data provided in the system. The City supports related revisions to the draft policy language as proposed by the California Stormwater Quality Association (CASQA) in their comment letter.*

5. *Revise 4.2 as follows:*

*4.2 The Water Boards encourage Permittees to use standardized cost data, along with other information, as a tool to seek and justify proposed stormwater funding measures.*

Comment 13.5

ADDRESS FUNDING CONSTRAINTS AND FUTURE ASSESSMENT

The Draft Policy should acknowledge existing funding limitations and allow for future assessments and refinements of data collection efforts. Insufficient funding within agencies hinders their ability to fulfill all of the requirements mandated by state and regional boards. The data to be collected as part of the Draft Policy does not reflect these funding and compliance challenges faced by all Ventura County Permittees. Continuous evaluation is essential to ensure the data collected serves its intended purpose and may lead to necessary policy modifications.

Request: Add a new section to the Draft Policy outlining a funding limitations assessment and data collection refinement process.

## Attachment J: Legal Requirements

Comment 1.7

**The Draft Policy should not mandate a specific date for submitting the cost reporting information and should allow additional time for the duplicate entry into the Cost Survey Tool.**

Section 8.1 of the Draft Policy states, “Each Permittee shall document and submit total MS4 Permit-related expenditures annually by September 30”. It is unclear why the State Water Board requires this information by September 30 instead of simply requiring that the cost reporting information be submitted with the Annual Report, in which each Permit includes specific reporting dates.

Additionally, since the State Water Board requests that the Permittees enter the cost reporting data electronically into the Cost Survey Tool, additional time should be provided to allow for the duplicate submittal of this information. The Contra Costa Permittees’ Annual Report is due September 30<sup>th</sup> of each year. The Draft Policy should allow for time after the submittal of the Annual Report so that the Permittees can prioritize the completion and submittal of the Annual Report before submitting information to the Cost Survey Tool.

### **CCCWP Recommendations:**

- *Modify Section 7.1 to require that the Cost Reporting information be submitted as a part of the Annual Reporting requirements as specified in the applicable stormwater permit.*
- *Permittees shall track all municipal agency-related expenditures directly related to Permit implementation activities (consistent with the permit year of the applicable Permit) for each fiscal year beginning July 1 and ending June 30.*
- *Modify Section 8.1 to require that the Cost Reporting information be submitted as a part of the Annual Reporting requirements as specified in the applicable stormwater permit.*
- *Each Permittee shall document and submit the municipal agency's total MS4 Permit-related expenditures as a part of the Annual Report (consistent with the applicable Permit) and electronically into the Cost Survey Tool within 30 days after the submittal of the Annual Report annually by September 30. The submission shall contain expenditure information from the previously concluded fiscal year, beginning July 1 and ending June 30.*

Comment 1.9

**The Draft Policy should allow current permits with Cost Reporting requirements under the ORPP Guidance to continue to report cost reporting requirements consistent with the applicable permit instead of requiring a new format and terminology.**

Since the development of the ORPP Guidance, cost reporting requirements consistent with the Guidance have been incorporated into the following Phase I Permits and are currently being implemented by almost 180 Permittees:

Although the ORPP Guidance notes that “it does not set Board Policy”, “it is not binding,” and it did not undergo a formal public review and commenting process, the

guidance contained therein was, nonetheless, subsequently incorporated as specific permit cost reporting requirements. To this end, the Fact Sheet rationale for the Region 2 MRP noted the following:

- *“ORPP’s guidance describes methods for obtaining information on compliance approaches and associated costs and for completing an independent analysis of costs. The guidance promotes greater consistence(sic) and transparency related to estimating costs to implement TMDLs...The Permit specifies expectations for cost reporting in Provision C.20, Cost Reporting, which is intended to improve the Board’s understanding of Permittee costs to comply with the Permit. The Water Board hopes that in conjunction with ORPP’s guidance and the EFC’s resources, Provision C.20 will provide valuable cost information that will improve the Water Board’s consideration of economic factors in issuing future permits. (Attachment A, pg A-18)*
- *“The cost reporting categories were developed considering the ORPP guidance, as well as the cost reporting requirements of the City of Salinas MS4 Permit and the Regional MS4 Permit for Los Angeles and Ventura Counties.” (Attachment A, pg 343)*

Region 2’s cost reporting requirements are, for all practical purposes, consistent with the ORPP Guidance as well as with Region 3 and 4’s cost requirements. Thus, the ORPP Guidance has become a permit requirement for almost 180 Permittees and has set the tone for the consistency that the State Water Board has desired. In addition, the Draft Fact Sheet does not identify why the ORPP Guidance and current permit requirements are inadequate, such that they need to be modified, and/or the benefits of modifying them.

**CCCWP Recommendations:**

- *The Draft Policy should recognize that the cost reporting permit requirements in Region 2 are substantially equivalent to the Draft Policy approach, so they do not need to be modified.*

**Comment 2.6**

Integration of Cost Reporting Data Submission with Annual Reports is Essential for Cohesion and Efficiency.

For years, ACCWP members have collaborated robustly with a myriad of internal and external stakeholders to develop its yearly individual, countywide, and regional stormwater program and supplemental reports. This long-standing collaboration has cultivated a refined system that optimizes the coordination necessary to efficiently adhere to reporting deadlines. The established schedules of these reports are crucial to our members’ operations.

Given this background, it is paramount that the timelines proposed in the Draft Policy be synchronized with the timelines we have used over the years. Ensuring congruence between the new state cost reporting requirements and the established timelines of the MRP will forestall any potential disruptions that might arise from mismatched schedules.

Moreover, with the debut of the Cost Survey Tool and its stipulation for redundant data entry, it is essential to recognize and account for the additional time commitment such a tool necessitates. A logical approach would be to set the deadline for the Cost Survey Tool after the submission of the Annual Report. This sequencing would allow permittees to prioritize the accuracy and

completion of their Annual Reports and subsequently port the cost data to the State's Cost Survey Tool, ensuring a seamless reporting experience.

#### Comment 4.8

Each Permittee shall document and submit total MS4 Permit-related expenditures annually, in the same timeframe as the financial reporting required by the Permittee's MS4 permit ~~by September 30.~~

#### Comment 7.2

##### **The Draft Policy's cost reporting submission deadlines should be consistent with existing MS4 permit annual reporting deadlines.**

Section 8.1 of the Draft Policy requires MS4 Permittees to submit total MS4 Permit-related expenditures through the State Water Board's MS4 Implementation Cost Survey Tool by September 30th each year. The three Phase I MS4 permits for which the RCFCWCD serves as Principal Permittee all have different annual reporting deadlines, none of which is September 30th. If the reporting policy imposes another deadline, it would create a longer annual reporting cycle, and place significant burdens on stormwater managers by eliminating the efficiency of collecting all annual report data at once. Also, the September 30th deadline for submittal of expenditures does not provide enough time following the end of the fiscal year to assemble, account for, and report the expenditures.

Our comment is not made in a vacuum. The Southern California Stormwater Monitoring Coalition (SMC), a partnership of 16 stormwater management agencies, including RCFCWCD, three Regional Water Quality Control Boards, and the State Water Board, is working on a project to streamline annual reporting. As noted in the SMC's 2021-2022 Annual Report: "SMC member agencies spend hundreds to thousands of person-hours each year to produce annual reports as a compliance requirement." Creating another reporting deadline for Permittees will only add to the number of hours stormwater and associated administrative staff spend to prepare reports. Further, as noted above, it will greatly impact smaller Cities within Riverside County with limited resources that may not have a dedicated stormwater manager.

The RCFCWCD therefore agrees with Comment No. 7 in the CASQA letter that any cost reporting deadline should align with the Annual Report deadline in each applicable MS4 permit. This is vitally important to reduce annual reporting burdens.

**Recommendation:** Revise the cost reporting submission deadline to be consistent with existing annual report deadlines in existing municipal stormwater permits. The RCFCWCD endorses the proposed language set forth in Comment No. 7 in the CASQA letter.

#### Comment 7.4

##### **Clarify how supporting documentation is to be used to support cost estimations.**

Section 7.3 of the Draft Policy states: "For activities that serve purposes in addition to stormwater management, Permittees shall estimate a percentage of expenditures that can be directly attributed to Permit implementation. The cost estimation of these activities shall be informed by feedback from staff performing those activities. Best professional judgement shall be used when estimating personnel costs for staff who are also assigned job responsibilities beyond stormwater Permit implementation."

Although it appears that the intent of this language is to provide some flexibility in determining the costs for activities that are not exclusively related to stormwater management, Section 8.5 of

the Draft Policy is not as flexible. Section 8.5 states: "Submitted cost information shall be in a format consistent with this Draft Policy and shall be verifiable using supporting documentation retained by the Permittees. Each Permittee shall make such supporting information available upon request within a timely manner, generally no more than ten business days." It is difficult to imagine how Permittees could "verify" a Best Professional Judgment (BPJ) estimation using supporting documentation. A BPJ estimate is by definition something that requires the subjective (albeit informed) exercise of judgment by a professional. It is not something which can be "verified" by external documentation. The Draft Policy should be amended to clarify that while supporting documentation is required, "verification" through that documentation is not.

**Recommendation:** The first sentence of Section 8.5 of the Draft Policy should be revised to read: "Submitted cost information shall be in a format consistent with this Draft Policy and shall be supported using documentation retained by the Permittees." The RCFCWCD also supports inclusion of a limitation provision such as that provided as Appendix A attached to the CASQA comment letter.

#### Comment 7.6

**Permittees should not be restricted from raising costs as an issue when defending an enforcement action or commenting on the scope of MS4 Permit requirements.**

Section 4.4 of the Draft Policy, concerning the use of standardized cost data, states:

"Additionally, the financial resources necessary to comply with a Permit shall not be used to justify noncompliance by a Permittee or as a rationale to request less stringent permit requirements." We are concerned that these statements improperly conflict with the Water Quality Enforcement Policy ("Enforcement Policy") adopted by the State Water Board and implicate environmental justice concerns. The statements also purport to improperly restrict the rights of Permittees to comment on draft MS4 permit provisions, in contravention of the report of the California State Auditor, "State and Regional Water Boards: They Must Do More to Ensure That Local Jurisdictions' Costs to Reduce Storm Water Pollution Are Necessary and Appropriate ("CSA Report") and state and federal commenting provisions. The Draft Staff Report cites the CSA Report as a foundational document for the development of the Draft Policy."

First, regarding noncompliance not being justified by financial resources, Section I.G of the Enforcement Policy states:

"Publicly-owned treatment works (POTW), public water companies, municipal storm water collection and sewage collection systems that serve disadvantaged communities must comply with water quality protection laws. When water quality violations occur in disadvantaged communities, passing costs associated with facility upgrades and compliance measures through to ratepayers may create unduly burdensome financial hardships in the same way it does with small disadvantaged communities (discussed below).

In recognition of the financial hardships the cost of compliance may pose for disadvantaged communities and, in furtherance of the Water Boards' commitment to environmental justice in enforcement, the Water Boards should consider informal enforcement and/or compliance assistance as the first step to address violations, unless there are extenuating circumstances. The Water Boards should consider the disadvantaged community POTW's, public water company's or municipal storm water collection system's commitment to achieve compliance, the degree of economic hardship potentially imposed on ratepayers, and the availability of grants or low/no interest loans."

The Water Boards are thus expressly authorized to take into account a municipality's financial limitations in determining how enforcement is to be undertaken. This also invokes environmental justice concerns, as economically disadvantaged communities may struggle to find the funds to pay for compliance with the increasingly expensive requirements of MS4 permits. If an enforcement action ensues, the Enforcement Policy requires that the cost of compliance be taken into account in crafting appropriate penalties.

Second, the proposition that Water Boards are not to consider costs as a rationale to request less stringent permit requirements directly contradicts the recommendations listed in Page 17 of the CSA Report:

"When establishing pollutant control plans, the regional boards have not always adequately considered the costs to local jurisdictions involved in complying with these plans. State law requires regional boards to include economic considerations as a factor when establishing maximum pollutant levels. However, state law does not define what those economic considerations must include, and the State Water Board has provided limited guidance regarding the nature of these economic considerations.

Nevertheless, we would expect regional boards to determine the overall cost of storm water management to local jurisdictions and estimate the costs that local jurisdictions will incur in complying with the new pollutant limits being established. Regardless of any legal requirements, this information is critical because both the costs for complying with a new pollutant control plan and the local jurisdictions' ongoing costs for managing storm water affect their financial ability to comply with the plans. If the regional boards had this information, they could better aid local jurisdictions in complying with pollutant control plans by adjusting the timelines for compliance with the plans or identifying more cost-effective methods of compliance."

The CSA Report thus expressly cited the need for Water Boards to understand the cost of the permits and programs it would impose on municipalities.

Moreover, municipalities have the legal right to make comments on any and all aspects of a proposed MS4 permit, as provided in federal and state law. Such comments cannot be limited as to topic, and should address municipal financial resources, especially when a proposed permit requirement may be beyond the ability of the municipality to pay for or when the benefit of such a requirement would not justify its cost. Moreover, water boards considering MS4 permit terms must be able to take into account the financial resources of the Permittees and their ability to comply with pollutant control plans, as recommended by the CSA.

**Recommendation:** Remove the second sentence in Subsection 4.4.

#### Comment 9.4

##### Potential Regulatory Mechanisms for Cost Reporting Analysis

The Permittees agree with the CASQA comments that, prior to the finalization and adoption of the Draft Policy, the State Water Board needs to refocus the purpose statement, refine the cost reporting construct (goals, framework, and adaptive management), and clearly articulate how the cost reporting data generated from these requirements will be used.

**The State Water Board should consider the potential use of Investigative Orders focused on specific management questions instead of statewide mandated permit requirements to conduct the desired analysis while minimizing the inherent variability described above. At a minimum, perhaps this could be completed as noted in overarching concern 3 above, prior to the adoption of the Policy.**

Comment 10.7

**THE TRACKING AND SUBMITTAL OF COST REPORTING DATA SHOULD ALIGN WITH THE TIMELINES OF THE APPLICABLE PERMIT.**

- Section 7.1 and Section 8.1 require specific timeframes for the tracking and submittal of cost reporting data. We recommend modifying these requirements to align with the timeframes required by the applicable MS4 permit.
- **CASQA Recommendations:**
- *Modify Section 7.1 to require that the Cost Reporting information be submitted as a part of the Annual Reporting requirements as specified in the applicable stormwater permit.*
  - *Permittees shall track all municipal agency-related expenditures directly related to Permit implementation activities (consistent with the applicable Permit) for each fiscal year beginning July 1 and ending June 30.*
- *Modify Section 8.1 to require that the Cost Reporting information be submitted as a part of the Annual Reporting requirements as specified in the applicable stormwater permit.*
  - *Each Permittee shall document and submit the municipal agency total MS4 Permit-related expenditures as a part of the Annual Report (consistent with the applicable Permit) and electronically into the Cost Survey Tool within 30 days after the submittal of the Annual Report annually by September 30. The submission shall contain expenditure information from the previously concluded fiscal year, beginning July 1 and ending June 30.*

Comment 10.12

**How Should the Cost Reporting Policy be Implemented?**

State Water Board staff recognized that the Policy is not self-implementing and that there may be a substantial period of time before the Phase I Permits and Phase II Permit are reissued to include the cost reporting requirements. As such, regulatory tools such as a Water Code Section 13383 order may be implemented for the interim period between the effective date of the Policy and the amendment or reissuance of permits incorporating the cost reporting requirements.

Based on the lessons learned from the use of 13383 Orders for the Statewide Trash Amendments, CASQA recommends that if other regulatory tools like 13383 Orders are issued, the requirements from the Order are fully incorporated into the municipal stormwater permits when they are reissued. The primary goal is to ensure that the work initiated under the 13383 Orders (or other regulatory tools) is continued seamlessly into permit implementation, avoiding significant redirections or reinterpretations. This direction should be explicitly stated in the Orders (or other regulatory tools).

**CASQA Recommendations:**

- *If the State Water Board issues 13383 orders, they should be aligned with the final cost reporting adopted language and written such that they can be fully incorporated into the municipal stormwater permits when they are reissued.*

Comment 11.4

**The submittal of the cost reporting data should be synchronized with the submittal of the Annual Reports.**

The proposed reporting date of September 30 conflicts with the annual reporting due date in the City's current MS4 Permit and would not allow enough time to prepare the required cost reporting data for submittal. The City's MS4 Permit currently requires submittal of annual reports covering each fiscal year (July 1 – June 30) by January 31 of the following year. The City has consistently worked hand-in-hand with a diverse range of internal and external stakeholders to develop its annual stormwater program reports, including cost data. Through the years, our concerted efforts have fine-tuned the coordination and synchronization necessary to meet the January 31 reporting deadline effectively. Considering the amount of internal and external coordination needed within and outside the Stormwater Department, the proposed reporting date of September 30 is not feasible for reporting the previous fiscal year's costs. The City requests that the draft policy be revised to align the submittal dates with current reporting requirements and to ensure that the City is able to provide the requested information on time.

***Recommendations:***

*6. Modify Section 7.1 to mandate that Cost Reporting data be incorporated into the jurisdiction's Annual Report, in line with the stipulations of the relevant stormwater permit.*

*~~7.1 Permittees shall track all expenditures directly related to Permit implementation activities for each fiscal year beginning July 1 and ending June 30.~~*

*7.1 Permittees should consistently monitor and report all municipal agency-related expenses associated with Permit implementation activities consistent with the applicable permit.*

*7. Modify Section 8.1 to stipulate that Cost Reporting data should be part and parcel of the Annual Report, as delineated in the associated stormwater permit.*

*~~8.1 Each Permittee shall document and submit total MS4 Permit-related expenditures annually by September 30. The submission shall contain expenditure information from the previously concluded fiscal year, beginning July 1 and ending June 30.~~*

*8.1 Each Permittee shall document and submit the municipal agency's related expenditures as a part of the Annual Report (consistent with the applicable permit) and electronically into the Cost Survey Tool within a 30-day window after the Annual Report submission.*

Comment 13.6

**ALIGN REPORTING TIMELINES WITH PERMIT REQUIREMENTS:** The Draft Policy stipulates specific timelines for the tracking and submitting cost reporting data. These requirements should be modified to allow alignment with the reporting timeframes required by the applicable MS4 permit.

*Request: Revise relevant sections of the Draft Policy to ensure that cost reporting information is submitted as part of the annual reporting requirements specified in the applicable stormwater permit.*

Comment 15.2

**Revise the reporting deadlines and implementation timeline to allow municipalities sufficient time to prepare internal processes.**

Section 8.1 requires Permittees to annually report costs accrued during the fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) by September 30<sup>th</sup>. This September 30<sup>th</sup> deadline only provides 90 days for municipalities to close their fiscal year accounting procedures and complete the cost reporting requirements in the Draft Policy. LASAN is a large municipality with a centralized division (Watershed Protection Division [WPD]) responsible for obtaining information from a number of City bureaus and agencies (e.g., Bureau of Engineering, Fire Department, etc.) to complete the annual report after each of these entities has completed their own end of fiscal year accounting process. Additionally, the City and the majority of MS4 Permittees in the Los Angeles region work collaboratively to implement permit requirements to address watershed issues. These collaborative efforts are typically guided by memorandum of understanding and cost sharing agreements that are not reconciled every fiscal year. As such, complying with a September 30<sup>th</sup> deadline is not feasible, as some City and partner agencies can require six months to complete their annual accounting processes or reconcile shared expenditures. If the purpose of the Draft Policy is to standardize cost reporting and to collect cost information to inform the regulatory process, it is unclear why such a short reporting deadline is needed to achieve this purpose. LASAN requests that the annual cost reporting deadline be revised to June 30<sup>th</sup> following the end of the previous fiscal year. This will ensure that submitted data are of high quality and will reduce the potential need to revise data to ensure costs are accurate.

Section 9.1 of the Draft Policy provides the option for regional water boards to incorporate the Draft Policy into the Phase I MS4 Permits either through an amendment or in the reissuance of the Phase I MS4 Permit. LASAN supports the approach to incorporate this new Policy at the time of reissuance of each Permittee's Phase I MS4 Permit. In 2021, the Los Angeles Regional Water Quality Control Board adopted a new Regional Phase I MS4 Permit which included additional expenditure reporting requirements. Because municipal budgets utilize categories different than the categories required in the Draft Policy, reporting these expenditures is a complex task requiring reconciling the differences in expenditure categories. Because it is anticipated that this Draft Policy will further revise the expenditure reporting requirements of the Los Angeles Regional MS4 Permit and the Draft Policy allows regional water boards some discretion on reporting requirements, LASAN requests that the Draft Policy direct regional water boards to provide two years between the first submittal of the new cost reporting requirements and the effective date of the incorporation of new cost reporting requirements into reissued MS4 Permits. This allows Permittees time to develop internal processes to meet cost reporting requirements consistent with the final effective permit adopted in the region.

Requested Action:

Revise Section 8.1 as follows:

- *Each Permittee shall document and submit total municipal MS4 Permit-related expenditures annually by ~~September~~ June 30 of the following fiscal year. The submission shall contain expenditure information from the previously concluded fiscal year, beginning July 1 and ending June 30.*
- Direct regional water boards to adopt new cost reporting requirements as part of Phase I MS4 Permit renewal process. Direct regional water boards to make the first submittal of the new cost reporting requirements due two years after the effective date of the MS4 Permit renewal adoption.

Comment 18.4

**Define “timely review” under State Agency Roles on page 10 in sections 9.1 & 9.3.**

Within the Cost reporting section on page 10 section 8.5 defines timely manner to generally be no more than ten business days. Sections 9.1 & 9.3 use the similar term of timely review but there is no definition provided. These terms should be replaced with actual and realistic number of days to complete.

Comment 19.2

**The State Water Board Should Minimize Cost Exaggeration Reported in Catch-All Categories by Including Spot Audits of Costs Reported.**

One of our largest concerns with the Cost Policy is the use of vague cost categories that will lead to open-ended cost reporting as a catch-all bucket, and therefore allow permittees to exaggerate compliance costs greatly. For example, the draft Cost Policy uses terms such as “general coordination”, “miscellaneous costs”, “other” costs, and “indirect costs”. We appreciate the need to provide catch-all categories to ensure permittees report all relevant costs associated with implementation of the permit, but we fear that permittees will use these open-ended catch-all categories to inflate their resource expenditures going towards permit compliance in inappropriate manners. And given permittees’ previous track-record of inflating cost of compliance to put pressure on the Water Boards to weaken permits, we are concerned that pattern will repeat itself through the cost reporting under the Cost Policy.

To strike a balance between capturing all costs associated with permit implementation and eliminating costs that are unrelated to permit compliance, the State Water Board should include more stringent safeguards in the Cost Policy. First, we recommend in each open-ended catch-all category that the State Water Board remind the Permittee that costs reported shall only be for permit compliance, and that costs reported in those categories should be narrowly tailored. Second, the State Water Board should include the ability and requirement for the Permittee to explain in detail what those miscellaneous costs contain. Lastly, and most importantly, the State Water Board should add language to the final Cost Policy to put Permittees on notice that they shall be audited on a rotating non-targeted basis to ensure accuracy and consistency between permittees.

## **Attachment K: Alignment with Existing Methods**

### Comment 2.2

The Draft Policy should acknowledge and integrate already established cost reporting systems, ensuring they align with the guidelines set out. This is particularly crucial when the intention is to ensure data consistency between those experienced in cost reporting and newcomers to the process.

In its present iteration, the Draft Policy falls short of offering definitive instructions on the methodologies for collecting and sharing cost-related data. For instance, when the San Francisco Bay Municipal Regional Stormwater NPDES permit (referred to as MRP) was renewed under Order No. R2-2022-0018, it incorporated a provision pertaining to cost reporting (specifically, Provision C.20). Responding to this, the Bay Area Municipal Stormwater (BAMS) Collaborative formulated a structured approach and accompanying guidance document to fulfill this cost reporting requirement. While shaping this Guidance Manual, the BAMS Collaborative endeavored to understand the diverse accounting methodologies employed by each of the MRP permittees. Their primary focus was to devise a strategy that both respected the constraints of these agencies and create a methodology that allowed each to report consistently and reproducibly on the cost of implementing the required MRP program elements.

Given this backdrop, it becomes imperative for the Draft Policy to recognize and affirm that the cost reporting stipulations in the MRP are in harmony with the requirements of the Draft Policy. Essentially, there should not be a need to make any changes to the existing MRP cost reporting approach since they are significantly aligned with the Draft Policy's objectives.

ACCWP Recommendations:

1. Modify Section 1.2 to read “The Draft Policy describes the cost categories that Phase I MS4 Permittees and Traditional Phase II Permittees shall use to track their Permit implementation costs, including best practices for cost accounting.” [note: this sentence may be better placed in a section other than “Purpose”]
2. Review the Bay Area Cost Reporting Guidance Manual and accompanying Framework Tool developed by the BAMS Collaborative (dated June 2023) and develop similar guidance for public review prior to the finalization and adoption of the Draft Policy. We encourage you to adapt the Bay Area Cost Reporting Guidance Manual for use statewide. For your convenience, we have attached a copy of the Final Draft – Under Review of the Guidance Manual and a presentation given by the BAMS Collaborative project team that display the features of the cost reporting tool.
3. Recognize that the cost reporting permit requirements in the MRP are substantially equivalent to the approach in the Draft Policy such that they do not need to be modified and may be utilized as equivalent to the Draft Policy.

### Comment 6.7

#### 2. The Draft Policy Should Recognize and Be Consistent with the Bay Area Cost Reporting Framework

The Draft Policy should recognize the cost reporting products already developed for Permittees in the San Francisco Bay Region to comply with MRP cost reporting requirements. The Draft Policy should allow those Permittees to report costs in a manner that is consistent with the applicable permit instead of requiring a new format and terminology, to avoid duplicate efforts to report municipal stormwater program costs. In addition, The Santa Clara Program requests the

SWRCB incorporate into the Draft Policy the terminology, cost categories, line items, and cost estimating procedures contained in the Bay Area Cost Reporting Framework and Guidance Manual.

For Bay Area Permittees, the development of the regional Cost Reporting Framework and Guidance Manual to comply with MRP requirements has involved a significant investment of resources. The Framework achieves a balance between level of detail provided and the level of effort required for Permittees, provides information in a regionally consistent but flexible manner, and provides information valuable to stormwater program managers. The San Francisco Bay Regional Water Board considers the Framework and Guidance Manual to be acceptable (with two minor changes) and to contain the appropriate level of detail.

The Santa Clara Program believes that the Bay Area Cost Reporting Framework is equivalent to the Draft Policy's approach. The SWRCB should explicitly acknowledge that the Framework is equivalent and should not adopt a Policy that requires Bay Area Permittees to significantly revise the Framework to meet State cost reporting requirements included in the Policy that is eventually adopted by the SWRCB.

That said, Bay Area Permittees are committed to continuing to work with SWRCB staff to make the costs calculated within the Bay Area Framework compatible with the STORMS Tool. The Santa Clara Program strongly recommends using the structure of categories and line items included in the CASQA Letter Appendix A, Comment #2, Suggested Table for Cost Categories and Line Items.

**Requested Change:** Please make the following changes to the Draft Policy to help align the STORMS Tool with the Bay Area Framework:

- Require reporting of costs by main cost categories only (remove the subcategories);
- Add Asset Management as a cost category;
- Align the cost line items with the cost types used in the Bay Area Framework:
  - Personnel and overhead
  - External professional (consultants and contractors) and other (countywide program costs)
  - Capital costs (planning, design, permitting and construction)
  - Land costs
  - Operation and maintenance (of publicly owned assets)
- Allow reporting of the actual costs incurred during the reporting period, e.g., the portion of a capital project completed that year (instead of waiting to report costs at completion of construction), or the cost of equipment purchase that year (as opposed to annualizing the cost over the life of the equipment as proposed in the Draft Policy).
- Report all costs associated with new infrastructure or retrofit under capital expenditure or land costs.
- Include indirect costs in other reported cost line items as appropriate, and not require reporting indirect costs as a separate line item.

Comment 14.2

Recognition of the Bay Area Cost Reporting Framework and Guidance Manual as a Model for the Draft Policy

As noted in the CASQA comment letter, significant effort and lessons learned on establishing new MS4 permit cost reporting guidance have gone into the development of the Bay Area Cost Reporting Framework (Framework) and Guidance Manual (see enclosures) developed by the Bay Area Permittees, via the Bay Area Municipal Stormwater Collaborative (BAMSC). The BAMSC developed the Framework and Guidance in compliance with Provision C.20, Cost Reporting, of the reissued Francisco Bay Region Municipal Regional National Pollutant Discharge Elimination System (NPDES) Permit1 (MRP).

SMCWPPP program Permittees and program representatives worked regionally over the past year with the other Phase I countywide stormwater programs in the San Francisco Bay via the BAMSC to finalize the Framework and Guidance Manual in June 2023, with input from SWRCB and the San Francisco Bay Regional Water Quality Control Board (Regional Water Board).

Having gone through a thorough review process and received input from permittees, program representatives and State and regional regulators, we strongly urge that the SWRCB explicitly recognize the Framework and Guidance Manual in the Draft Policy. In compliance with the reissued MRP (MRP 3.0), the Bay Area Permittees have already submitted the Framework and Guidance Manual to the Regional Water Board for Executive Officer approval, and have received feedback from Regional Water Board staff that the Framework and Guidance Manual are “generally acceptable” with just two minor revisions. Once the Framework is approved, Permittees will begin annually preparing and submitting a fiscal analysis of the costs incurred to comply with MRP requirements beginning in FY 2024-25. It is our collective and express hope that the SWRCB will make the necessary changes to align the Draft Policy with the Bay Area Framework as a leading example for rigorous and implementable cost reporting policy guidance for MS4 permits throughout the state.

## **Attachment L: Use of Cost Data**

### **Comment 7.7**

Clarify that cost information will not be used to compare Permittee performance of MS4 Permit activities.

Section 8 of the Draft Staff Report states: "Cost data shall not be used to compare permittees' performance and assess the efficacy of their MS4 programs. Any comparisons between permittees would need to take local socio-economic conditions and challenges the different permittees face into account."

The RCFCWCD concurs with these statements, since they appropriately recognize the differences among municipalities that are subject to the same requirements in MS4 permits. However, the language in Section 4.4 of the Draft Policy does not reflect the Draft Staff Report position that cost data should not be used to compare the efforts of MS4 Permittees. We request that Section 4.4 be amended to reflect this.

Recommendation: After the first sentence in Section 4.4 of the Draft Policy, add the following language: "nor shall it be used to compare Permittees' performance or assess the efficacy of their MS4 programs."

### **Comment 9.2**

Uses of and Comparability of Municipal Stormwater Program Implementation Cost Data.

It should be acknowledged that, even with a standardized or "consistent" format, the fiscal analysis data may not be "consistent" or comparable amongst municipal stormwater programs throughout the state, due to, but not limited to, the following:

- Varying municipal stormwater permit provisions and requirements;
- Differing physical characteristics of municipalities such as geography, geology, hydrology, climate and landscape, slope and elevation, and history, extent and pattern of urban development;
- Differing approaches to program implementation based on contaminants of concern; extent of urbanization and infrastructure; municipal staffing and financial capability; and
- Significant fluctuations in Permittee stormwater budgets year-to-year due to grant funding.

The Draft Policy needs to explicitly recognize the inherent limitations and usefulness of the data by the Water Boards and others; therefore, the policy must allow flexibility. [also see CASQA Comment #4

### **Comment 10.3**

**ADD A NEW SECTION TO THE COST REPORTING POLICY SPECIFIC TO FUTURE ASSESSMENT AND REFINEMENT**

All data collection efforts should involve a step for assessment and refinement. Are the data providing the information necessary to answer the defined management question? Are any modifications necessary? Are there additional goals that can build off the initial goal? Given that the Cost Reporting Policy is novel and the first of its kind, this assessment and future refinement aspect should be an explicit part of the final policy.

For example, Section 4 of the draft Cost Reporting Policy identifies a number of potential uses of the collected data. As noted in Comment #1, these uses significantly expand the scope of the Cost Reporting Policy beyond determining the cost of MS4 permit implementation. Both Section 4.1 and Section 4.3 represent potential future uses of the data, but both uses need to recognize that the data collected under the policy would not be the sole source of data needed. While data collected under this policy will provide more consistent information on annual implementation costs associated with existing permit limitations, additional information would be necessary to allow the Water Boards to fully consider the economic implications of permit provisions when developing or reissuing permits. Similarly, 4.2 is an ancillary goal of the draft Cost Reporting Policy, but other information would be needed for stormwater permittees to justify proposed funding measures.

CASQA Recommendation:

- Add a new section to the Cost Reporting Policy to explicitly incorporate an assessment and refinement process.
- Move Sections 4.1 and 4.3 of the Draft Policy to this new section.

Comment 11.3

The uses and inherent limitations of the data should be clearly defined in the draft Cost Reporting Policy to avoid unintended interpretations and uses of the collected data.

Section 4 (Use of Standardized Cost Data) of the draft policy identifies a number of potential uses of the collected data. The City recommends that Section 4 be modified to ensure all stakeholders have a clear and shared understanding of the intended use and limitations of the data, supporting informed decision-making and effective policy implementation. For example, Sections 4.1 and 4.3 represent, included below, potential future uses of the data, but both uses need to recognize that the data collected under the draft policy would not be the only information needed for decision making.

4.1 The State Water Board and regional water boards (collectively Water Boards) shall use standardized cost data, collected in compliance with this Draft Policy, to inform the regulatory steps necessary to implement state and federal water quality laws for the protection of public health and the environment, including consideration of economic information in the development of new Permits and Permit reissuances.

4.3 The Water Boards plan to use standardized cost data, in the long-term, to identify and address environmental justice issues in municipal stormwater management, i.e., equitable stormwater management and investments in Disadvantaged Communities.

While data collected under this draft policy may provide more consistent information on annual implementation costs associated with existing permit limitations, additional information would be necessary (and may not be available) to allow the Water Boards to fully consider the economic implications of permit provisions when developing or reissuing permits. Similarly, Section 4.2, included below, is an ancillary goal of the draft policy, but other information would be needed for stormwater permittees to justify proposed funding measures.

4.2 The Water Boards encourage Permittees to use standardized cost data as a tool to seek and justify proposed stormwater funding measures.

Recommendations:

The items in Section 4 should be modified to include clear statements of the management questions that will be answered by the data collected under the draft Cost Reporting Policy and comprehensively outline, define, or otherwise contribute to how the Waterboards should

interpret and use the data provided in the system. The City supports related revisions to the draft policy language as proposed by the California Stormwater Quality Association (CASQA) in their comment letter.

Revise 4.2 as follows:

4.2 The Water Boards encourage Permittees to use standardized cost data, along with other information, as a tool to seek and justify proposed stormwater funding measures.

Comment 15.1

The Draft Policy should be revised to require a level of expenditure reporting detail that more appropriately aligns with the purpose of the policy and should clearly define how Permittees' expenditure data will be utilized to achieve its purpose.

In Section 1.1 it is stated that the purpose of the Draft Policy is to ensure that MS4 permittees "estimate, track, and report annual expenditures related to the implementation of MS4 permits in a consistent manner." LASAN agrees with this overall purpose but believes that the Draft Policy contains requirements that are not aligned with this purpose and require a greater level of detail than is necessary to achieve this purpose. It should also be noted that a purpose of the Draft Policy should be to support MS4 Permittees in reporting expenditures by providing clear, consistent direction.

The Draft Policy contains many requirements, further discussed in Comment #3 below, for routine MS4 activities which are extraneous to the stated purpose in Section 1.1. For example, Section 7.4 of the Draft Policy requires "relevant details of street sweeping, including area swept, type of sweepers, and volume of debris collected." This type of requirement is not only resource intensive to collect but reaches beyond the scope of reporting cost data pertinent to the purpose of the Draft Policy. It is unclear why this type of tangential data is needed or how will be used to consistently estimate, track, and report MS4 expenditures.

The Draft Policy also does not provide a clear linkage between how the submitted data will be utilized and the purpose of the policy. Section 4 of Draft Policy states the standardized cost data will be used to "inform regulatory steps necessary to implement state and federal water quality laws [...] including consideration of economic information in the development of new Permits and Permit reissuances", encourage the use of "standardized cost data as a tool to seek and justify proposed stormwater funding measures", and "identify and address environmental justice issues in stormwater management". These stated uses are vague and do not specify concrete actions that the State Water Board and regional water quality control boards (regional water boards) will undertake with the required cost data. To complete the requirements established by the Draft Policy, a significant amount of resources will be required to develop and implement new municipal accounting processes. As currently written, the purpose of the Draft Policy does not justify the level of detailed information required in reporting expenditures and no framework is established to connect such efforts to the desired outcomes. The level of information required in the Draft Policy should be more appropriately balanced to meet the level of information required to achieve the purpose of the Draft Policy.

Requested Action:

Revise the Draft Policy language to clarify the linkage between the stated purpose of the policy and how the data will be used to achieve that purpose. Define concrete actions the State Water Board and regional water boards will undertake with the expenditure data reported by Permittees.

Revise Section 1.1 of the Draft Policy as follows:

The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure that support municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track and report annual expenditures related to the implementation of each municipal stormwater program's applicable MS4 permits in a consistent manner.

#### Comment 20.1

Policy guidance is needed for MS4 permittees and regional boards regarding how data gathered under the proposed Municipal Stormwater Cost Policy are to be used, including in Financial Capability Assessment (FCA).

Establishing the costs of measures implemented to comply with MS4 permits is clearly an important and necessary first step to tailoring regulatory programs to achieve desired outcomes. It is clear that significant resource expenditures will be required to comply with MS4 permits and improve water quality, but it is not yet clear how the State Water Board will utilize the information to be gathered under the new policy. This information should provide the basis for developing tools to help permittees direct resources to the most impactful implementation measures.

EPA recently updated its Financial Capability Assessment (FCA) framework for analyzing a municipality's costs and ability to pay for water-related services in an integrated water management approach.<sup>1</sup> EPA's FCA framework is intended "to assess a community's financial capability for the purpose of developing a reasonable implementation schedule for necessary improvements that will not burden the community."<sup>2</sup> The updated FCA Guidance includes templates and calculations that communities can use to submit information regarding lowest quintile income (a departure from the historical median household income metric), drinking water costs, financial models or studies, and other relevant information, including wastewater control costs, property tax revenues, property tax collection rate, unemployment, and bond ratings.

EPA's FCA framework could be used as the basis for a state FCA approach that would include drinking water, wastewater, recycled water, and flood control, in addition to storm water. The FCA framework could be used to determine the affordability and phasing of programs and controls required by the state's storm water program and would assist municipalities in prioritizing implementation measures for the most critical water quality programs and controls. The updated FCA framework could also be used to assess and address impacts to disadvantaged communities, and to give those communities a greater voice in establishing implementation priorities and realizing the benefits of integrated storm water planning.

The FCA should include a description of the community, including its demographic characteristics, and should list the projects and programs that are contemplated over a five-year implementation period. For each project and program, the FCA should include a schedule that details the planning and design, funding, bidding, and construction stages, including land acquisition plans and uncertainties that could affect project implementation. The affordability analysis should include a detailed review of the financial resources of a watershed's communities, together with information gathered under the proposed Municipal Stormwater Cost Policy describing the expenditures needed to support various permit objectives.

Finally, the State Water Board should consider whether (and which) requirements in the Municipal Stormwater Cost Policy could be used to characterize the cost of compliance with

other stormwater permits, including the state's Industrial General Permit (IGP), Construction General Permit (CGP), and other statewide general orders that may be issued in the future.

## **Attachment M: Other Comments**

### **Comment 10.9**

The cost reporting policy should provide more definition for several key terms to minimize confusion with existing permit requirements and terminology.

In addition to the proposed terms in the Cost Reporting Policy, terminology for cost reporting is already in use in the ORPP Guidance as well as three municipal stormwater permits. There is drift in how these terms are applied in various regulatory contexts, which is causing confusion (see the table below). We recommend a review of the terminology, defining each term, and addressing any change in terminology from terms already in use in permits (if applicable).

Definitions – There are several terms that are introduced in the Draft Policy that are not currently included within the definition section or explained within the Policy. Each of these terms should be clearly defined with examples so that it is clear how they are to be applied within the context of municipal cost reporting.

CASQA Recommendations:

Review terminology, precisely define each term, and explicitly address any change in terminology from terms already in use in permits (if applicable). Including a table to support any transition of terms would be beneficial.

Modify the title of the Draft Policy to “Water Quality Control Policy for Standardized Municipal Agency Cost Reporting in Municipal Stormwater Permits.” Make other conforming edits as needed within the Draft Policy and Draft Staff Report.

### **Comment 14.1**

SMCWPPP Supports CASQA’s Comment Letter

Generally, the Program supports the California Stormwater Quality Association (CASQA)’s comment letter on the Draft Policy submitted to the SWRCB on this same date, and respectfully requests the SWRCB to address the comments made and the revisions requested by CASQA in developing the Revised Draft Policy. In particular, SMCWPPP supports the points made in CASQA’s comment letter regarding the requested changes to ensure the Draft Policy is broad enough to allow Permittees to report costs consistent with the applicable permit, instead of requiring a new and more complicated format and terminology, to avoid duplication of effort and significant challenges in reconfiguring costs and accounting for two reporting processes.

SMCWPPP also strongly urges the SWRCB to remove subcategories in the Draft Policy, and instead require cost reporting at the category and line Item level only. In many cases, NPDES stormwater permit responsibilities are split among different departments with different budgeting and accounting processes and timelines. Furthermore, year to year and permit to permit, these processes may change to accommodate other department and agency-wide changes in fiscal management. The complex nature of local municipal stormwater planning and budgeting makes it challenging, if not infeasible, to reliably and accurately separate out stormwater-related costs from other ongoing department activities and expenditures.

### **Comment 19.1**

In Section 8 of the Draft Policy, the State Water Board Should Be Explicit that All Cost Reporting Data Shall Be Publicly Available Through SMARTS. Transparency and public verification of submitted data is critical to the purpose of the Draft Policy to ensure that MS4

Permittees estimate, track, and report annual expenditures related to the implementation of MS4 permits in a consistent manner. The public has a right to know where and how their taxpayer dollars are being spent. Are federal, state, and local dollars being invested in community multi-benefit projects to attain the public's right to fishable, swimmable, and drinkable waters, or is the public's money being spent for consultants who "paper-over" non-compliance to avoid liability?

Section 8.4 of the Draft Policy states that annual reports shall be submitted electronically "using the MS4 Implementation Cost Survey Tool." While we believe it is the State Water Board's intent to make the reporting data public, we request the State Water Board be explicit in the Cost Policy that cost reported data be publicly available. Specifically, the State Water Board should incorporate the Cost Survey Tool into the Stormwater Multiple Application and Report Tracking System (SMARTS) to provide the submission of all stormwater reporting data in one centralized location alongside other stormwater permittee documentation.

Self-reporting and making data public is a cornerstone of the Clean Water Act. It should be no different for this Clean Water Act Policy; the permittees should be allowed to self-report costs, but the public should be allowed to verify and investigate whether permittees are truly and accurately reporting costs in a consistent manner as required by the Cost Policy. The permittees should have no apprehensions about reporting costs being made public because Section 4.4 the draft Cost Policy is explicit that "reported costs of Permit implementation data shall not be used as a surrogate for the level of compliance activities performed by a Permittee."

#### Comment 20.4

The State Water Board should continue to incorporate best available science and engineering practices into its stormwater programs, including streamlining adjustments to water quality standards while fully protecting beneficial uses.

CCEEB's WQTF has long supported the State Water Board's efforts to incorporate best available science into its programs, including water quality standards development. Priorities of WQTF members include development of guidance regarding the implementation of the biotic ligand model (BLM) to evaluate water quality objectives for metals, including copper and zinc, and to streamline the process of adjusting water quality standards where justified by the science. Additional WQTF priorities include additional guidance for implementing water quality objectives and writing appropriate permit requirements for indicator bacteria, as natural, uncontrollable, nonpoint sources of bacteria, such as wildlife, are important during wet weather conditions.