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Emel G. Wadhvani
California State Water Resources Control Board
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P.O. Box 100
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Via Email: ewadhvani@waterboards.ca.gov

**Re: SWRCB File A-2236(A) through (KK) – Comment Letter Re: State Water Board
Workshop on Receiving Water Limitations**

Dear Ms. Wadhvani:

The League of California Cities appreciates the State Water Resources Control Board's (Board) efforts to provide consistent statewide language on the receiving waters limitation (RWL) provisions for the stormwater MS4 permits. The League's communities are committed to working with the Board to refine the RWL provisions in order to provide meaningful guidance to all of California's communities. This letter is provided to assist the Board in clarifying the RWL language found in the 2012 Los Angeles County MS4 permit, which we understand may become the basis for statewide RWL provisions in the MS4 permits.

During the past four decades, California's communities have made significant investments to improve the water quality in the state's many bays, estuaries, lakes and rivers. The State's water quality is much improved since the adoption of the Clean Water Act in 1972, due in good part to these substantial local investments. Our communities will continue to make significant investments to improve the State's waters in the coming decades to address the challenges of stormwater and urban runoff. The RWL provisions in the permit should be crafted to encourage the innovation necessary to deal with these serious challenges.

The League is concerned that the extension of the permit regimen for wastewater treatment, as now being applied to stormwater by some of the regional boards, is having unintended and serious consequences for local government. A report by the California Council for Environmental and Economic Balance ("CCEEB") echoes the concern of imposing numeric limits on stormwater discharges:

"This approach tends to regard stormwater as a waste and thus fails to recognize its importance as a resource; stormwater is a key element of the hydrologic cycle and provides nutrients, freshwater and sediment to many ecosystems. CCEEB believes that this stringent approach using numeric limits is technically inappropriate but more importantly drives permittees away from sustainable solutions that utilize natural landscape processes and provide multiple benefits and towards "grey" treatment solutions, which typically involve more hardscaping and greater energy and waste generation." A Clear Path to Cleaner Water, Implementing the Vision of the State Water Board for Improving Performance and Outcomes at the State Water Boards, June 2013, (Pages 67-68).

In 2006, the Board convened a "Blue Ribbon Panel" of stormwater experts to examine the feasibility of applying numeric limits to stormwater discharges. The Panel concluded that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." The

League conveyed the concerns of our members over the application of numeric limits to stormwater runoff at that time. The many best management practices (BMPs) that have been constructed by local governments since the panel's conclusion has strengthened our concerns regarding the problems of enforcing numeric limits to stormwater runoff. The CCEEB report draws a similar conclusion in "that calculating appropriate numeric limits for storm flows will require the development of new methodologies and improved data. *"In addition, application of most water quality criteria, including the California Toxics Rule criteria, to storm flows was not considered when those criteria were adopted, so the reasonableness of using those criteria for stormwater regulation has not been established."* (Page 68)

The League convened a Water Quality Task Force consisting of cities, large and small statewide in 2010 to study water issues, including impediments to capitalizing on stormwater a resource. Many cities expressed concern over the inconsistent application of the RWL language statewide and the trend of regional boards to include numeric limits in their stormwater permits as major impediments to innovation. This application of numeric limits in MS4 permits occurred despite the State Board's Order WQ 99-05, requiring the use of Best Management Practices ("BMPs") to the Maximum Extent Practicable ("MEP"). Based on the recommendations of the Water Quality Task Force, the League adopted a policy in March of 2012 which opposes the use of numeric limits in waste discharge permits, especially in storm water permits "because of the difficulties in meeting them, problems with exceeding them, and the cost and potential enforcement impacts." (IV. Water Quality Policies, 6 Water Quality 4D).

We applaud the Los Angeles Regional Water Board working with the stakeholders to develop the RWL language in their 2012 MS4 permit. As we understand the permit, the cities have three options for compliance, including the development of Watershed Management Programs (WMP) and Enhanced Watershed Management Programs (EWMP). These programs provide some partial protection from fines and third-party litigation for cities during the planning and implementation process. We note that the final step of this program requires compliance with numeric limits, which still presents major problems for local government.

The Board should also consider extending the RWL language, with iterative, non-numeric best management practices, to TMDLs and to constituents found in the California Toxics Rule (CTR) and not yet a part of any TMDL. CTR includes over 120 constituents, many not regulated in TMDLs. When US EPA adopted the CTR in 1999, the agency expressly indicated that it expected a "non-numeric" application to stormwater. EPA did not support advanced treatment or a "black box" treatment approach to implementing CTR. In a response a comment letter by the County of Los Angeles on the application of CTR to stormwater, EPA replied *"The commenter appears to assume that stormwater discharges would be subject to numeric water quality based effluent limits never to be exceeded for other point sources, like POTWs. The commenter then appears to assume that such WQBELs would then require the construction of very costly end of pipe controls. EPA contents that neither scenario is valid. EPA will continue to advocate for the use of BMPs."* (See Response to Comment from US EPA, Number 6, 1997) Extending the RWL iterative process language to CTR would implement the expressed goals of EPA.

Thank you again for the opportunity to comment. We appreciate the State Board considering these comments as you refine the RWL language to develop a statewide model.

Sincerely,

Jason Rhine
Legislative Representative