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DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
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November 13, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend,

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on the Issue Paper discussing several alternatives approaches being considered by the State Water Resources Control Board (State Board), which address the provisions contained in the receiving water limitations language of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges from Municipal Separate Storm Sewer Systems (MS4s) published on October 10, 2012.

Caltrans continues to be concerned with the collective impact these receiving water limitations may have with respect to being able to comply with the newly adopted Caltrans Order. Previously, MS4 dischargers have relied on this type of permit language to comply through an iterative approach and process. However, in the wake of the July 2011, Ninth Circuit Court of Appeal's decision, the iterative language as expressed in the receiving water limitations language does not constitute compliance.

Caltrans is vulnerable to enforcement action by the State Board and third party citizen suits alleging violations of receiving water limitations language in question. As a practical matter, Caltrans' stormwater discharges may not cause or contribute to an exceedance of a water quality standard, which means stormwater discharges to receiving waters considered to exceed water quality standards must meet water quality standards at the point of discharge to avoid non-compliance.

To avoid strict application, and liability associated therewith, the receiving water limitations language must be revised. To that end, Caltrans supports the California Stormwater Quality Association (CASQA) proposed receiving water limitations approach and language to the State Board for consideration. Caltrans would support revisions to the receiving water limitations language that are similar to those recommended by CASQA, or other options, as long as the receiving water limitations language is drafted in a manner to clearly indicate that compliance with the iterative process provides an exception from compliance with the discharge prohibition in Caltrans' recently adopted MS4 permit (General Discharge Prohibition A.4). Without such changes to the aforementioned provisions, Caltrans may be exposed to significant liability for failing to comply, even if Caltrans is implementing the iterative process provisions.



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Caltrans and the State Board have a common interest in achieving the highest water quality benefit at a minimum life cycle cost to ensure responsible expenditure of public funds. Resolution of the receiving water limitations language as outlined herein is environmentally and fiscally responsible. If you have any questions, please contact me directly at (916) 653-4446.

Sincerely,



SCOTT McGOWEN, P.E.
Chief Environmental Engineer