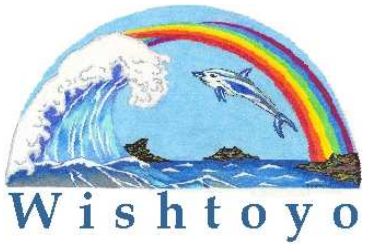


May 29, 2008

Executive Officers and Members of the Board
CA Regional Water Quality Control Board Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Attn: Xavier Swamikannu

Re: Draft Tentative Ventura County Municipal Separate Storm Sewer System (MS4) Permit distributed April 29, 2008 (NPDES PERMIT No. CASOO4002)

Dear Ms. Egoscue and Members of the Board:

Thank you for the opportunity to comment on the above-referenced permit (the "Draft Permit").

Ventura Coastkeeper ("VCK") is a program of the Wishtoyo Foundation. The Wishtoyo Foundation is a community based, non-profit, membership organization located in the City of Ventura. The foundation uses traditional Native American Chumash beliefs, practices, songs, stories and dances to increase awareness of our connection with the environment and to preserve the culture and resources of coastal communities. Core values of the Chumash nation include sustainable living and respect for the environment.

In 2000, the Wishtoyo Foundation launched VCK to protect and restore Ventura County's traditional waterways and marine habitat. VCK's programs include: (1) a citizen monitoring program in Calleguas Creek and Revolon Slough to measure the effectiveness of Best Management Practices (BMPs) and assess impacts of pollutants flowing from Calleguas Creek into Mugu Lagoon; (2) surveys of the Santa Clara River to determine ecosystem health; and (3) the Ormond Beach Wetlands recovery project. Additionally, VCK investigates polluters and, when necessary, takes legal action to stop them. In commenting on the Draft Permit, VCK draws upon the Wishtoyo Foundation's unique perspective, our involvement with the local community, and our experience protecting the traditional waterways of Ventura County.

VCK's overriding comment is that, although the Draft Permit contains many innovative programs to protect water quality (such as Municipal Action Levels and Low Impact Development requirements), it continues the fundamentally flawed storm water permit scheme created by the State and Regional Boards. Storm water permits are overly complicated, difficult to enforce, and contain opaque standards and monitoring programs that are difficult to implement and understand. VCK urges the Regional Board to simplify and objectify compliance standards and the monitoring program.

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Additionally, VCK strongly supports the comments of the Natural Resources Defense Council (NRDC) and Heal the Bay to the first, second and third drafts of the permit. Finally, VCK's has the following specific comments to the Draft Permit:

**1. Draft Permit Must Link Monitoring Data to Water Quality Standards**

The monitoring program must be sufficient to determine whether a municipality is causing or contributing to violations of the permit. See 40 C.F.R. §122.44(i). The Draft Permit prohibits any discharges from the MS4 that cause or contribute to a violation of water quality standards. Draft Permit Part 3.1 at page 32. Thus, legally, the monitoring program must be sufficient to determine whether the permittees are violating water quality standards. The Draft Permit, however, does not satisfy this requirement for two reasons:

(1) First, the monitoring locations are insufficient to identify the activities or failures that are causing or contributing to impairment. This source identification problem is summarized by Jonathan Bishop, the former Executive Officer of the Regional Board, in a letter to the Principal Permittee dated March 9, 2007:

> "The Monitoring Program has been in effect for several years in the County of Ventura and Permittees report exceedances of several of the same water quality objectives year after year in receiving waters without being able to identify or eliminate the sources of the exceedances. Without differentiation of sources from the Permittee's MS4s, the application of appropriate Best Management Practices (BMPs) to reduce the discharge of pollutants of concern to the maximum extent practicable (MEP) is unattainable."

To evaluate the permittees' compliance with water quality standards and what additional steps must be taken to achieve compliance, the Draft Permit must require upstream monitoring that is representative of their respective discharges. The Regional Board needs to define which major outfalls will be monitored in accordance with this objective. It is unacceptable to allow the permittees' to determine which major outfalls are "transporting representative landuse discharges" and thus need to be monitored. Draft Permit at page F-4. Unless the Regional Board and the permittees know the source of the pollutants causing and contributing to water quality violations, how can anyone know what BMPs are needed or working? For all of these reasons, the Draft Permit needs to contain, at the outset, a robust program of upstream monitoring and source identification.

(2) Second, the Draft Permit does not articulate how to make a determination of compliance with water quality standards. To make such a determination, the Draft Permit must link the measurements obtained by the monitoring program to water quality standards such as those set forth in the California Toxics Rule ("CTR"). VCK is asking the Regional Board to invest a significant amount of time to articulate how monitoring data can be converted into a

determination of compliance with water quality standards. Not only is it legally required, but it will greatly simplify implementation and enforcement of the final permit.

Has the Regional Board evaluated how many person years it will take to review all of the various reports, Storm Water Quality Management Plans and field inspections required by the Draft Permit (apart from the time it is taking to draft the nearly 200-page permit)? The State Board itself found that "the current level of program staffing resources is not sufficient to fully implement the storm water program." Draft Enforcement Report, CA State Water Board, January 2008, page 14. For fiscal year 2006-2007, the State Board estimated that the NPDES Storm Water Program needed 400 staff in order to operate a fully-functioning program. As of April 2008, the NPDES Storm Water Program had about 100 staff. Baseline Enforcement Report (FY 2006-2007), CA State Water Board, revised April 30, 2008, page 21. Adoption of water quality standards will lessen the need for so many reports, plans and programs because it will be clear from the monitoring program alone whether the permittees are in compliance and, more importantly, the permittees will know better how to achieve compliance.

It is also important to put the Draft Permit into context. This is the third iteration of Ventura County's Phase I MS4 Permit (first adopted in 1994). The MS4 Permit has been regulating storm water discharges for nearly 15 years but storm water continues to exceed water quality standards and impair our waters. Draft Permit at page 2. In 2007, monitoring data showed elevated pollutant concentrations at all monitoring sites during one or more monitored wet weather storm events, and at specific sites during one or more dry weather events . Ventura Countywide Stormwater Quality Management Program, Annual Report for Permit Year 7, Reporting Year 13 (October 2007) at page 9-17. Yet, the Draft Permit limits monitoring to three mass emission stations and an undefined set of major outfalls. Let's not wait another five to seven years before we make a serious attempt to identify the source of this pollution.

**2. Require Compliance with MALs and Provide a Method of Enforcement**

VCK agrees with NRDC and Heal the Bay regarding the MALs (a) being too high relative to water quality standards (such as the CTR), and (b) constituting technology-based effluent limitations that do not reflect the Maximum Extent Practicable (MEP) standard. Notwithstanding those issues, at a minimum, the Draft Permit needs to actually require compliance with the MALs on a reasonable schedule, and to provide a mechanism for enforcement. Staff has indicated that, to account for sampling abnormalities, the Draft Permit allows the permittees to exceed the MALs 20% of the time over the first three years of the Draft Permit before attempting to require any corrective action. Draft Permit Part 2.1 at page 32. If the MALs are exceeded more than 20% of the time, the violating permittee is required to "affirmatively augment and implement all necessary storm water controls and measures to reduce the discharge of the associated class of pollutants in accordance with [MEP]," which is exactly what every permittee is required to do in the first place. Id. Thus, the Draft Permit undermines the very MAL standards it sets forth and requires no real progress for at least three more years in a program intended to achieve compliance in 1992.

The Draft Permit should be revised to provide that any exceedance of the MALs shall create a presumption that the permittees have not complied with MEP and require all permittees upstream from the point of discharge to notify the Regional Water Board within 30 days of knowledge of such exceedance and thereafter submit a MAL Compliance Report in accordance with the procedures set forth for RWL Compliance Reports at Part 3.3 of the Draft Permit. If there is any sampling abnormality, the EO can make such a determination and modify the contents of the MAL Compliance Reports accordingly.

**3. Trigger for Receiving Water Limitation Compliance Reports is Too Subjective**

Part 3 of the Draft Permit is internally inconsistent. Part 3.1 states that "[d]ischarges from the MS4 that cause or contribute to a violation of water quality standards are prohibited." Draft Permit at page 32. But, Part 3.3 of the Draft Permit goes on to say that "[i]f exceedances of water quality standards or water quality standards ***persist*** . . ,the permittee shall ensure compliance with discharge prohibitions and receiving water limitations by [submitting a Receiving Water Limitations [RWL] Compliance Report]." Draft Permit at pages 32-33 (emphasis added). By allowing violations of water quality standards to "persist" for an undefined period of time, the Draft Permit in effect permits rather than prohibits such violations. The word "persist" needs to be deleted from Part 3.3 of the Draft Permit because (a) it is inconsistent with the permit's stated objective of ensuring compliance with water quality standards, and (b) it undermines effective enforcement of water quality standards by setting a totally subjective trigger for RWL Compliance Reports. Draft Permit Finding F.2 at page 21.

**4. Implement Storm Water Quality Management Programs Sooner**

The Draft Permit gives permittees 365 days to adopt a Storm Water Quality Ordinance and modify their storm water management programs. Draft Permit Part 4 at pages 35, 37. However, per the existing MS4 permit, the permittees already have storm water quality ordinances and storm water management programs in place. Order No. 00-108 at pages 11-12. Ninety (90) days is a reasonable period of time to amend existing ordinances and revise existing Storm Water Management Programs.

**5. Principal Permittee Should Share In Responsibility for Permittees' Compliance**

The Principal Permittee's pipes convey pollutants from the municipalities to waters of the United States via point sources. Yet, the Draft Permit purports to relieve the County from any liability for these discharges which is inconsistent with the requirements Clean Water Act. Draft Permit, Part 4.E.1(b) at page 37 (stating that "the Principal Permittee is not responsible for ensuring compliance of any other individual permittee"). Not only is this illegal, it is bad public policy. If the parties want to make a distinction between the responsibility of the Principal Permittee and the other permittees, they need to monitor upstream to determine pollutant source and relative contribution of the permittees to water quality impairment. Otherwise, all permittees upstream from a discharge violating water quality standards (including the Principal Permittee) should be jointly responsible for such violations. The permittees can work out relative liability amongst themselves.

**6. Grading Prohibition Variance is Too Broad**

The Draft Permit requires each permittee to prohibit grading activity at construction sites with a high risk of erosion during the wet weather season. Draft Permit Part 5.F.1 at page 63. Although sediment is a "primary pollutant impacting beneficial uses of watercourses," the Draft Permit goes on to allow the permittees to grant grading prohibition variances without any notice to or input from the Regional Board. Id. Instead, the Draft Permit leaves it to the permittees to determine whether the builder can demonstrate that the proposed BMPs are "reasonably expected to (1) Not cause or contribute to the degradation of water quality . . . (4) Not impair beneficial uses, [and] (5) Includes a monitoring program to ensure effectiveness." Id. The Draft Permit needs to eliminate the variance or (a) delete the "reasonably expected to" language and require the BMPs to actually meet the variance requirements, (b) articulate how to determine compliance with requirements (1), (4) and (5), and (c) require the permittee to submit the variance documents to the Regional Board as a public document prior to issuance of the variance.

**7. Replace TMDL "Workplans" with Existing RWL Compliance Report Process**

To enforce compliance with Total Maximum Daily Load requirements ("TMDLs"), the Draft Permit provides: "[i]f any [Waste Load Allocation] is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the MS4 Effluent Quality and Source Identification Workplans. Following these actions, the Regional Water Board staff will evaluate the need for further enforcement action." Draft Permit at pages 83-89. However, the Draft Permit does not define "MS4 Effluent Quality Source Identification Workplans." Staff indicated that said Workplans are one and the same document as the workplans required of the permittees at Part 6.II of the Draft Permit, which must be approved by the Executive Officer of the Regional Board. Draft Permit Part 6.II at page 82. There is no need to create another type of compliance report. The Draft Permit should delete all references to the workplans and simply provide that any exceedance of WLAs is a violation of water quality standards and requires RWL Compliance Reports in accordance with Part 3 of the Draft Permit.

**8. Protect Areas of Special Biological Significance (ASBS)**

The California Ocean Plan prohibits discharges to Areas of Special Biological Significance (ASBS) (now called "State Water Quality Protection Areas") such as Mugu Lagoon. Although Calleguas Creek flows into Mugu Lagoon, the Draft Permit does not appear to impose any additional requirements based on Mugu's ASBS status. The Draft Permit needs to address the legal protection afforded to Mugu Lagoon by the California Ocean Plan. Moreover, Mugu Lagoon has special significance because it was originally the location of Muwu, a traditional Chumash village from which the name "Mugu" is derived. Allowing polluted discharges of storm water to Mugu Lagoon disregards the value of our traditional village and resources.

Thank you for this opportunity to comment on the Draft Permit and for all of your work to protect our waters. Please contact us at with any questions you may have.

Sincerely,

[signature sent via fax]

Mati Waiya
Coastkeeper

[signature sent via fax]

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