State of California
Regional Water Quality Control Board
North Coast Region

Mona S. Dougherty
July 1, 2009

EXECUTIVE OFFICER'S SUMMARY REPORT
1:30 p.m., Wednesday, July 22, 2009
Regional Water Board Hearing Room
5550 Skylane Boulevard, Suite A
Santa Rosa, California

ITEM: 1

SUBJECT: Santa Rosa, Sonoma County, and the Sonoma County Water Agency NPDES Municipal Separate Storm Sewer System (MS4) Storm Water Permit

DISCUSSION

Regional Water Board staff released the second draft of the National Pollutant Discharge Elimination System (NPDES) storm water permit for discharges from the City of Santa Rosa, Sonoma County and the Sonoma County Water Agency's (Co-Permittees) municipal separate storm sewer systems (MS4s) on May 22, 2009. This public meeting is to discuss the second draft permit, receive public testimony summarizing timely submitted written comments and Regional Water Board direction on the draft permit prior to the public meeting to consider adoption on October 1, 2009.

BACKGROUND ON MUNICIPAL STORM WATER PERMITS

The State and Regional Water Boards have been designated by the United States Environmental Protection Agency (U.S.EPA) to issue NPDES permits (including storm water permits) and are responsible for implementing storm water permitting requirements in the federal Clean Water Act (CWA).

Municipal or MS4 storm water permits are one type of permit adopted by the State and Regional Water Boards. Municipalities own and operate storm drain systems that have multiple discharge points and, when a municipality both discharges to waters of the United States and meets established size, urban density, census, or growth rate criteria, the discharge points are considered regulated point sources. In addition to these criteria, federal regulations allow for the state to regulate other MS4 systems where it can find that the MS4 is a significant source of pollutants to waters of the United States. Similar to other NPDES permittees that have regulated point source discharges, municipal storm water permittees need permit coverage for their discharges.

Reliance on BMPs

Municipal storm water permittees are allowed more flexibility in their permitting than typical NPDES permittees. Municipal storm water permittees may elect to have a traditional permit with numeric end-of-pipe effluent limits, or they are allowed to choose a more flexible permit that requires specific best management practices (BMPs) to achieve compliance. Under some circumstances related to TMDL or Basin Plan

requirements, numeric effluent limits for specific constituents may be included in an MS4 permit that otherwise relies primarily on BMPs for compliance with water quality standards. And while municipal storm water permittees are required to meet water quality standards like other NPDES permittees, they are usually allowed an iterative process of BMP assessment and improvement in order to meet water quality standards. If an MS4 permittee is not meeting water quality objectives, but is implementing an iterative BMP process to achieve compliance, the permittee is not subject to mandatory minimum penalties.

MEP Standard

Under section 402(p) of the CWA, municipalities are required to effectively prohibit non-storm water discharges into the storm sewers and reduce the discharge of pollutants from their MS4s to waters of the United States to the maximum extent practicable (MEP). The CWA states that municipal storm water permits, "shall require controls to reduce the discharge of pollutants to the MEP, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." MEP is a dynamic performance standard which evolves over time as storm water runoff management knowledge increases and storm water programs mature. MS4 permittees' storm water runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, and BMPs in order to achieve the evolving MEP standard. To achieve the MEP standard, municipalities must employ whatever BMPs are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. If BMPs are found to be feasible, achievable and effective in one MS4 program, that increases the likelihood that the same BMPs should be utilized in another MS4 program to achieve the MEP standard.

A definition of MEP is not provided in either the federal statute or regulations. The final determination regarding whether a municipality has reduced pollutants to the MEP can only be made by the Regional Water Board or the State Water Board, and not by the MS4 permittee. While the Regional Water Board or the State Water Board ultimately defines MEP, it is the responsibility of MS4 permittees to initially propose actions that implement BMPs to reduce the discharge of pollutants to the MEP. Regional Water Board staff has determined that additional activities and measurable goals are needed beyond those contained in the Co-Permittees' current storm water permit or Storm Water Management Plan (SWMP) to meet the MEP standard. Regional Water Board staff met with the Co-Permittees several times prior to the release of the first draft permit on September 9, 2008, to discuss additional BMPs and measurable goals for the renewed permit. In addition to programs added by the Co-Permittees following these discussions, the draft permit provides a minimum framework to guide the Co-Permittees in meeting the MEP standard.

Required Program Elements

MS4 permits are required to contain specific programs and the Co-Permittees are required to exercise their authorities within their jurisdiction to eliminate the discharge of non-storm water and reduce the discharge of pollutants in storm water to the MEP and to meet water quality standards. Requirements for municipal storm water programs, as set forth in the U.S.EPA regulations governing storm water permits, include proper legal authority to control discharges and require implementation of program requirements, a public information and participation program, a construction activities regulation program, an industrial facilities regulation program, a municipal operations program, an illicit connection and discharge elimination program, and requirements for new development and redevelopment projects.

Municipalities must have the legal authority to implement required program elements and to prohibit discharges of polluted storm water or non-storm water to their MS4 that will cause their discharge to waters of the United States to be out of compliance with their MS4 permit. The goals of a public information and participation program are to involve the population and entities within a municipality in the storm water program, inform citizens of the impacts of discharges of polluted storm water and non-storm water on receiving waters and activities that contribute to these discharges, and to modify behavior to prevent the discharge of pollutants. The goal of the programs to regulate construction and industrial activities and facilities is to eliminate the discharge of pollutants to the MS4 from these specific land uses. The municipal operations program includes requirements for BMPs for use on the permittees' maintenance projects, facilities such as corporation yards, and all municipal activities that could impact water quality. The goal of the illicit connection and discharge elimination program is to eliminate the discharge of pollutants in storm water and non-storm water to waters of the United States through identification and disconnection of illicit connections and investigating, tracking and eliminating illicit discharges. Municipalities are required to reduce the pollutants discharged from new development and redevelopment projects through site design measures and the use of post-construction storm water BMPs.

Measurable Goals

MS4 permits do not typically include effluent limits like other NPDES permits and therefore, verifying compliance with permit requirements and water quality standards can be complicated. Other NPDES permits, such as for wastewater treatment plants, establish numerical limits and leave it up to the permittee to implement treatment, maintenance and monitoring measures in order to meet permit limits. MS4 permits are much more prescriptive on the various individual program elements that, taken together, are expected over time to meet water quality standards. Municipal storm water regulations require measurable goals in each required program component to define how BMPs are being implemented. Measurable goals are concrete, verifiable tasks that municipal storm water permittees can perform and demonstrate implementation of program elements. Example measurable goals can include number of storm drain inlets cleaned annually or number of informative pollution prevention radio messages, etc.

The Regional and State Water Boards or U.S.EPA make the final decision on the adequacy of measurable goals included in SWMPs and MS4 permits.

California MS4 permits were previously written to provide maximum flexibility in the structure of program elements and the choice of BMPs to allow municipal storm water permittees time and latitude to develop effective storm water programs. Because of the great flexibility in previous California permits, measurable goals were not proposed in adequate number or detail to demonstrate to Regional Water Board and U.S.EPA staff that all program elements were being conducted adequately. Over the last several permit terms, the State Water Board, the Regional Water Boards, and the U.S.EPA have begun to have a better understanding of what types of strategies work to reduce storm water pollution. As a result, MS4 permits are now being written with greater specificity and guidance on measurable goals, BMPs, inspection tools, and performance standards. Some MS4 permittees have stated that this greater level of specificity conflicts with California Water Code section 13360 because it improperly specifies method and manner of compliance. To the extent that such specificity is inconsistent with Water Code section 13360, Water Code section 13372 states that the provisions implementing the CWA prevail over other provisions of the Porter Cologne Act.

U.S.EPA INSPECTIONS

U.S.EPA contractors performed an inspection of the City of Santa Rosa's storm water programs on November 7 and 8, 2007. The goal of the inspection was to determine how the Co-Permittees were meeting permit requirements and to suggest additional program elements needed to meet MEP. The contractors identified program deficiencies in the following areas: private construction; public construction; storm drain operation and maintenance; vehicle maintenance, material storage facilities, corporation yards management; and implementation of the post-construction treatment BMP guidance manual (SRA-SUSMP), BMP construction oversight, and maintenance and tracking of BMPs.

The conclusion of the inspection report (included in Attachment 2) states, "All findings made in this inspection report are subject to enforcement action by the Regional Board. The information gathered during the inspection indicates that the City of Santa Rosa's MS4 program is being implemented, but that program element improvements are needed to ensure compliance. Based on the results of this inspection, additional routine inspections focusing on the Private Construction Element, Public Construction Activities Management, and SRA-SUSMP appear warranted."

U.S.EPA contractors performed an inspection of Sonoma County's and the Sonoma County Water Agency's storm water programs on November 27 and 28, 2007. The contractors identified program deficiencies in the following areas: private construction; public construction; storm drain operation and maintenance; vehicle maintenance, material storage facilities, corporation yards management; streets and road maintenance; illicit discharge detection and elimination; implementation of the post-

construction treatment BMP guidance manual, BMP construction oversight, and maintenance and tracking of BMPs.

The conclusion of the inspection report states, “All findings made in this inspection report are subject to enforcement action by the Regional Board. The information gathered during the inspection indicates that the permittees’ programs are being implemented, but that program element improvements are needed to ensure compliance.”

TMDL

As Total Maximum Daily Loads (TMDLs) are developed statewide, municipal storm water permits are becoming an increasingly common tool for implementing pollutant load allocations. While including TMDL waste loads for storm water runoff in municipal storm water permits is becoming increasingly common and is required by U.S.EPA, it remains controversial. The State Water Board is considering a draft Order that states that waste load allocations for non-storm water discharges should be included in MS4 permits. On March 1, 1995, the Regional Water Board approved a TMDL and Waste Reduction Strategy (Strategy) for the Laguna de Santa Rosa watershed that assigned numeric, seasonal targeted reductions and net load goals for Total Nitrogen and Total Ammonia. On May 4, 1995, U.S.EPA approved the TMDL and Strategy. The Strategy implements the TMDL using four programs aimed at reducing nitrogen and organic matter inputs to the Laguna. One of these identified programs is the municipal storm water permit program.

The Strategy identified the City of Santa Rosa, the City of Rohnert Park, the City of Cotati, the City of Sebastopol, and the Town of Windsor as contributing urban storm water and non-storm water to the Laguna watershed, and it recommended that all urban areas reduce nutrient loads to the Laguna watershed. The Strategy states, “Urban development has increased rapidly in the greater Santa Rosa area and contributes to the water quality problems in the Laguna.” Sonoma County was identified in the Strategy for development of a storm water program in cooperation with Santa Rosa because of their discharges of storm water to the Laguna watershed and the interconnectedness of the City and County’s storm drain system. The draft permit contains elements intended to implement the TMDL, such as the use of Low Impact Development (LID) for new development and redevelopment, outreach to businesses that sell and use fertilizers to avoid overuse, and requirements for municipal operations that store, apply and dispose of fertilizers. The draft permit adds additional monitoring to help determine compliance with the TMDL allocations.

Regional Water Board staff is currently developing an updated TMDL for the Laguna watershed and anticipates that it will be adopted within the term of this permit. Until the updated TMDL has been established, the Regional Water Board is required to include the Strategy waste loads in the proposed permit.

ECONOMIC CONCERNS

U.S.EPA, the California Regional Water Boards, and the State Water Board have attempted to evaluate the costs of implementing municipal storm water programs. The assessments demonstrate that true costs are difficult to ascertain and reported costs vary widely. Nonetheless, they provide a useful context for considering the costs of requirements within the draft permit. In addition, reported fiscal analyses tend to neglect the costs incurred to municipalities when storm water runoff is not effectively managed. Such costs result from pollution, contamination, nuisance, and damage to ecosystems, property, recreation, and human health.

In 1999, U.S.EPA reported on multiple studies it conducted to determine the cost of storm water runoff management programs. A study of Phase II municipalities determined that the cost of the Phase II program was expected to be $9.16 per household annually. U.S.EPA also studied 35 Phase I municipalities, finding costs to be $9.08 per household annually, similar to those anticipated for Phase II municipalities. A study on program cost was also conducted by the California Regional Water Quality Control Board, Los Angeles Region (LARWQCB), where program costs reported in the municipalities' annual reports were assessed. The LARWQCB estimated that the average per household cost to implement the MS4 program in Los Angeles County was $12.50 annually.

The State Water Board also recently commissioned a study by the California State University, Sacramento to assess costs of the Phase I MS4 program. This study includes an assessment of costs incurred by Phase I MS4 permittees throughout the State to implement their programs. Annual cost per household in the study ranged from $18-46, with the City of Encinitas in San Diego County representing the upper end of the range.

It is important to note that reported program costs are not all attributable to compliance with MS4 permits. Many program components, and their associated costs, existed before any MS4 permits were ever issued. For example, street sweeping, trash collection, and restaurant and other commercial and industrial inspection costs cannot be solely attributable to MS4 permit compliance, since these practices have long been implemented by municipalities and serve additional purposes. Therefore, true program cost resulting from MS4 permit requirements is some fraction of reported costs. The California State University, Sacramento study found that only 38 percent of program costs are new costs fully attributable to MS4 permits. The remainder of the program costs was either pre-existing or resulted from enhancement of pre-existing programs.

The second draft permit contains measurable goals consistent with requirements contained in other MS4 permits in California and other states. Staff made 132 substantive modifications to the draft permit between the first and second drafts at the Co-Permittees' request. The majority of these changes were intended to lessen the financial impact of permit requirements. Regional Water Board staff is not legally

required to prepare a fiscal analysis of the cost of the draft permit, but is willing to consider any information that the Co-Permittees submit.

Financing the MS4 program is a considerable challenge for municipalities. A proven successful financing mechanism is the establishment of a storm water utility. Utility fees, which are assessed on the property owner based on some estimate of storm water runoff generated for the site, are a predictable, secure and dedicated source of funds. Utility fees can also provide a mechanism to provide incentives to commercial and industrial property owners to reduce impervious surface areas. Such incentives offer flexibility to property owners to choose the better economic option, paying more fees or making improvements to reduce runoff from the site. In order to implement the MS4 storm water permit program and to accomplish other City-wide goals, the City of Santa Rosa has enacted a storm water enterprise (parcel fee) devoted to operate, maintain and fund the City's surface water, storm water, storm drainage and flood control management program. At this time Sonoma County does not have a dedicated storm water utility funding source to implement their storm water program.

PERMIT HISTORY

On June 26, 2003, the Regional Water Board adopted a second term (five-year term) municipal storm water NPDES permit for discharges from the Santa Rosa, Sonoma County and the Sonoma County Water Agency's MS4s. In the permit, the three entities cooperate as Co-Permittees, each responsible for their individual storm drain system, discharges into these systems, and discharges from their MS4 to waters of the United States. This permit is required to be renewed.

Regional Water Board staff met with the Co-Permittees several times to discuss improvements to programs and measurable goals that were needed for the permit renewal. On December 21, 2007, the Co-Permittees submitted the SWMP, which is an application for permit renewal. The SWMP did not include all of the program elements and measurable goals that were discussed in earlier meetings between staff and the Co-Permittees. Regional Water Board staff determined that additional requirements and measurable goals were needed to achieve MEP and meet water quality standards as described in the draft permit and fact sheet.

On September 9, 2008, Regional Water Board staff released the first draft of the Co-Permittees' new permit. Regional Water Board staff held a public workshop to discuss the draft permit on October 21, 2008. The 43-day comment period on the first draft permit ended on October 22, 2008.

As part of writing the second draft of the permit, Regional Water Board staff met with interested parties and parties that had commented on the first draft permit. Meetings were held with:

(a) Co-Permittees: September 25, 2008; October 23, 2008; November 13, 2008; November 25, 2008; December 8, 2008; December 15, 2008; December 29, 2008; December 30, 2008; January 8, 2009; January 20, 2009; January 21, 2009;

January 28, 2009; February 4, 2009; February 19, 2009; February 26, 2009; March 12, 2009; and April 9, 2009;

(b) Russian River Watershed Association: October 14, 2008;
(c) Sonoma County Fire Fighter's Association: October 28, 2008;
(d) Russian River Watershed Protection Committee: November 19, 2008;
(e) Russian Riverkeeper and Coast Action Group: December 2, 2008;
(f) Sonoma/Marin Vector Control District: December 9, 2008;
(g) Engineers representing associations and local consultants: December 15, 2008;
(h) U.S.EPA: February 18, 2009; and
(i) Department of Fish and Game: March 3, 2009.

The Co-Permittees also submitted redline versions of the first draft permit with their requested language changes for Regional Water Board staff to consider for the second draft permit. Regional Water Board staff held 17 meetings with the Co-Permittees between the release of the first and second draft permit. Regional Water Board staff has given the Co-Permitees and other interested parties in the North Coast Region unprecedented opportunities to participate in the development of this permit. Based on these meetings and comments received on the first draft permit, staff made 132 substantive modifications to the draft permit. Those modifications are now included in the second draft permit for Regional Water Board consideration. It includes feasible requirements, considers the economic and staff resources of the Co-Permittees, and protects water quality.

COMMENTS RECEIVED ON THE FIRST DRAFT PERMIT

The Regional Water Board received 159 comment letters (attachment 5) on the first draft permit. Staff responded (attachment 4) to the comments on June 22, 2009. The comments and response are attached to this Executive Officer's Summary Report (EOSR) for Regional Water Board review. The majority of the comments were resolved through modifications to the first draft permit, including 132 substantive modifications at the request of the Co-Permittees alone.

Several common issues were raised in respect to many requirements in the first draft permit. Specifically, commenters asserted that the first draft permit contained unfunded mandates, that the first draft permit was too stringent, and that the first draft permit was not stringent enough. Additional issues that were raised in the comments are described in the next section on particular programs in the second draft permit.

The Permit Does Not Include Unfunded Mandates

Throughout the state of California, MS4 permittees have argued that requirements in permits are unfunded mandates. Article XIIIB, Section 6 of the California Constitution requires subvention of funds to reimburse local governments for state-mandated programs in specified situations. There are several exceptions and limitations to the subvention requirements that provide bases for the Commission to determine that the Test Claim is not subject to

subvention. Article XIIIB, Section 6 provides, "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service." Implementing statutes clarify that no subvention of funds is required if: (1) the mandate imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation (Govt. Code, § 17556, subd. (c)); or (2) the local agency proposed the mandate (id., subd. (a)); or (3) the local agency has the authority to levy service charges, fees, or assessments sufficient to pay (id., subd. (d)). In addition, numerous judicial decisions have further limited when the State must provide subvention of funds. Currently, there are several test claims before the Commission on State Mandates to determine whether the State must reimburse local governments for expenditures to implement the municipal storm water program.

Discussion in the fact sheet is consistent with the position that the State Water Board and other regions have taken in the unfunded mandate proceedings before the Commission on State Mandates. The fact sheet states that although requirements in California MS4 permits may be more explicit than requirements in the CWA and federal regulations, the requirements are not additional programs beyond those required by the CWA and federal regulations. Also, as the MS4 permits issued in California are similar to permits that would be issued by U.S.EPA without the in-lieu authority granted to California, California permits do not contain unfunded mandates.

Additionally, the Co-Permittees are required to have a storm water permit if they choose to discharge storm water or non-storm water with a detectable level of pollutants into waters of the United States. The Co-Permittees filed an application for an MS4 permit indicating their intent to discharge their storm water and non-storm water into waters of the United States. If they did not obtain a permit, their storm water and non-storm water discharges to waters of the United States would be unpermitted, and Regional Water Board staff would be in the position of taking enforcement action every time the Co-Permittees discharged without a permit.

<u>The Draft Permit is Consistent with Other Recently Adopted or Proposed Permits</u>

Some commenters contend that the draft permit is too stringent. Regional Water Board staff, however, made 132 substantive modifications to the draft permit between the first and second drafts at the Co-Permittees' request. Staff also met with commenters over 25 times to receive input on the draft permit. While some older California MS4 permits (Region 5) may be less stringent than the draft permit, the draft permit is consistent with other permits recently adopted and proposed statewide, and in some cases less stringent than this new generation of MS4 permits.

For example, the first draft permit required post-construction storm water treatment controls on new development or redevelopment projects with 5,000 ft^2 or more of impervious surface (based on type of land use). In the second draft permit, staff relaxed that requirement to 10,000 ft^2, rather than the 2,500-5,000 ft^2 threshold required in other California (Los Angeles (4), Santa Ana (8) and San Diego (9) Regions) or national (Washington and Georgia) storm water permits. The first and second draft permits have also kept the one acre of new impervious surface threshold for single-family residential development and redevelopment projects requiring post-construction BMPs from the previous permit adopted in 2003. The draft permit does not contain numeric effluent limits (permits from Regions 4 (TMDL waste load allocations), Lahontan (6), 8 (TMDL waste load allocations) and 9 do) or municipal action levels (permit from Region 9 does). The draft permit has significantly fewer monitoring requirements than many other storm water permits (permits from Regions San Francisco Bay (2), 4, 8, and 9).

The Draft Permit is Not Stringent Enough

Several commenters contend that the draft permit is not stringent enough in the areas of erosion and sediment control, action plans, early implementation of TMDLs, LID performance standards, numerical effluent limits, and alternate regional/subregional treatment controls. Staff supports the requirements in the draft permit. Some additional language has been added to the second draft permit to clarify the standards for LID implementation. The draft permit balances the need to protect water quality and the current fiscal situation of the Co-Permittees.

SECOND DRAFT STORM WATER PERMIT

On May 22, 2009, Regional Water Board staff released the draft fact sheet (attachment 1), the second draft permit (attachment 2), and the second draft monitoring and reporting program (attachment 3) for another public comment period that will end on July 6, 2009. The modifications to the permit between the first and second drafts were so numerous that it was impossible to present the second draft in an underline/strikeout format, and therefore the language that was modified is marked in grey. In writing the second draft permit, Regional Water Board staff met with the Co-Permittees 17 times between release of the first and second drafts and made 132 substantive modifications in the second draft from the first draft permit in response to Co-Permittees' input.

Permit Boundary

Regional Water Board staff proposed in the first draft permit to expand the permit boundary from the existing area that includes the Laguna de Santa Rosa and Mark West Creek watersheds as well as the area outside of Healdsburg and the Graton area, to include the entire area of Sonoma County that falls within the North Coast Region. The MS4 permit boundary had been proposed for expansion for the following reasons: (1) the North Coast Region has CWA section 303(d) impaired water bodies that receive storm water runoff containing pollutants of concern in areas of Sonoma County outside the existing permit boundary; (2) total maximum daily loads (TMDLs) will be

developed for these water bodies and until TMDLs are established, the impaired waters must be protected from the discharge of pollutants; (3) these additional areas of Sonoma County do discharge storm water runoff and do contribute, cumulatively, to the water quality impairment of downstream receiving waters; (4) many of these water bodies provide habitat for endangered species; (5) to encourage Co-Permittees to provide consistent requirements and standards for development within Sonoma County; and (6) Sonoma County has substantial coastal resources that need to be protected from new and existing sources of storm water pollution, including a state designated area of biological significance (ASBS) in the waters of Bodega Bay.

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) require coastal states with approved coastal zone management programs to address non-point source pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point source pollution: agriculture, silviculture, urban, marinas, and hydromodification. In September 1995, the State Water Board and the California Coastal Commission submitted the state's response to the CZARA requirements. In lieu of a separate state program for the coastal zone, the state decided to apply the CZARA requirements on a statewide basis. The second draft permit does address some CZARA requirements (urban and hydromodification) within the permit boundary, however, the second draft permit does not address the CZARA management measures required for the areas of Sonoma County that are not included within the permit boundary. Compliance with requirements specified in the second draft permit does not relieve the Co-Permittees from developing a non-point source plan for other programs identified under CZARA.

Regional Water Board staff reconsidered the recommended approach and decided to propose keeping the existing, smaller permit boundary in the second draft permit because of the difficult economic position the County is in and because the County has proposed to implement three of the storm water-related programs required in the draft permit on a county-wide basis. These three programs include: (1) new development and redevelopment post-construction treatment controls, such as LID and hydromodification requirements; (2) a municipal operations program; and (3) an illicit connections and discharges elimination program. Regional Water Board staff has determined that implementation of these programs county-wide within the North Coast Region would be most effective for protecting water quality. Regional Water Board staff is willing to implement these program elements under another regulatory program instead of expanding the boundary in the permit.

Staff appreciates direction from the Regional Water Board on three choices for the permit boundary: (1) expand the permit boundary to all of Sonoma County within the North Coast Region as proposed in the first draft permit and to comply with CZARA; (2) expand the permit boundary to cover the entire Russian River and Bodega Bay watersheds, which would be consistent with U.S.EPA's comments on the first draft permit requesting protections for impaired waters and provide coverage for the more populated areas of Sonoma County; or (3) keep the existing permit boundary including

the Laguna de Santa Rosa and Mark West Creek watersheds, the Graton area and the area surrounding Healdsburg.

Additionally, for this third option, staff would draft a waiver for waste discharge requirements for Regional Water Board consideration that would provide coverage for the rest of Sonoma County within the North Coast Region. The waiver would include requirements for a new development and redevelopment program, a municipal operations program, and an illicit connect and discharge elimination program. The third approach would be similar to the approach being considered by Regional Water Board staff for similar non-point source discharges in other counties in the North Coast Region.

New Development and Redevelopment

For residential developments, staff proposes to keep the one acre size threshold for requiring post-construction storm water treatment controls in new development and redevelopment projects included in the previous permit adopted in 2003. In the first draft permit, staff proposed that new commercial development and redevelopment that included 5,000 ft^2 or greater of new impervious surface be required to implement post-construction storm water treatment controls. This size threshold is consistent with permits adopted or proposed in the Los Angeles Region (Ventura County), the Santa Ana Region (Orange County North) and San Diego Region (Orange County South), as well as requirements in the states of Washington and Georgia. The Lahontan Region (Lake Tahoe) has adopted a permit with existing development retrofit requirements that are more stringent than our first draft permit.

After the first draft permit was released, the Co-Permittees requested that the 5,000 ft^2 threshold be relaxed because of their economic and staffing situation. In the second draft permit, staff proposed the threshold be relaxed to 10,000 ft^2, a size threshold consistent with the MS4 permit proposed in the San Francisco Bay Region (Municipal Regional Permit), while maintaining the one acre threshold for residential development from the previous permit. Consistency between our second draft permit and the permit proposed in the San Francisco Bay Region will provide clarity and regulatory certainty for developers, engineers and contractors operating in the Bay Area. Regional Water Board staff has determined that the proposed 10,000 ft^2 threshold for new development and redevelopment projects is achievable, feasible, and protective of water quality, and therefore, meets the MEP standard.

This requirement for post-construction storm water treatment controls is also consistent with the State Water Board Resolution No. 2008-30, “Requiring Sustainable Water Resources Management,” adopted May 6, 2008. In that resolution, the State Water Board stated that it:

(a) Continues to commit to sustainability as a core value for all Water Boards’ activities and programs;

(b) Directs Water Boards' staff to require sustainable water resources management such as LID and climate change considerations, in all future policies, guidelines, and regulatory actions; and
(c) Directs Regional Water Boards to aggressively promote measures such as recycled water, conservation, and LID BMPs where appropriate and work with Dischargers to ensure proposed compliance documents include appropriate, sustainable water management strategies.

The second draft permit implements the State Water Board's Resolution No. 2008-30 by requiring the Co-Permittees to prioritize LID strategies and BMPs, above other types of BMPs, in new development and redevelopment projects. LID strategies and BMPs promote ground water recharge, retention of natural areas, and water quality protection. If LID BMPs are determined to be infeasible based on site constraints, the second draft permit allows the use of alternative BMPs with the proper justification for the substitution. The first draft permit required the Co-Permittees to develop an LID manual within a year of permit adoption to implement LID. The second draft permit gives the Co-Permittees an additional year (for a total of two years) to develop and/or adopt an LID manual.

The first draft permit included requirements for interim and final hydromodification watershed and area control plans. The interim hydromodification control requirements in the first draft permit included maintaining the pre-development peak flow rates, duration, volume and time of concentration. The Co-Permittees commented that these requirements were too stringent and Regional Water Board staff modified the requirements in the second draft permit, which includes interim requirements to maintain the pre-development peak flow rates and duration. Additionally, the Co-Permittees must ensure that the pre-development runoff volumes are maintained when feasible.

The first draft permit required a final plan for hydromodification control that could be achieved by either implementing a simplified BMP numeric sizing factor, a hydraulic model, or a system of evaluating risk to receiving waters. The Co-Permittees commented that the risk based system was too complicated and staff-time intensive and requested that the option be removed from the draft permit. The modifications requested by the Co-Permittees were made to the second draft permit and additionally the Co-Permittees were granted an additional three years, for a total of four years, to complete the final plan.

Development Construction

Consistent with requirements in a recently adopted Los Angeles Region (Ventura County) permit, the second draft permit requires specific BMPs for construction projects and provides for BMP substitution, if needed. The second draft permit also includes some wet weather grading controls for both private and public construction projects. For construction projects on hillsides of 20% or greater slope, grading activities must either be restricted to the dry season or the Co-Permittees may grant a variance to

allow wet season grading with enhanced BMPs, inspections, and monitoring. These source control measures are needed to protect our sediment impaired waters and are achievable, feasible and meet the MEP standard.

Municipal Operations

The second draft permit requires that the Co-Permittees comply with the Fishnet 4-C Road Maintenance and Activities Manual for road projects, as agreed upon by the Co-Permittees. The second draft permit also requires specific BMPs found in the California Department of Transportation and California Stormwater Quality Association BMP manuals for corporation yards and other municipal operations, or the Co-Permittees can substitute alternative BMPs of equivalent efficacy. The second draft permit requires the Co-Permittees to properly store, apply and dispose of herbicides and pesticides, as well as fertilizers and other nutrient sources that are used in landscaping on public parks and lands to minimize the discharge of pollutants in storm water runoff. Regional Water Board staff made the majority of the modifications in the second draft permit that the Co-Permittees requested.

Non-Storm Water and Illicit Connection and Discharge Elimination

Consistent with requirements in a recently adopted Los Angeles Region (Ventura County) permit, the second draft permit includes categories of non-storm water discharges that the Co-Permittees may allow to be discharged to their MS4 with the use of approved BMPs. This approach is also consistent with the Low Threat Discharge Basin Plan Amendment that the Regional Water Board will consider for adoption on July 23, 2009. Additionally, the second draft permit requires that the Co-Permittees investigate, track, and eliminate illicit connections and discharges. The requirements in these sections are consistent with other adopted California storm water permits, are achievable and feasible.

Monitoring and Reporting

The second draft permit includes monitoring and reporting requirements, such as outfall monitoring to verify compliance with permit requirements and water quality standards. While most MS4 permits require outfall monitoring, the Co-Permittees' have never had this permit requirement before.

PRELIMINARY STAFF RECOMMENDATION:

The second draft permit was written with U.S.EPA guidance and unprecedented Co-Permittee and public participation. Staff believes compliance with the second draft permit constitutes MEP.

Comments on the second draft permit are due on July 6, 2009. This is not enough time for Regional Water Board staff to review, organize and respond to comments prior to the public meeting on July 22, 2009. The July 22, 2009, public meeting presentation will

include a summary of the comments received on the second draft permit and staff's preliminary responses to the comments. The Regional Water Board will receive the full comments on the second draft permit and staff's responses prior to the public meeting on October 1, 2009 to consider the draft permit for adoption.

At the July 22, 2009 public meeting, the Regional Water Board will receive testimony summarizing timely submitted written comments and provide direction to staff on the draft permit. The Regional Water Board will not be taking any formal action on the draft permit, and will consider the draft permit for adoption on October 1, 2009.

This EOSR includes the following attachments for Regional Water Board review:

1. Draft Fact Sheet
2. Second Draft Permit: with permit attachments A-F
3. Monitoring and Reporting Program
4. Responses to Comments Received on the First Draft Permit
5. Comments Received on the First Draft Permit
6. Public Notice
7. Extended Public Notice