

Attachment A

Comments on Proposed Draft of NPDES MS4 Permit from Permit & Resource Management Department (PRMD)

GENERAL DISCUSSION

The US EPA has developed guidance on writing Phase I MS4 permits (Gentile and Tinger, Region IX, SF, CA). That guidance clearly states permit elements address: 1) what needs to happen, 2) who needs to do it, 3) how much they need to do, 4) when they need to get it done, and 5) where it needs to be done. The draft MS4 does not meet the objectives of EPAs standard.

Requiring the county to follow this permit will make our storm water program dysfunctional. Adopting this draft permit will place the county in a position of attempting to document we are in compliance rather than making efforts to improve water quality in the streams and creeks.

In general, this draft permit is highly disorganized and lacks clarity. There was no Table of Contents to guide the reader to specific sections in the document and one had to search for provisions or sections that were referred to in the document. The sections have been re-organized and titles changed that no longer reflect the Storm Water Management Plan we submitted. In fact, the majority of the document diverges significantly from the submitted Storm Water Management Plan (SWMP), which had been developed with input from stakeholders and in cooperation with NCRWQCB staff. It is recommended that the permit be reorganized to more closely follow the SWMP and rewritten in clear language.

The overall impression of the draft permit is it is disorganized and unclear such that it will take tremendous effort to rewrite the Measurable Goals within our county Storm Water Management Plan to ensure the county is in compliance with the orders of the permit. This draft permit needs to be rewritten with a coherent reevaluation to format (like providing meaningful headers and considering a more meaningful outline system) and with the addition of a table of contents.

The Regional Water Board is creating unfunded mandates by requiring compliance with state statutes and state regulations. Specifically, the permit requires we modify our CEQA process. CEQA is a state statute and not directly related to the Clean Water Act. The permit requires compliance with water quality objectives. Water quality objectives are found in the Regional Water Board's Basin Plan. The Regional Water Board is required to create a Basin Plan pursuant to the Porter-Cologne Water Quality Control Act, not the federal Clean Water Act.

The County has implemented the current MS4 permit in good faith. We have an outstanding compliance record. In certain respects, the County has exceeded the scope of the permit. The County

does a great deal to protect water quality. In response, the Regional Water Board is using the permit renewal to dramatically increase the permit boundary, to dramatically increase the measurable goals and to dramatically leverage their ability to protect water quality on the backs of local government.

The Regional Water Board has exceeded their authority under the Clean Water Act by requiring measurable goals that go beyond the MS4.

The Regional Water Board has not implemented their programs to the point their lack of enforcement has created water quality impairment and they are attempting to pass on their programs to local governments.

During our discussions with the Regional Water Board at our monthly co-permittee meetings, most of the Special Provisions were not discussed or were vague at best. Some of the more onerous new requirements that were a complete surprise to the County include: the entire Public Information and Participation Program; the Development Construction Program; and the Industrial/Commercial Facilities program.

County staff have discussed with RB1 staff many times our SUSMP² program is immature with critical elements not fully developed. Requiring many more types of projects and significantly smaller projects to comply with the SUSMP requirements is unconscionable until we clearly describe how the development community can comply more fully with SUSMP.

There are numerous new requirements in the permit that lack flexibility, are overly prescriptive, and do not appear to take local costs into consideration. In addition, this permit identifies the actions, activities, and best management practices (BMPs) that the Permittees must implement without the flexibility that allows for individual determinations. For example, to substitute a different BMP for any that have been specifically identified in the draft permit, the Permittees must petition the Regional Water Board's Executive Officer to obtain approval. This provision requires substantial fiscal and technical justification for using a different BMP, and places an increased burden on the Permittees.

This permit specifies method and manner and provides very specific guidance on how to achieve the permit goals. I was taught that Porter-Cologne prevented prescribing method and manner and that the state could only set limits and that it was up to the permittee to devise the method and/or manner in which they complied with the permit limit.

This draft permit regulates the county to a level not enforced by the state; including post-construction and sites smaller than 1-AC. The state "one-size fits all" approach to MS4 permits does not work well in rural counties like the County of Sonoma.

Several findings and their EO's recent letter (denying a request to postpone the hearing) attempts justify this permit because other Regional Water Board permits have similar requirements. However,

² Standard Urban Storm Water Mitigation Plan. A method of using post-construction best management practices to improve water quality.

a watershed or county wide might work for urbanized environments like Los Angeles or Oakland, but these requirements do not work well for a predominantly rural county such as Sonoma.

The sheer magnitude of the estimated cost from the draft permit shows fiscal irresponsibility on the part of the state. The County of Sonoma must be more strategic in applying limited funds to the storm water program and can not accept the fiscal burden embedded within compliance of this draft permit.

The following table highlights the main issues from the draft MS4 permit:

topic/issue	current permit	draft permit
1. Storm water boundary	Mark West Creek watershed plus others: approx 220 mi ²	county wide approx. 1,250 mi ² within RB1 area, 6X increase
2. SUSMP thresholds (post-construction BMPs or Standard Urban Storm Water Mitigation Plan)	discretionary, ≥ 1 -AC new impervious surface	ministerial and discretionary, ≥ 0.12 -AC (5,000-SF), even down to 2,500-SF for special environmental area; and based on land use
3. Hydromodification	Control peak discharge and velocities	Maintain the projects pre-development "storm water runoff flow rates, time of concentration, volume and duration." (pg 64) with interim criteria of matching within 1% the storm event pre-development peak flow and volume hydrograph" (pg 65)
4. Monitoring Plan	manageable	extensive additions with uncertain responsibilities
5. Cost	approx. \$1,300,000 per year	assumed \$25,000,000 per 5-yr term for all new tasks
6. Completion schedule	manageable	extremely difficult with current staff levels

7. Alter county CEQA process	none	address impacts to water quality ³ (pg. 70)
8. Amend General Plan	none	none, RB1 commented on recent Gen. Plan 2020
9. Annual Reports	manageable	greatly increased work to produce complete submittal
10. Types of applicable projects	discretionary	ministerial and discretionary
11. Clarity	vague with typos	unacceptable; too many questions/interpretations
12. Inconsistencies	uncertain -	many

Discussion of highlights

1. Storm water boundary. The draft permit increases our storm water boundary approximately six times beyond the current area. This increase will significantly increase our workload as more projects will come to PRMD from review.

2. SUSMP thresholds (post-construction BMPs). The area thresholds are significantly reduced from the current 1-AC threshold down to 2,500-SF for certain projects. This reduction in area threshold will significantly increase the workload for the county. Currently, the SUSMP Guidelines do not provide adequate guidance on how the applicant should address channel-forming discharge (hydromodification or trying to eliminate any changes to storm water runoff after development). We can not expand our program until we provide adequate guidance on channel-forming discharge. I have explained this problem to RB1 many times. The regional water boards have convinced the county not to fund consultant assistance with channel-forming discharge until the state produces other guidance documents (with uncertain release dates).

3. Hydromodification. RB1 is asking the county to maintain the projects pre-development "storm water runoff flow rates, time of concentration, volume and duration." (pg 64) This is possible with the

³ County must consider potential to storm water impacts and provide appropriate mitigation for project: construction, post-construction, hazardous materials, impairment to the beneficial uses of receiving waters, harming biological integrity of waterways, changes to velocity or volume, causing erosion, and potential to cause or contribute to an exceedance of a water quality standard.

use of well-designed infiltration galleries to remove runoff from leaving this project area. In soils with a high clay content achieving the goals of hydromodification is very difficult and nearly impossible. The interim criteria of matching within 1% the pre-development peak flow and volume will be exceedingly difficult as well without infiltration capabilities. This is not what the county needs now. Instead, we need to more fully develop the hydromodification program then provide public outreach at workshops about hydromodification. Requiring more projects address hydromodification without providing the guidance is a recipe for disaster. A crude analogy is RB1 is asking DMV to lower the driving age to 14-yrs (bring in more work) without providing sufficient guidance on how to drive a car (providing outreach).

4. Monitoring Plan. Did not review. It was assumed SCWA would provide thorough comments.

5. Cost. The estimated cost of new work embedded within the findings is 25-million dollars. The burden of the estimated new cost to taxpayers could exceed \$2,000,000 per year. A better, lower cost alternative is for RB1 to support the County Storm Water Management Plan as submitted to RB1 in December 2007.

6. Completion schedule. Very difficult with current staff levels and freezes on hiring. Of the approx. 90 new tasks in the draft permit at least 23 are due in 180-days. Two of those new task are develop and implement a strategy to measure effectiveness of in-school water quality programs (pg. 49) and coordinate and develop outreach programs for watershed specific pollutants (pg. 49). All together the draft permit has an exceedingly aggressive schedule for completion that our current staffing levels can not accommodate.

7. Alter county CEQA process. Not sure if this is a legal request from the state. One of the main issues regarding unfunded mandates is if the task simply passes through the state from the federal government under the Clean Water Act then the state request is not an unfunded mandate. However, having the state request we alter our CEQA process is, I believe, outside the scope of the Clean Water Act and NPDES program, a special requirement of the state, and hence an unfunded mandate.

8. Amend General Plan. In discussion with Division Manager Greg Carr (PRMD) I was given the impression that the state did review the recently adopted new General Plan 2020. Hence, Greg felt there would be no action on this item until the next revision of the county General Plan.

9. Annual Reports. The draft permit requires many new reports and plans. Compiling, referencing, and delivering these reports and plan will increase the amount of work on an annual basis.

10. Types of applicable projects. The intent of this draft permit is to cover both discretionary and ministerial projects. Broadening the types of projects to include ministerial will increase the number of projects subject to review by PRMD.

11. Clarity. Much of the wording is too vague in direction. For example D 2 2 c 1 A states: "Conduct a storm water pollution prevention advertising campaign." We could do this with flyers at PRMD for \$100 or we could produce TV commercials for \$1,000,000. It is only through clear reworking of the

Measurable Goals within any revised county Storm Water Management Plan that the county can know if we are in compliance or not. There are many more examples of unclear or vague wording.

12. Inconsistencies. One example of inconsistencies in the draft permit is the description of the wet season as November 1 - April 15 (pg. 71) then as the wet season beginning October 1st (pg. 72). Another example is the differences between the many descriptions of hydromodification; as 1) "reduce post-development surface flows" (pg. 59), 2) "Flow/Volume/Duration" control criteria (pg. 64), and 3) where hydromodification "shall be achieved by maintaining the projects's pre-development storm water runoff flow rates, time of concentration, volume and duration." (pg. 64). Beyond the inconsistencies between the descriptions of hydromodification the third item above is nearly impossible to achieve without the installation of infiltrations BMPs in well-drained soil layers.

DISCUSSION OF FINDINGS

The overall impression of the findings is they are a mixture of fact, assumption, and speculation. My overall impression of the conditions is they are often unclear and mostly excessive, exceeding costly to county taxpayers, and not all are applicable to the conditions found in county jurisdiction. Some of the findings and conditions do provide good direction.

Finding 5 (pg. 2) specifies MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP)... MEP is defined (Att. C) as the standard for implementation of storm water management programs to reduce pollutants in storm water. The Clean Water Act⁵ requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

Finding 7 correctly recognizes that MS4 discharges vary considerably in quality and quantity due to geology, land use, season, and the sequence and duration of hydrologic effects. This fact militates against a one-County-fits-all permit that imposes the same requirements on all pipes and projects, regardless of their specific geology, land use, season, and contribution of pollutants (or lack thereof) to waters of the United States. If the Regional Board has any quantifiable water quality data documenting the quantity or quality of MS4 discharges from the County MS4 systems, please provide it to the Permittees immediately. Otherwise, the proposed permit should be revised to abandon its proposed expansion of the permit boundary, and focus instead on the specific MS4s, geologies, and pollutant loads that have resulted in documented contributions to an impaired water body.

⁵ CWA § 402(p)(3)(B)(iii). State documents interpret MEP as including technical feasibility, cost, and benefit derived... MEP generally emphasizes pollution prevention and source control best management practices (BMPs) (as first line of defense) in combination with treatment methods as a backup (additional line of defense). Furthermore, it is recognized that the implementation of BMPs to ensure water quality protection is an iterative process. BMPs must be evaluated for success and, when necessary, additional BMPs implemented to provide required water quality protection.

Finding 7 further states the “Permittees have jurisdiction over and/or maintenance responsibility for their respective MS4s that they own and operate in Sonoma County. The MS4 discharges consist of storm water runoff generated from various land uses...”

Finding 8 asserts there is a refined working relationship between the permittees and the Regional Water Board with respect to reducing pollutants of concern in storm water runoff. The County of Sonoma challenges this assertion. This is a one side relationship at best. The County has diligently implemented the current MS4 permit and in several instances has exceeded the scope of the current permit. For example, the County conducts plan review and inspection activities on projects that do not drain to the County’s MS4 system. The County conducted public outreach that extends beyond the Mark West Creek and Santa Rosa Creek watersheds. Whereas the Regional Water Board conducts a minimum amount of inspections on sites they have under permit, the Regional Water Board does not adequately enforce its general construction storm water permit to address post-construction impacts and the Regional Water Board rarely interacts with the County on discretionary projects.

Finding 9 discusses the requirement to extend the permit boundary to be county wide. This finding lists six reasons for the permit expansion. Most of these reasons are not unique to Sonoma County and apply to all counties within the Regional Water Board’s jurisdiction. Sonoma County asserts this permit inappropriately singles out Sonoma County. Why is the Regional Water Board not pursuing similar permits for Mendocino, Humboldt, or Del Norte counties? All of the stated reasons apply to these counties as well, except for the first part of reason 6, which is unique to Sonoma and Mendocino counties. In regards to reason 6, one area of biological significance surely does not justify a county wide MS4 permit boundary.

Reason 1 states that a six-fold expansion in the permit boundary is required because some “areas” of Sonoma County produces runoff containing unspecified “constituents of concern” that flow into impaired water bodies. This statement does not constitute substantial evidence supporting an expansion of the permit boundary to encompass the entire North Coast Region. If specific MS4s or “areas” of the County are making documented contributions to an impaired water body, the County would be happy to work with the Regional Board to address that issue.

Reason 2 states that a 6-fold expansion in the permit boundary is justified because the Regional Board intends to develop TMDLs, and impaired water bodies must be protected in the interim. This logic appears backward. If TMDLs are warranted, the Regional Board should adopt and implement them, and then require NPDES permits to conform to the extent necessary. The Regional Board may not impose greater burdens on permittees based on what TMDLs might look like, if and when the Regional Board adopts them. Nor may the Regional Board abdicate its duty to regulate water quality, through TMDLs or similar measures, and delegate it local jurisdictions through NPDES permit requirements.

Reason 5 states the Regional Water Board has a goal to encourage permittees to provide consistent requirements and standards for development within Sonoma County. This finding also discusses that

the permit boundary expansion will help provide a consistent watershed-wide effort to control all MS4 sources of pollutants to receiving waters within the watershed. The County asserts these goals are outside the legal authority of the Clean Water Act which can only regulate discharges from a storm water conveyance system owned or operated by a municipality. Creating measurable goals that extend beyond the County's MS4 system is outside the legal framework of the MS4 permit. The County asserts there are vast areas of Sonoma County that do not drain to a county owned or operated MS4 system. The County asserts there are vast areas that drain to waters of the nation and/or to waters of the state through private storm drain systems or through non-point discharges that are outside the legal framework of the Clean Water Act. The County asserts that requiring the development of consistent requirements and standards for development for projects that flow to waters of the nation and/or waters of the state directly is outside the legal framework of the MS4 program.

Finding 9 concludes by correctly recognizing that land use areas are different, and call for different control strategies and management practices. This finding militates against a one-County-fits-all permit that imposes the same requirements on all pipes and projects in all land use areas. The County recommends that the Regional Board and County work together to identify those MS4s that actually do cause or contribute to water quality violations, and develop reasonable, appropriate control strategies and management practices tailored to those MS4s and land use areas. The alternative proposed by proposed by the draft permit would significantly increase County work load and costs without advancing our shared commitment to improving water quality.

Finding 10 describes "Provisions of this Order apply to the urbanized areas of the municipalities, areas undergoing urbanization and areas which the Regional Water Board Executive Officer determines are discharging storm water that causes or contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States pursuant to CWA." Again, the Regional Board must provide specific analyses of storm water quality changes as it passes through county MS4s, and other substantial evidence, before adopting the proposed permit.

Finding 10 discusses specific areas that are covered by this permit. These include the urbanized areas of the municipalities, areas undergoing urbanization and areas which the Regional Water Board determines are discharging storm water that cause or contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States. The County respectfully requests that the Regional Water Board identify specific areas where this permit applies. This permit lacks enforceability if the regulator and permittee do not know the specific areas that are being permitted.

Findings 14 through 31 attempt to summarize or present discharge characteristics. Of these findings only one, finding 24, quantifies a pollutant loading and this was an estimate. All of the other discharge characteristic findings make inferences but lack references to studies and lack quantifiable data to support the arguments. If the Regional Water Board has studies, hopefully local studies, and/or quantifiable water quality data to support these findings, the County respectfully requests this information.

Finding 15 (pg. 6) references “[n]ationwide studies” that allegedly show that storm water discharges result in exceedences of water quality standards. No one disputes that on a national level, improperly managed storm water can result in many harms, including exceedences of water quality standards. But national studies, or studies of completely different areas of the country, do not provide substantial evidence that these Permittees in this region are causing an exceedence of any water quality standard. The proposed permit should be revised to disclose and analyze any local studies or data that support its expansion of the permit boundary and other requirements. In the absence of such studies or data, the permit should be withdrawn as arbitrary and capricious, and rewritten to focus more specifically on any specific MS4s that are making documented contributions to exceedences of water quality standards.

Finding 19 (pg. 7) describes how “Often direct flows are much warmer than the receiving water and can lead to temperature stress in many cold water aquatic species.” This is unreferenced speculation for Sonoma County and unsupported in the draft permit. Finding 20 (pg 8) related to pesticides is also unsubstantiated.

Finding 22 (pg. 8) states “In general, the substances that are found in municipal storm water runoff can harm human health and aquatic ecosystems.” I suggest storm water is mostly water and beneficial to aquatic ecosystems and ask RB1 to provide the data that shows storm water from county MS4s are harmful.

Finding 25 (pg. 9) states “Municipal storm water (wet weather) and non-storm water (dry weather) discharges may contain pollutants that cause or threaten to cause an exceedance of the water quality standards, as outlined in the Basin Plan.” To my knowledge this finding is unsubstantiated speculation.

Finding 27 discloses that the Regional Board intends to amend the Basin Plan, and may develop a method for identifying and addressing low-threat discharges to surface waters. Even without this method, the proposed permit requires the Permittees to incorporate BMPs satisfying what the amended Basin Plan might look like. This logic appears backward. The Regional Board should amend the Basin Plan, if warranted, rather than prejudicing that process and imposing new requirements on the Permittees.

Finding 32 discusses the Permittees’ storm water management plan and states the storm water management plan fulfills the Regional Water Board’s permit application requirements subject to the condition that it will be improved and revised in accordance with the provisions of this order. This is the only time that the Regional Water Board has informed the County that our permit application was deficient. We do not know why it is deficient, and Finding 32 provides no specific information.

Finding 32 states only that modifications to the storm water management plan “could” include additional measurable goals, improvements in program elements, or modifications to implementation schedules. This finding contains no substantial evidence that the submitted Management Plan is deficient and, as noted above, merely lists broad types of changes that “could” be made to improve it. Providing such a late determination (approximately 8 months after submittal of the application) of a deficient application, and providing vague direction on how to meet the minimum submittal

requirements, is contrary to the discharger's bill of rights and does not support the refined working relations alluded to in Finding 8. The proposed permit should be revised to delete this finding, or to specifically identify perceived deficiencies in the Management Plan.

Finding 36 (pg. 12) discusses sources of funding for the county storm water program. The finding states: "If the state makes budgetary changes that reduce available discretionary funding for the municipalities, certain measurable goals now required by the Management Plan may become cost prohibitive." RB1 does not explain how the determination of "cost prohibitive" goals would occur. Further, to my knowledge the state has not give one penny directly to the county for any of the storm water programs. This finding is either spurious, erroneous, and/or needs clarification.

Finding 37 indicates Regional Water Board staff worked with the permittees in developing a storm water management plan. The County takes exception to this finding. The County asserts there were several meetings in which storm water management plan requirements were discussed and program elements were requests. The County asserts Regional Water Board staff shared some of their views on what the draft permit would contain. County staff raised concerns about many of the provisions, however, the draft permit does not reflect any of the concerns raised by the County. In fact, there are numerous additional provisions that appear in the permit that were not discussed with County staff. The County asserts that Regional Water Board staff told the County staff what to expect and did not listen in good faith to our concerns.

Finding 37 also correctly suggests that a new regulation may be legally permissible, and not arbitrary and capricious, if it is "consistent with permit language in other MS4 permits." This finding militates against the proposed six-fold increase in the permit boundary and many other specific requirements of this proposed permit. No other municipality in the North Coast Region is subject to a Phase I permit, much less a Phase I permit that covers all county areas within the region. Absent specific, substantial evidence that the regulated MS4s are demonstrably worse than all others in the North Coast Region, this permit should be withdrawn and substantially rewritten.

Finding 40 discusses requiring post-construction controls on site smaller than one acre. The Regional Water Board has a poor record in enforcing post-construction controls on development sites that disturb one or more acres. Regional Water Board staff indicated zero enforcement cases relative to post-construction provisions of the general construction storm water permit. The rationale, which is not supported by County staff, is that the post-construction provision is not enforceable, yet similar language appears in this permit. Please refer to provision A.10 of the general construction storm water permit and Part 4, 1(b). Regional Water Board staff assert the language of minimize is not quantifiable and therefore not enforceable. The County asserts this language appears as an example of a post construction BMP in the general construction storm water permit and that provision A.10; in combination with other provisions of the general permit, make the post-construction provisions of the general construction permit enforceable. This Regional Water Board has just not regulated or addressed post-construction impacts in their storm water program. The lack of regulation of the post-construction provisions since 1991 has lead to water quality impacts and possible impairment of the listed water bodies, which in turn is leading the Regional Water Board to require that local governments regulate these concerns.

Finding 40 specifies using LID strategies to solve the post-construction impacts. This is an example of the permit prescribing method and manner.

Finding 40 (pg. 14) describes that LID (low impact development) has the goal of maintaining or reproducing “the pre-development hydrologic system...” and “the volume and frequency of discharges are maintained...” However, Finding 79 (pg. 27) states LID principles address “...the peaks and durations of runoff are significantly reduced and, in the case of a new development, are substantially the same as before development occurred on the site...” This discrepancy should be resolved within the permit language.

Finding 42 need clarification. What does the following mean?: “Projects requiring only ministerial approvals can be required to prove compliance with pre-existing criteria before development is allowed.”

Finding 45 (pg 16) describes that the US EPA is required to “establish regulations setting forth NPDES requirements for storm water discharges in two phases...” Phase I MS4s serve a population of 100,000 or more. Phase II MS4s serve a population of between 10,000 and 100,000. Investigations show the total county population served in urban clusters is approximately 25,000. I ask RB1 to provide the basis for providing coverage to the county as a Phase I entity.

Finding 46 relies on “preliminary TMDL analyses” that allegedly indicate that storm water runoff is a significant contributor of pollutants to all the impaired surface waters in Sonoma County. The Regional Board should provide those preliminary analyses immediately, and disclose why they support significant revisions to this NPDES permit, but not the establishment or implementation of TMDLs.

This finding also incorrectly states that “development patters in the County indicate that development pressure will continue.” In fact, development applications have declined over the last several years, and the County recently adopted a 2020 General Plan that continues to direct future growth to incorporated cities rather than the unincorporated County. Those cities are not a part of this permit, except for Santa Rosa, and the County’s southernmost cities are not in the North Coast Region at all. No substantial evidence suggests that the unincorporated areas of Sonoma County within the North Coast Region are facing development pressures sufficient to warrant the changes proposed by this permit.

Finding 47 alludes to reducing pollutants in storm water from the permitted areas in Sonoma County. Please elaborate on the permitted areas in Sonoma County.

Finding 48 states the Clean Water Act requires permits to effectively prohibit non-storm water discharges into MS4s. Discharge Prohibition A.1 mirrors this finding by prohibiting discharges into the MS4. The County asserts that discharges to waters of the nation and/or waters of the state that occurs upstream of the County’s MS4 are outside the jurisdiction of the MS4 permit authority. The County asserts that if a pollutant enters waters of the nation and/or waters of the state prior to entering

a County MS4 and is merely being transported through the MS4, the County is not responsible or should not be held accountable for that pollutant discharge into or out of the County MS4.

Finding 49 asserts that permittees can not enforce NPDES general permits, yet there are requirements that mirror the NPDES general permit requirements and other requirements that we determine if a NPDES general permit is needed, determine if the applicant has obtained the general permit and to notify the RWB if a permit was not obtained. It appears that this permit requires us to enforce the NPDES general permits.

Finding 50 asserts that this permit incorporates a cooperative partnership between the RWB and us. There is no partnership. The RWB is requiring us to regulate sites that are under permit from the state.

Finding 52 asserts we voluntarily sought coverage and therefore the permit is not an unfunded mandate. We did not voluntarily seek coverage, but were required to.

Finding 52 asserts this permit is less stringent than obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges. No other NPDES permit in the RWB jurisdiction requires the level of activity that is being proposed. The County asserts this is the most stringent NPDES storm water permit in the north coast. All other municipalities in the north coast are under the small MS4 NPDES general permit and have much less stringent requirements.

Finding 52 asserts the CWA and PCWQCA regulates with an even hand. The County asserts this permit creates an unlevel playing field between counties in the north coast region. Further, as this permit applies only to discharges to the MS4 and since there are many projects that will discharge directly to waters of the nation and/or state that this permit does not apply to, and due to the RWBs lack of inspections/enforcement, this permit will create an unlevel playing field within the County.

Finding 52 (pg. 18) describes state mandates and concludes the requirements of the draft permit do not constitute an unfunded mandate. One reason given is that the Permittees have the authority to charge fees to pay for compliance with the order. This indicates RB1 is aware additional costs will be associated with compliance with the draft MS4 permit yet are still somehow convinced it is not an unfunded mandate. I ask RB1 to provide funds for all new tasks that are outside the scope of the Clean Water Act.

Finding 54 asserts that there are entities within the permittee boundaries that discharge to storm drains systems regulated by this order and that the permittees may lack jurisdiction over these entities. The Regional Board recognizes the permittees should not be held responsible for such facilities and/or discharges. However, Discharge Prohibition A.1 prohibits all discharges into and from the County's MS4 regardless of Finding 54 and regardless of where or who originated the discharge. The County asserts that discharges to waters of the nation/state that occur prior to or after (upstream or downstream) the County's MS4 should not be subject to this permit. Permit provisions, such as Discharge Prohibition A.1 and others, need to be redrafted to reflect this legal limitation of the MS4 program.

Finding 66 (pg. 23) describes how the CA State Assembly passed AB 1721 in 2005 requiring elementary and secondary public schools be provided with educational materials on storm water pollution. However, this state requirement becomes county responsibility if the submitted Storm Water Management Plan includes elementary and secondary school education on storm water issues. I ask RB1 to use this educational task as a case study and describe why the county should be responsible for implementing the state requirement and not the state.

Finding 81. This finding states that renewal of this NPDES permit is exempt from CEQA because "it is for an existing facility." The proposed permit should be revised to clarify that it does not apply to one specific facility, but several miles of independent structures, facilities, and topographical features owned or operated by three separate governmental entities, and covering hundreds of square miles. The Regional Board should clarify whether this finding was made specifically for this permit, or merely copied from another permit, for an actual, existing facility.

Finding 81 should also be revised to acknowledge that the exemption is precluded because the proposed permit would have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines, § 15300.2, subd. (c). The Regional Board should specifically disclose and analyze the environmental impacts that would result from the massive increase in permit fees that this proposed permit would require, and that the Regional Board appears to contemplate in Finding 52. Those permit fees would create a tremendous incentive for private parties to avoid County fees by performing unpermitted work, resulting in significant adverse environmental effects.

Finding 88 (pg. 31) describes CEQA implementation and the differences between discretionary and ministerial projects. This finding states "For water quality purposes, regardless of whether a project is discretionary or ministerial, the Regional Water Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements." The Regional Board should provide the legal basis for this finding.

Finding 88 should also be revised to delete the word "mitigation." Ministerial permits are not subject to CEQA, and their impacts may not be "mitigated." The proposed permit should be revised to clarify that projects should be subject to uniform measures and requirements to reduce storm water pollutants.

Finding 93 discusses Public Information and Participation Programs. Finding 66 discusses AB 1721 which is related to environmental education. The County asserts that an adequate PIPP does not necessarily need to include providing elementary and secondary public schools with education materials. Radio spots, ads in public locations (billboards, bus stops, etc.), outreach to various industrial sectors, etc. can implement an effective PIPP. Further, AB 1721 is a state law that goes beyond the CWA and is an unfunded mandate at the state level.

Finding 101 (pg. 34) describes RB1 can pursue enforcement if the county can "not demonstrate a good faith enforcement effort...." This phrase must be described in detail or its use may become arbitrary.

Finding 101 discusses the roles and responsibilities of enforcement. The County asserts the Regional Board's authority to enforce on a municipality only applies to direct discharges to a MS4 and does not apply to direct discharges to waters of the nation/state or discharges to waters of the nation/state via a private storm drain system.

Finding 103. This finding incorrectly cites 35 Cal.4th 618, reportedly from *County of Los Angeles v. California Water Boards*, in support of its finding that the proposed permit is exempt from CEQA. The cited page is actually from an entirely different case, *City of Burbank v. State Water Resources Control Board*, that does not discuss CEQA. The proposed permit should be revised to accurately identify its judicial authority, and disclose whether this finding was made specifically for this permit, or merely copied from some other permit or document.

Finding 105 (pg. 35) describes the "The above paragraphs set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the Draft Order." Many of the "facts" are assumptions. I ask RB1 to completely review the findings to exclude speculation or assumption.

DISCUSSION OF SPECIFIC ORDERS

Discharge Prohibition A.1 does not allow for the latitude expressed in Finding 54. Findings are not enforceable provisions of NPDES permits. Future staff could strictly enforce Discharge Prohibition A.1. More of a concern is citizen lawsuits. A citizen group could sue the County for violation of this prohibition even though the County may not have legal jurisdiction over the discharge.

Regarding Discharge Prohibition A.3, there are many, many small construction projects that are not required to obtain or enroll in a general NPDES permit. It appears this MS4 permit prohibits these projects from discharging storm water to the MS4. There is no exception in section A that would allow projects that disturb less than an acre to discharge storm water to the MS4.

Discharge Prohibition A.4 describes, "The Permittees shall effectively prohibit non-storm discharges into the MS4 and watercourses except where discharges originate from a State, federal, or other source which they are pre-empted by law from regulating." This is the type of direction we are looking for in a storm water permit. The County asserts that the county is not responsible for pollution in a county MS4 if the pollution entered the storm water from waters of the state or federal land. However, this prohibition is in conflict with prohibition A.1 and A.2

Discharge Prohibition A.4 is onerous. This prohibition requires the County to prevent the discharge of non-storm water that routinely occurs in nature. The County has no jurisdiction over Mother Nature. Specifically, natural springs is listed in Table 2. Natural overflows from riparian habitats or wetlands (floods) are listed in Table 2. Many other non-storm water discharges are authorized by the Basin Plan waiver policy. Under the proposed permit, the County would need to submit a request to have the Executive Officer authorize each of the list non-storm water discharges some of which that occur in nature or that were previously waived under the Basin Plan.

Receiving Water Limitations B.1 appears to be a prohibition versus a limitation.

Receiving Water Limitations B.1 states, "Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited." B.2 states, "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of pollution or nuisance."

These two orders, Order B 1 and B 2, could form the sole basis of our relationship with RB1. It would be sufficient if the draft permit were to end here and let us decide how to comply with the orders through our Storm Water Management Plan and not through the prescriptive nature of many of the subsequent orders.

PART 2 – Public Information and Participation Program (PIPP)

Many of the requirements in this section would not be attainable due to the lack of staff and funding to implement.

2. (c) (1) Outreach and Education - Implement an advertising campaign, public service announcements, and organizing watershed Citizen Advisory Groups/Committees.

The County is interested in working with watershed groups to further the outreach and education program but does not have the staff or resources to organize and lead groups or committees. This goal should be modified and the County shall determine what can be accomplished and when.

2.(c) (2) Develop a strategy to educate ethnic communities through culturally effective methods.

Please elaborate on the term ethnic communities and what is expected here, and alter the implementation date of 180 days after permit adoption.

2.(c) (6) Provide schools within each School District in the County with materials, videos, and live presentations to educate a minimum of 50% of all school children (K-12) every 2 years.

It is not the role of the County to fund the schools with educational materials and assess the effectiveness of their education. In addition to not being school teachers or sociologists, the County does not have the expertise to develop a behavioral change assessment strategy.

This order also states, Pursuant to AB 1721 (2005), the Permittees, in lieu of providing educational materials/funding to School Districts within the permit boundary, may opt to provide an equivalent amount of funds or fraction thereof to the Environmental Education Account established within the State Treasury. This option requires the written approval of the Regional Water Board Executive Officer.

We do not have the staff or funding to implement this program. This provision should be eliminated.

2. (d) Pollutant-Specific Outreach - Develop outreach programs that focus on watershed specific pollutants in Table 1.

The implementation date of 180 days should be modified.

PART 3 – Industrial Commercial Facilities Program

3. Inspect Critical Resources

(a) Commercial Facilities

This whole section is confusing. It does not specify who would be performing all the Industrial Inspections, maintaining records, enforcing, etc, and it may constitute a whole new program that the county does not have the training, resources, or staff to implement. The NPDES Industrial Program is supposed to be overseen and enforced on by the Regional Water Boards. It seems that the North Coast Water Board is trying to use the County to oversee their program. This goal should be eliminated, and the County shall continue with their current industrial/commercial inspection program.

PART 8 – Development Construction Program

2. Grading Restrictions

Implement a program to restrict grading between November 1 – April 15 (wet season) on hillsides with slopes 20% or steeper prior to land disturbance and in areas of high erosivity.

(a) (b) The grading prohibition should be considered on a case by case basis. Some areas such as hilltops would pose little risk in a discharge. This requirement could also be unwarranted as additional enhanced BMPs could be implemented to address any water quality concerns. This prohibition is not in our ordinance and should be modified.

(c) In the Grading Prohibition Variance would the County be requiring the developer to sample and monitor? I think this is a requirement the Water Board can impose under an NPDES Construction Permit.

3. Construction Sites Less than an Acre

PRMD would prefer the draft permit provide flexibility in selecting/requiring BMPs applicable to the site or construction activities. This requirement is over prescriptive and should be modified.

6. Local Agency Requirements

(a) (1) Local SWPPP

A Storm Water Pollution Prevention Plan (SWPPP) is already required for sites 1 acre or more under the State Construction Permit, and the Regional Water Boards are required to inspect those sites for compliance with the SWPPP. Our contribution to the RWB is to ask if the SWPPP is on-site and being maintained, and to send letters of non-filer when determined. It seems that the Water Board wants the County to oversee their Construction Program for them by requiring a separate SWPPP from the County. It even says in 6 (a) (ii) that a Local SWPPP may substitute for the State SWPPP. This is overly prescriptive and burdensome to the County.

The County does not foresee a benefit from requiring a Local SWPPP. The County has checklists, procedures, and guidelines for the installation and evaluation of BMPs that have proven to be very beneficial. Adding an onerous requirement that the State is already requiring for project proponents does not seem like the best way to change behavior.

However, providing storm water training for contractors may have a more significant long-term effect, which is one of the activities PRMD had planned on doing in the next permit term.

6. (a) (2) Certification Statement

This section also applies to the Local SWPPP and includes requiring a signed certification statement on the SWPPP from each landowner or landowner's agent. The County would prefer to develop other methods of seeking compliance and raising the awareness of landowners on storm water BMPs and our local codes and ordinances.

9. Inspections

Here again the Local SWPPP is being required, but on All construction sites. It seems the Water Board is trying to force us to change the way we operate no matter how successful we have been with our current program. The County has not had a problem with discharges from a construction site due to our inspection and enforcement actions. We do not feel there is a need or benefit in adopting the State model nor taking on the duties of the Water Board. This goal should be eliminated.

10. State Conformity Requirements

In this provision each permittee is to verify coverage under a State NPDES permit before issuing permits, check that a SWPPP has been prepared, and ask for proof of an updated NOI. It is not a policy at PRMD to hold up permit issuance until a SWPPP has been prepared, but we usually verify NPDES coverage and ask for a copy of the NOI, otherwise we refer sites to the Water Board as non-filers. If this was implemented, why would we need a Local SWPPP?

