



City of Signal Hill

2175 Cherry Avenue ♦ Signal Hill, CA 90755

January 20, 2015

State Water Resources Control Board
1001 I Street, 24th Floor (95814)
P.O. Box 100
Sacramento, CA 95812-0100

Attention: Felicia Marcus; Board Chair
Members of the Board
Ms. Jeanine Townsend, Clerk to the Board

Subject: Comments to A-2236(a) – (kk) The Need for a Financial Capability Assessment with the WMP/EWMPs

Submitted via email to commentletters@waterboards.ca.gov

Dear Chair Marcus and Members of the Board:

The City of Signal Hill appreciates the State Water Resources Control Board conducting the workshop on the 2012 Los Angeles Municipal Storm Sewer System (MS4) Permit (Order No. R4-2012-0175) on December 16, 2014. We truly appreciate the efforts of the Board and staff to outline alternative pathways to compliance in the Watershed Management Program and Enhanced Watershed Management Program (WMP/EWMP) process. We believe it is important to recognize that the WMP/EWMPs are in their “first generation” stage, and that they will improve over time, as monitoring, performance and cost data is generated from real world implementation experiences.

The WMP/EWMP process should be improved by the addition of a financial capability assessment as part of the review and approval of the individual WMP/EWMPs by the Regional Board. This financial capability assessment is critical since the Los Angeles permit regulates over 80 communities, each with varying degrees of financial resources. Alternative pathways to compliance should recognize that what is a significant undertaking for a community will vary based on the individual circumstances in that community. This is especially critical since the Order may be applied to Phase II communities statewide.

The City provided prior comments on the importance of factoring in individual circumstances into the permit decision process. Our prior comments included a copy of "*A Guide to Consideration of Economics Under the California Porter-Cologne Act*" April 6, 2006, prepared by Dr. David Sunding and Dr. David Zilberman from the College of Natural Resources, UC Berkeley. This economic study outlines the steps in an economic decision process recommended to be followed by local government and the water boards when the permits are under consideration.

I. The Importance of the WMP/EWMP Process in Determining Affordability

While prior MS4 permits resulted in the implementation of numerous programs, they did not include a comprehensive planning framework that could be used to prioritize water quality improvements in a cost-effective and environmentally sound way. The WMP/EWMPs are designed to create water quality plans at the community and watershed level. Whether they will be affordable and acceptable to the public remains an open question.

MS4 permits adopted prior to 2012 focused on the implementation of best management practices, inspection programs, public education efforts, increased monitoring and the like. The permits have also focused on design requirements and building structural water quality devices for new private and public projects. The most difficult and expensive task remains - retrofitting of the "built-out" urban environment. The WMP/EWMPs will be critical in meeting this final objective in a cost-effective, environmentally sound and publically acceptable way.

Recent WMP cost estimates developed by the RAA modeling illustrate the challenges faced by local governments in Los Angeles County. For example, the implementation costs of the Los Cerritos Channel WMP are estimated at \$330 million over the next twenty-five years. The Los Cerritos Channel watershed is 27.7 square miles in size, includes portions of seven cities, and has an approximate population of 282,000 residents. Financing the implementation of the WMP will pose significant challenges for the seven cities in the watershed. We appreciate the State Board recognizing that full compliance with water quality objectives in the near term is not technically feasible for our communities. However, it has not been recognized that implementing the WMP/EWMPs may be financially infeasible as well.

The major concern of local governments in implementing the WMP/EWMPs revolves around several uncertainties – including the performance of the BMPs, the implementation costs, and funding obstacles. The WMP/EWMP process currently lacks a component that explores how the communities will balance the substantial continuing investments needed to capture, treat and use stormwater, with other competing priorities. This balance is articulated in Federal policy in what is known as the Financial Capability Assessment (FCA), which is lacking in State policy.

“Many local governments face complex water quality issues that are heightened by the need to address population growth or decline, increases in impervious surfaces, source water supply needs, and aging infrastructure. In recent years, many local governments and authorities have increased investments in the wastewater and stormwater infrastructure through capital projects to rehabilitate existing systems, improve operation and maintenance, and address additional regulatory requirements. As programs are implemented to improve water quality and attain CWA objectives, many state and local government partners find themselves facing difficult economic challenges with limited resources and financial capability. We recognize these challenging conditions and are working with states and local governments to develop and implement new approaches that will achieve water quality goals at lower costs and in a manner that addresses the most pressing problems first.” U.S. EPA, Financial Capability Assessment Framework for Municipal Clean Water Act Requirements, November 24, 2014, page 3.

The FCA framework has existed in U.S. EPA guidelines since 1997 and was revised this past November. The FCA provides a common basis for financial burden discussions between local government, regulators and the U.S. EPA; and assesses the costs and ability to pay for all water-related services, including stormwater, drinking water and flood control.

Local government finances are constrained and many communities currently must rely on their General Funds to finance stormwater programs. While the permit encourages watershed planning, the watersheds in Southeast Los Angeles County include disadvantaged communities, which are hard-pressed to provide basic services to their residents and businesses. The other watershed cities are facing financial challenges as well. The FCA would be used to create the necessary discussion between local governments and the water boards to understand and to address the affordability and implementation issues of the WMP/EWMP for the watershed's communities.

II. Porter-Cologne Considerations

The requirement to consider economics and affordability under Porter-Cologne is absolute. (See Cal. Water Code, §§ 13000, 13241, 13263; see also *Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 625.) However, the Legislature and the courts have provided little guidance to the regulators and to local government on how to implement these requirements, and the WMP/EWMP process does not currently result in the generation of the data and information needed to evaluate affordability and economics. As such, we believe that the WMP/EWMP process would be greatly improved if it included a financial capability assessment similar to the Federal process.

It should be noted that the FCA is not a cost-benefit analysis, but an analysis that would be used to determine the affordability and phasing of the programs and controls being proposed in the WMP/EWMP. The FCA would encourage the establishment of

priorities and phasing, focusing on the implementation of the most environmentally beneficial programs and controls at the least cost; the FCA would evaluate State, Federal and other financial resources, the potential for other agency and private sector funding and costs to the ratepayers/taxpayers in the watershed's communities.

The FCA should not be seen as anti-regulation, since the best regulations can be designed to be environmentally effective and to achieve their objectives at low costs. Examples of highly effective, low-cost regulations include removing lead from gasoline, controlling particulate matter in air pollution, reducing lead levels in drinking water and controlling CFC emissions.

III. Components of the Financial Capability Assessment

At its core the FCA is a financial strategic plan, which addresses obstacles and opportunities, project scheduling, and alternatives to and integration with other programs, including drinking water, wastewater and flood control. The FCA should promote efficient and sustainable investments in water infrastructure by addressing the question of the best way to pay for water quality and water supply investments and by recognizing the need to balance these investments with other community needs. The FCA should be implemented for a certain period of time; for example, for five-years and periodically updated as financing and implementation factors change over time.

We understand that the economic staff that had been assigned to the Water Board was reassigned to the Air Resources Board. We suggest that the State Board consider retaining a contractor to develop the FCA protocol that would be followed by local government and the regional board staff as part of the WMP/EWMP process. We recommend that the State Board convene multi-stakeholder groups of regulators, the environmental community, local government, the business community and other stakeholders to assist in the development of the FCA. The FCA would be implemented by the Regional Board as part of the WMP/EWMP development and review process.

The Board should consider the following factors in developing the FCA protocol:

- 1) The FCA should include a complete description of the watershed's communities, including their socio-economic and demographic characteristics. This would include information on income distribution and the number of disadvantaged households in the watershed and could be compiled relying on the Cal/Enviro Screen Tool, the U.S Census and other information. The information would include a listing of the affected parties, including businesses and all governmental agencies in the watershed.
- 2) The FCA would list the projects and programs that were contemplated in the first five years of the WMP/EWMP's life cycle, along with the projected cost of each project and program. The FCA would include a statement from the waterboard staff on the anticipated costs and the basis for the board's cost estimate. The

FCA would include a schedule for each project and program, detailing the planning and design, funding, bidding and construction stages of the projects and programs to be implemented in the first five-year phase. The schedule should also take into account land acquisition, if required. The FCA should discuss potential factors that could impact the costs and the schedule of individual projects and programs, including funding uncertainties.

- 3) The FCA would include a review of integration of the WMP/EWMP projects with drinking water, wastewater and recycled water projects proposed in the watershed over the same time period by the watershed's communities and by other agencies and organizations in order to encourage an integrated water management approach. The FCA would review alternatives and options proposed in the WMP/EWMP and a discussion of whether the watershed's communities will need to engage in research to find more cost-effective technological and/or legislative solutions, including source control.
- 4) Similar to the Federal FCA process, the State FCA would include an analysis of the affordability of the projects and programs in the first phase, including a review of the financial resources available to the watershed's communities. The Federal FCA includes affordability reviews that assess the availability of new fees or other revenues and any budget constraints; reviews historical population trends, unemployment data and trends, rate or revenue models and information used to establish historical rates, data on late payments, disconnection notices, uncollectable rate amounts; local restrictions or limitations on revenues and assessments, circumstances that could impact bond ratings and financial plans that detail the impacts of incurring additional debt on communities. The FCA would include information and explain any impacts of the WMP/EWMP on existing services – in categories such as Negligible, Low or High. The costs of the first five year period would also be rated as Negligible, Low or High. The FCA would include the costs to the watershed's communities for implementing the Safe Drinking Water Act and related State drinking water quality requirements, as well as costs to the watershed's communities of sanitary sewer and flood control.
- 5) The FCA would include a review of the expenditures required to support various public service objectives in the watershed's communities, including both water related objectives (stormwater, drinking water, sanitary sewer, and flood control services) and other programs, including but not limited to public safety, roads, parks, community services, libraries, etc. Information would be presented on the compliance costs in relation to revenues and the budget of the agency. The FCA would review if a reduction in expenditures on other items would be necessary in order to fund the WMP/EWMP. Finally, the FCA would include a review of the financial demands and stresses on the watershed's communities.

- 6) A public review and comment period should be applied to the FCA, which would afford the opportunity for the community to review, understand and comment on the financial impacts of the WMP/EWMP. The FCA should include potential local rate, fee or tax increases necessary to fund the WMP/EWMP.

The FCA should discuss relevant financial or demographic information that illustrates unique or atypical circumstances faced by the local government or the watershed's communities. The FCA should document any extraordinary stressors such as those from a natural disaster, municipal bankruptcies, unusual capital market conditions or other circumstances which may impact the ability of communities within the watershed to raise revenues or acquire needed financing and the impact of these special circumstances on WMP/EWMP implementation schedules.

The City will be providing an additional comment letter outlining its concerns with the State Board's rejection of the City's individual NPDES Permit request, since its request that the State Board include the FCA in the WMP/EWMP approval process is worthy of separate consideration. This additional letter will also discuss concerns raised by other commenters, which, consistent with the comments raised herein, include the need for an evaluation of economic considerations in the development of permit requirements. (See Cal. Water Code, §§ 13000, 13241, 13263.)

Sincerely,



Kenneth C. Farfsing
City Manager

cc: City Council
City Attorney
Deputy City Manager
Public Works Director