



November 9, 2012

Via Email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Mr. Tom Howard, Executive Director  
c/o Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814



**Subject: State Board Workshop on Receiving Water Limitations Language**

Dear Mr. Howard:

The Santa Clara Valley Water District (District) appreciates the State Water Resources Control Board (Board) holding a workshop on November 20, 2012 concerning receiving water limitations language for municipal storm water permits issued in California. We reviewed the Issues Paper and Agenda developed by your staff and compliment their thorough and thoughtful efforts. We now offer these comments for the Board and for staff's further consideration.

As the result of the *NRDC vs. County of Los Angeles* decision by the Ninth Circuit and statements appearing in the fact sheets of several proposed Municipal Separate Storm Sewer System (MS4) permits since the decision was issued, we are concerned about the issues related to contributions of municipal storm water discharges which exceed water quality standards. Unless action is taken, flood protection districts, such as ours, could face third party lawsuits regardless of the circumstances, magnitude, or duration of an event, or regardless of the District's faithful conformance to its permit provisions. We do not believe that the Board intended agencies that merely convey storm water without the addition of pollutants to face potential third party lawsuits. Important to our District, is a request that the Board clarify that a conveyance of storm water will not be a basis for a third party suit and, that the Board will retain the enforcement of its provisions. We did not see this interest presented as an alternative in the Issues Paper, but believe the Board should consider it along with its other considerations.

We support that progress toward improvement of water quality will benefit substantially from municipalities working collaboratively with Regional Board staff in implementing the iterative process in those cases where exceedances of water quality standards occur; where they do not, Board enforcement may be an appropriate alternative depending on the circumstances.

Sincerely,

  
Ann Draper  
Deputy Operating Officer  
Watershed Stewardship Division

cc: A. Fulcher, S. Dharasker, B. Calhoun

