



CITY OF DALY CITY

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November 9, 2012

Via Email to: commentletters@waterboards.ca.gov

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



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

Dear Mr. Howard:

The City of Daly City very much appreciates the State Water Resources Control Board (Board) holding a workshop on November 20, 2012 to address receiving water limitations language for municipal stormwater permits issued in California. Daly City has reviewed the Issues Paper and Agenda developed by your staff in preparation for this workshop and complement their thorough and thoughtful efforts. Daly City now offers these comments for the Board and staff's further consideration.

The 9th Circuit Court of Appeals decision in *NRDC v. County of Los Angeles* presents an exceptionally troublesome public policy issue the Board must proactively address. This decision essentially determined that a municipality is liable for permit violations if its stormwater discharge cause or contribute to an exceedance of a water quality standard, regardless of whether a municipality engaged in good-faith best management practices embedded in the well-established iterative process to address that exceedance. The 9th Circuit Court determined that the "iterative" process language within the Los Angeles County permit did not provide a "safe harbor" in that each permit provision is individually enforceable. This interpretation by the 9th Circuit Court is fundamentally opposite from the State Board's own interpretation of its Order WQ 99-05 that this language did not require strict compliance with water quality standards of which local municipalities have been reliant upon.


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It is respectfully requested that the State Board direct language that receiving water limitations must provide municipal permittees assurances that they are not subject to enforcement action and third party litigation if a permittee, in good faith, actively implement the iterative process. Otherwise, municipal stormwater permittees will be exposed to considerable liability despite municipal efforts to reduce pollutants to the maximum extent practicable, the cornerstone of the iterative process. Essentially, precedent language within local stormwater permits must strengthen the iterative process as it provides the best fit as a permitting approach for complex stormwater problems being regulated within a point source regulatory framework.

While the issue of improving the iterative process language to make it function better is an important one to be considered at the workshop, preserving the intent behind its establishment - to avoid the potential diversion of resources from water quality improvement to third party litigation - is even more important to our agency. In this regard, if provisions which turn on the mere contribution of a stormwater discharge to an exceedance of water quality standards are to remain in California's MS4 permits, the State Board should at least make clear that the enforcement of these broad provisions is to be a matter of the State and Regional Board's discretion under the Water Code and reserved for unusual circumstances that warrant its exercise. Daly City did not see this presented as an Alternative in the Issues Paper but believe the State Board should consider it along with them.

Finally, Daly City believes 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, Water Board enforcement may be an appropriate alternative depending on the circumstances. Daly City, therefore, endorses that approach suggested by the Bay Area Stormwater Management Agencies Association ("BASMAA"), and that of the California Stormwater Quality Association ("CASQA"), and urge the Board to amend prior precedent MS4 language consistent with those recommendations.

Sincerely yours,



Patricia E. Martel
City Manager