



# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY



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### Transportation Department

November 13, 2012

Submitted via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Honorable Members of the State Water Resources Control Board  
c/o Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 "I" Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – Receiving Water Limitations Language Workshop**

Dear Honorable Board Members and Ms. Townsend:

The County of Riverside Transportation and Land Management Agency (TLMA) appreciates the opportunity to comment on the issue of Receiving Water Limitations provisions included in National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permits. This issue is the subject of a State Water Resources Control Board public workshop scheduled for November 20, 2012 in Sacramento.

The TLMA urges the State Water Resources Control Board to revise the statewide policy for the Receiving Water Limitations provision currently being used in most of the NPDES MS4 permits being proposed and adopted in California. A modification of the Receiving Water Limitations provision is necessary because, as interpreted by the Ninth Circuit Court of Appeal's decision in *NRDC v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, NPDES MS4 dischargers will almost certainly be in immediate and unavoidable noncompliance with their NPDES MS4 permit. Under the Ninth Circuit Court of Appeal's decision, any discharge that causes or contributes to an exceedance of a water quality standard subjects the NPDES MS4 permittee to civil penalty liability, injunctive relief and the payment of attorneys' fees in an action brought by a citizen plaintiff. As a discharger subject to three different NPDES MS4 permits, the prospect of unavoidable non-compliance and costly enforcement actions or third party litigation is of great concern to our County Board of Supervisors and to the TLMA staff responsible for our stormwater program.

The TLMA believes that the complex nature of stormwater discharges (particularly stormwater quality) combined with the Ninth Circuit Court of Appeal's strict interpretation of the Receiving Water Limitations provision places us, as an NPDES MS4 permittee, in an untenable situation. As currently written, the NPDES MS4 permits establish permit conditions that likely leave us in immediate non-compliance with no feasible opportunity for achieving and ensuring compliance. Such a permitting approach is simply not constructive or effective public policy.

The TLMA has been implementing a stormwater pollution prevention program for more than two decades. In implementing our stormwater program during this time, we have understood the stormwater program to be one of iterative and progressive improvement. If Receiving Water quality

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issues are identified, we as an NPDES MS4 discharger, work in cooperation with the Regional Water Quality Control Boards and other stormwater and wastewater dischargers to identify actions and opportunities for addressing those water quality issues, not only through the NPDES regulatory program but also through the Total Maximum Daily Load process. The complexity associated with the quality of stormwater discharges demands such an iterative approach as the science and engineering associated with stormwater quality is still being developed. In light of the Ninth Circuit Court of Appeal's decision, the TLMA is very concerned that without intervention by the State Water Resources Control Board to modify the Receiving Water Limitations provision, any known or newly discovered water quality issues will result in unavoidable noncompliance, enforcement actions and/or legal actions, regardless of our good faith efforts to iteratively and progressively improve our stormwater program in compliance with our NPDES MS4 Permits.

We encourage the State Water Resources Control Board to reaffirm its policy of allowing NPDES MS4 dischargers to use a program of Best Management Practices implemented to the Maximum Extent Practicable in conjunction with an iterative process. We request that the State Water Resources Control Board revise the existing Receiving Water Limitations language to clearly provide an "iterative process" approach. The TLMA concurs with the more detailed comments of the Riverside County Flood Control & Water Conservation District, which is the principal permittee for each of the three NPDES MS4 permits applicable to the TLMA. We also support the guiding principles that are being suggested by the California Stormwater Quality Association for the revision of the Receiving Water Limitations provision. Those guiding principles are:

- Provide enough specificity so that NPDES MS4 dischargers understand their responsibility.
- Acknowledgement that all pollutants causing or contributing to an exceedance of a water quality standard cannot and should not be addressed equally.
- Provide enough guidance so that Regional Water Quality Control Board staff and other stakeholders can assess whether the NPDES MS4 dischargers are acting in good faith in implementing an iterative process.
- Require enough iterative improvement to assure that progress will be made in addressing water quality impairments and protecting water quality.

In closing, we believe that without the action of the State Water Resources Control Board to change the current Receiving Water Limitations language, the TLMA and other NPDES MS4 dischargers will find themselves spending resources defending against litigation rather than spending those resources protecting and enhancing water quality.

Sincerely,



**Patricia Romo, Deputy Director**  
**Transportation Department**  
**County of Riverside**  
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