



September 6, 2011

MEMBER AGENCIES

- City of Cloverdale
- City of Cotati
- City of Healdsburg
- City of Rohnert Park
- City of Santa Rosa
- City of Ukiah
- County of Sonoma
- Sonoma County Water Agency
- Town of Windsor

VIRGINIA PORTER
Executive Director

300 Seminary Avenue
Ukiah, CA 95482
(707) 833-2553

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Ms. Townsend and Members of the Board:

Thank you for the opportunity to respond to the draft Phase II Small MS4 General Permit. Please accept this letter as the formal comment from the Russian River Watershed Association (RRWA) to the State Water Resources Control Board on the Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Draft Permit).

RRWA includes nine public agencies in the Russian River watershed in Sonoma and Mendocino Counties that have come together to coordinate regional programs for clean water and watershed enhancement. Seven RRWA member agencies - the Cities of Ukiah, Healdsburg, Rohnert Park, and Cotati, the Town of Windsor, Sonoma County Water Agency and the County of Sonoma - are regulated under the existing Phase II MS4 Program. The Draft Permit proposes to add an eighth RRWA member agency, the City of Cloverdale as a Phase II permittee. Our membership is invested in the outcome of this review process, and the resulting permit. Many of our member agencies will also provide independent comments.

RRWA member agencies have collectively reviewed the Draft Permit. We have significant concern regarding the permit as currently drafted. The Draft Permit requires Phase II permittees to meet or exceed the requirements of Phase I agencies in an accelerated timeframe; new designees are being asked to transition from no program to a comprehensive, demanding, and costly program. Phase II permittees do not have the resources of their Phase I counterparts – technical, human, and most fundamentally financial. It is imperative that the State Board and the Phase II communities develop a permit that is protective of water quality with a feasible implementation structure for the regulated community.

Our Executive Director has also participated in the review process undertaken by the California Stormwater Quality Association (CASQA). In general, RRWA supports CASQA's comments and priorities, and asks the State to consider CASQA's detailed comments and to continue to work closely with CASQA as the permit is redrafted for the next review process.

RRWA has the following comments which underscore some key areas of concern of our member agencies. RRWA is committed to a healthy watershed, and to implementing effective programs. We need a Phase II permit that not only supports this commitment, but one that is practicable and one that can be implemented given the scarcity of resources of the communities that would be affected by the new requirements.

1. The Draft Permit is significantly different from and more stringent than our regional Phase I Permit (Santa Rosa/Sonoma County Water Agency/County of Sonoma - Copermittees), and does not allow for consistency with our Phase I communities.

Many of RRWA's Phase I and Phase II agencies are geographically contiguous. In close coordination with the Region I Water Quality Control Board, our Phase I Copermittees have taken a regional lead in establishing stormwater resources, regulatory protocols, and outreach tools. Our Phase II agencies have worked to align with the Phase I Copermittees and are preparing to ramp up their existing programs consistent with the Phase I regional model.

The Draft Permit is both inconsistent with and more stringent than the regional Phase I permit. There are very few programs or tasks that overlap. The following is a partial list of inconsistencies:

- Enforcement Measures and Tracking (pg 21) - Program described is inconsistent with and stricter than that required in the Phase I Permit
- Public Outreach and Education (pg 24) - Program described is inconsistent with and stricter than that required in the Phase I Permit
- Industrial/Commercial Outreach and Education Programs (pg 28) - Program described is inconsistent with and stricter than that required in the Phase I Permit
- Public Involvement and Participation Program (pg 32) - Program described is inconsistent with and more involved than that required in the Phase I Permit
- Field Screening to Detect Illicit Discharges (pg 35) - Program described is inconsistent with and more involved than that required in the Phase I Permit
- Permittee Staff Training (pg 44) - Certification required is above and beyond the requirements of the Phase I Permit and the Construction General Permit
- Maintenance of Storm Drain System (pg 50) - Reporting described is beyond that required in the Phase I Permit
- Watershed Baseline Characterization (pg 65) requires permittees to develop a watershed baseline characterization with subwatershed delineations, meteorological characterization, physical landscape attributes – Program does not exist in Phase I Permit

In our region, many Phase II agencies have already seen the tangible benefits of collaborating with our Phase I permit by aligning with its post-construction program. For example, the City of Rohnert Park has implemented the Phase I post-construction requirements since 2006. Implementing this established program has advanced water quality improvements by providing a well-developed and regionally familiar program to guide developers. Utilizing the Phase I post-construction program – from the SUSMP Manual, to the forms, to the de facto “training” over several years of developers and engineers – allowed Rohnert Park to implement a recognized and effective regional program for post-construction stormwater quality and quantity control. The result of this

kind of collaborative process is a higher level of implementation, and a more effective regional message, than if each agency were to develop a program from scratch.

If the Phase 1 and Phase 2 permits are out of step with each other, all programs become less effective at protecting our watershed by eliminating opportunities for regional coordination and cooperation. We need to be able to work together; if we can't it is the water quality that will ultimately suffer. The Draft Permit will not allow this collaboration.

In order to provide regional consistency, RRWA recommends that the inconsistencies between the existing Phase I and proposed Phase II programs be eliminated so there is parity on a stand-alone basis. Alternatively, Phase II agencies within an identified region should be given the option to be regulated by the Phase I requirements that the larger governing agencies are already operating under, much like the current post construction provisions in the Draft Permit. This approach allows for greater regional partnership and consistency, and leveraging of existing successful programs.

2. The Draft Permit is inconsistent with the Region I Basin Plan, the recently adopted Low Threat Discharge Basin Plan Amendment, and the Region I Phase I permit.

Sections B.3 and B.4 of the Draft Permit are not consistent with the State Water Quality Control Board, Region I Basin Plan Low Threat Discharge Amendment which was approved by this Board in March 2011 and became law May 12, 2011; nor the Region I Phase I MS4 Permit, adopted in 2009.

CASQA's recommendations 19-23 (attached) would result in the Phase II Permit becoming consistent with Region I's regulations in Sections B.3 and B.4. This would involve the following changes:

Section B.3 - The Draft Permit lists allowable non-stormwater discharges but does not include landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water. According to the Federal Register, these are allowable discharges since they have not been identified as significant contributors of pollutants to the small MS4s.

RRWA Recommendations adding landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water to the list within B.3.

Section B.4 - The Draft Permit goes beyond the Region I regulations and federal mandate.

RRWA recommends that Section B.4 be re-written in accordance with CASQA's comments 20,21,22,23 (attached).

3. The Draft Permit includes numerous provisions that repeat requirements of other State regulations such as the Industrial General Permit (IGP), Construction General Permit (CGP), and the Water Efficient Landscaping Ordinance (WELO).

Numerous requirements of the Draft Permit repeat requirements of existing State regulations. Much of the data collected via the CGP and IGP will be tracked in the SMARTS database. Asking Phase II agencies to collect the same data is a redundancy that adds unnecessary time and expense with no benefit to water quality; it is nothing more than a data collection exercise for the sake of collecting data. This redundancy not only imposes a burden on the Phase II permittees, it will impose a burden on businesses and construction operations because Phase II permittees will have no option but to pass along new and potentially redundant fees to commercial and industrial businesses and construction sites.

The Draft Permit seems to require permittees to enforce the CGP and IGP. This is not appropriate as these inspection and enforcement responsibilities belong to the State Water Board. This shift in oversight responsibilities is, in our opinion, an unfunded state mandate.

RRWA recommends deleting redundancies throughout the permit. CASQA's comments provide specific details of many of the redundant provisions. We also strongly recommend elimination of additional inspection and enforcement responsibilities as presently proposed in the Draft Permit.

4. The Draft Permit assumes a financial and technical resource base that is not developed, nor sustainable, in many Phase II communities.

RRWA's Phase II agencies range in population from 7,000 to 43,000. The City of Cloverdale is proposed to be a new Phase II, with a population of approximately 8,500. All of our Phase II agencies interface rural lands, and several are surrounded by rural lands. These are small communities with limited resources relative to the onerous requirements of the Draft Permit. Many of the Phase II agencies are coping with substantially decreased revenues. Most of our Phase II agencies have implemented furloughs, therefore reducing staff time to implement ever increasing unfunded mandates.

The Draft Permit assumes resources to carry out the requirements in a very prescriptive way; this places an unnecessary burden on these small communities without a scientific basis for definable water quality benefit. For example, the Draft Permit relies heavily on Geographical Information Systems (GIS) mapping, and many small MS4 communities do not have GIS systems or staff trained in GIS mapping.

Another example is the requirement to use Community Based Social Marketing (CBSM) to carry out the public education and outreach requirements; most Phase II agencies would require professional contract support to comply with this provision. There is no scientific basis that these prescriptive requirements will produce water quality benefits. This additional burden will effectively reduce the level of service provided for the desired

local program. In addition, hiring contractors to carry out public education and outreach removes agency staff from the communities they regulate.

Establishing Phase II program requirements that are within the capacity of the current and anticipated resources of Phase II permittees will create a more effective tool to protect water quality and achieve the desired results.

RRWA recommends that the State Board partner with the Phase II agencies in the next redraft so the permit will realistically reflect the technical and financial means and resource of small MS4 communities.

5. The nature and number of provisions, and the proposed timeline of the Draft Permit do not respect the current economic conditions throughout the State of California, and in particular that of rural communities.

The Draft Permit is a complex and prescriptive regulation that requires the Phase II community to meet or exceed the requirements of the Phase I communities on a timeline that is more aggressive than our Phase I agencies have ever faced. In addition, the Draft Permit includes program requirements that represent higher levels of regulation than recommended by federal guidance.

RRWA supports CASQA's recommendations to change the permit to align with the six Minimum Control Measures recommended by the US Environmental Protection Agency. This means deleting the sections E. 10, E.11 and E.13. RRWA also supports CASQA's recommendation to change implementation timelines to eliminate the requirement to meet the ramped-up requirements in a single permit term when Phase I permittees had three to four permit terms (15-20 years) to develop the current level of permit compliance.

RRWA has specific concern for the City of Cloverdale's position as a newly designated permittee. As proposed, new designees are being asked to transition from no required program to a comprehensive, demanding, and costly stormwater program. This burden is compounded in the current financial constraints in our region and statewide. RRWA asks that new designees have an expanded compliance timeline when compared to existing Phase II agencies.

Notwithstanding the fiscal impacts to the agencies, the Draft Permit contains provisions that will significantly affect small business, which are the economic engines of our communities. Additional mandated programs as contemplated in the Draft Permit will prevent these businesses from expanding and hiring new employees at best, and at worse may cause some of them to close. This is not a message we want to send during these extremely difficult times.

RRWA asks the State Board to not adopt the Permit in its current form and direct staff to work with the operators of the small MS4 systems to redraft a permit that reduces the financial impacts of the current Draft Permit by considering all reasonable and practical options to achieve the Board's water quality objectives in the most efficient and cost-effective ways, and limit the scope of the permit to the six Minimum Control Measures.

In closing, RRWA believes this Board's water quality objectives can be realized by redrafting this permit to eliminate redundancy and excessive reporting, and by building a regulatory structure in the permit that aligns with existing Phase I agencies and with which the regulated small MS4 agencies have a greater chance for compliance.

Sincerely,

A handwritten signature in black ink that reads "Jake Mackenzie". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jake Mackenzie
Chair, RRWA Board of Directors

Enclosure – *Attachment A: CASQA Specific Comments on Draft Phase II Small MS4 General Permit* – pg 9-12

C: RRWA Board of Directors
Mike Thompson, US Representative
Lynn Woolsey, US Representative
Noreen Evans, California Senator
Michael Allen, California Assembly Member
Wes Chesbro, California Assembly Member
Jared Huffman, California Assembly Member
Thomas Howard, SWRCB Executive Director
Catherine Kuhlman, RWQCB – Region 1 Executive Officer
Rebecca Winer-Skonovd – CASQA Phase II Committee Chair

Discharge Prohibitions			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
19	Allowable Non-Stormwater Discharges	B.3 [page 15]	<p>Within the Federal Register¹ it states “The illicit discharge and elimination program need only address the following categories of non-storm water discharges if the operator of the small MS4 identifies them as significant contributors of pollutants to its small MS4: water line flushing, <u>landscape irrigation</u>, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, <u>irrigation water</u>, springs, water from crawl space pumps, footing drains, <u>lawn watering</u>, <u>individual residential car washing</u>, flows from riparian habitats and wetlands, <u>dechlorinated swimming pool discharges</u>, and <u>street wash water</u>.”</p> <p>The Draft Phase II Small MS4 General Permit lists allowable non-stormwater discharges but does not include landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water. According to the Federal Register, these are allowable discharges since they have not been identified as significant contributors of pollutants to the small MS4s.</p> <p><i>CASQA Recommendation</i> <i>Add landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water to the list within B.3.</i></p>

¹ Volume 64, No. 235, December 8, 1999, Page 68756

Discharge Prohibitions			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
20	Discharges of Incidental Runoff	B.4]page 16]	<p>This permit provision is onerous and goes beyond the federal mandate. CASQA recommends that this provision be re-written to identify the multiple ways in which irrigation runoff can be addressed within the existing stormwater program framework. Some examples are provided below.</p> <p><i>CASQA Recommendation Option #1</i></p> <p><i>Delete Section B.4 and replace it with the following provisions:</i></p> <ul style="list-style-type: none"> - <i>E.5 (Public Education and Outreach) – E.5.b. (ii)(h) – this existing provision supports the public education activities that would support water efficient landscaping- see also Comment #55</i> - <i>E.9 (Pollution Prevention/Good Housekeeping for Permittee Operations Program) – add a provision that states “Discharges from lawn, greenbelt, and median watering and other irrigation runoff from non-agricultural operations shall be minimized through a Model Municipal Activity Maintenance Program designed to control irrigation runoff.</i> <p><i>If Section B.4 is not deleted and replaced with the above, see the Recommendation below.</i></p>

Discharge Prohibitions			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
21	Discharges of Incidental Runoff – Incidental/Non-incidental Definition	B.4 [page 16]	<p>CASQA Recommendation Option #2</p> <p>If Section B.4 is not deleted and replaced with the above, replace it with the following provisions:</p> <ul style="list-style-type: none"> - Discharges of incidental runoff shall be reduced. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence. Non-stormwater discharge runoff that is not incidental is prohibited, unless otherwise specified in Section B.3. above. <p>Clarify the difference between incidental runoff and discharges that are not considered incidental. This may be accomplished by defining minimal overspray (incidental runoff) vs. excessive application (non-incidental).</p>
22	Discharges of Incidental Runoff – Detect and Correct Timeline	B.4.a [page 16]	<p>Correction of leaks and repairs might not be able to done in 72 hours if noticed late on Friday and if a contractor needs to be hired. Remove the reference to 72 hours and 1000 gallons (B.4.a). Repairs should be completed within a reasonable time as determined by the permittee. Permittees lack the resources and staff to correct and enforce this requirement, which is beyond the federal mandate for stormwater programs.</p> <p>CASQA Recommendation</p> <p><i>This language should be deleted since there is already an educational requirement with reference to the Water Efficient Landscape Ordinance (see Comment #21 above that recognizes this).</i></p>

Discharge Prohibitions			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
23	Discharge Prohibitions – RWQCB Notification Timeline	B.4.d	<p>Requiring a permittee to notify the RWQCB while determining that a discharge <u>may</u> happen four hours in advance of a 25-year, 24 hour storm event or larger is unreasonable. When large storm events occur, municipalities prioritize public safety first.</p> <p><i>CASQA Recommendation</i> <i>Require RWQCB notification 48 hours after a discharge occurs.</i></p>