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October 21, 2008

N C R W Q C B

Catherine Kuhlman, Executive Officer
North Coast Region Water Quality Control Board (RB1)
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

OCT 22 2008

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<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date

RE: Comments on the draft storm water permit

Dear Ms. Kuhlman:

I am writing to transmit the comments of the County of Sonoma on the proposed National Pollutant Discharge Elimination System (NPDES) permit Phase 1 Term 3 (2008-2013) (hereinafter "proposed permit").

Sonoma County expects the federal, state and local governments to work together to protect water quality, as no one agency can do this job alone. To that end, the County and Sonoma County Water Agency have gone above and beyond the requirements of our current NPDES permit to ensure pollutant discharges are minimized. Among many other measures, the County regulates development projects during construction, funds street sweeping to keep pollutants out of storm drains, conducts training of staff and the public, manages pesticide use in landscaped areas, and conducts a wide variety of public outreach programs. As you know, no other municipality in Sonoma County, except of course the City of Santa Rosa, Water Agency and the County, or anywhere else in the North Coast Region has a Phase I permit, much less implements measures above and beyond that permit to minimize storm water pollution. These measures cost the County alone approximately \$1.3 million per year, of which only a portion is recovered by development applicants.

The County has also worked extremely hard to develop a good working relationship and partnership with your staff. County staff reaches out to your staff to inspect alleged permit violations and pollution incidents. We forward applications for discretionary projects and draft California Environmental Quality Act (CEQA) documents for your review and comment, to better mitigate any potentially significant storm water impacts. We further instruct all applicants to be mindful of Regional Board requirements, and to apply for your general construction permit if necessary.

As part of our ongoing effort to improve water quality and protect environmental resources, the

County submitted an application in December 2007 for a permit that would meet the County's Clean Water Act (CWA) responsibilities and provide for the continued protection and preservation of the County's surface waters. Our staff then had several meetings and conversations with your staff, to explain our commitment to storm water quality, the programs included in our permit application, and the ways in which they would help us protect and ensure water quality above any other municipality in the North Coast Region.

We regret that your staff has rejected our proposed application, and instead drafted a permit that improperly shifts the Regional Board's duties and responsibilities to Sonoma County and the other co-permittees as unfunded mandates. We respectfully request that you withdraw this proposed permit, and work with staff from the co-permittees to draft a new permit that effectively regulates storm water from urban development.

As discussed below, we were quite surprised to see many of the provisions your staff included in this proposed permit. Despite the many meetings and conversations between our staffs, most of the special provisions in the proposed permit were discussed only in general terms, or not discussed at all. Among others, the entire Public Information and Participation Program, Development Construction Program and Industrial/Commercial Facilities Program were a complete surprise to the County. We were also quite surprised that your staff immediately rejected all County, Water Agency, and City requests for any extension of time to prepare comments or hold a hearing on the proposed changes. Your staff spent more than nine months reviewing our permit application, but allowed us less than two to review and comment on their surprising new proposed permit.

We hope that you will rectify these issues, and put our two agencies back on the road to a productive partnership to address storm water issues in Sonoma County. That result would be far preferable to all concerned, and would avoid the impasse and gridlock suffered by the Regional Board for the Los Angeles region. As you may be aware, that regional board has resumed negotiations with Ventura County after appointment of a veteran regulator, described as someone agreeable to listening to all sides, to handle the County's NPDES application. That approach would be equally beneficial here.

Absent that approach, and as detailed herein, the proposed permit contradicts the plain language and legislative intent of the Clean Water Act. Phase I permits are intended to apply only to urban centers with a population of 100,000 or more, which do not exist in Sonoma County outside the City of Santa Rosa. The proposed permit currently provides no supporting arguments or justification, much less substantial evidence, supporting a notion that the County should be regulated as a Phase I community.

As you know, the largest urbanized center in the unincorporated county is the Larkfield/Wikiup area with a population of roughly 7,500 people, followed by Guerneville with roughly 2,400 people. All the urban centers in the unincorporated county add up to just 20,000 people. As a result, the cumulative population of the urban centers does not meet half the threshold for a Phase I permit, much less justify this proposed permit.

As you also know, many cities in the North Coast Region have larger urban centers and larger populations, but are being regulated under a Phase II MS4 permit. The Regional Board has not required any other county in the region to submit a county-wide MS4 permit application, nor has the Regional Board issued a similar permit to any other entity. It is unfair and improper to include the County's unincorporated urban centers in a Phase I permit, especially since no other county in the North Coast Region has a comparable storm water program.

Coupled with its specific requirements, the permit's proposed six-fold boundary expansion would at least double the County's storm water costs and exceed the Regional Board's Clean Water Act authority.

The following items summarize our concerns:

1. Program costs and funding plus economic uncertainty. Your staff has added more than 90 new work items to this draft permit. These items would cost at least \$2 million per year for the County and \$1 million for the Sonoma County Water Agency (SCWA). Current County expenditures are \$1.3 million per year and \$160,000 per year for SCWA. Costs for the monitoring program for SCWA are uncertain.

Only a small portion of the overall cost is recovered through the issuance of building permits. The fiscal analysis documented in our Annual Reports indicate that PRMD (the County's permit center) expends roughly 30% of the annual outlay. The proposed permit states incorrectly on page 19 that the County can levy service charges, fees, or assessments sufficient to pay for compliance with the proposed permit. In fact, the County may not increase permit fees beyond what is required to process the permit itself. Nor can the County acquire any other funds sufficient to achieve compliance with this permit. For example, the County would need to more than triple our current permit fees to cover the current program expenditures, and increase fees roughly six to seven fold to cover the estimated costs of the proposed permit. Dramatically increasing our permit fees would act as a disincentive to applicants and decrease the number of permits. This would be a disservice to the community and would decrease water quality protection as the County would not be able to adequately staff the current water quality program, much less the proposed one.

As a result, complying with the new work described in the proposed permit would create severe fiscal impacts and reduce water quality protection at the local level. This would not have been acceptable in better fiscal times, but in today's local government finance environment it is completely unsustainable.

2. The Regional Board is creating unfunded mandates. The draft permit requires we modify our CEQA process and comply with water quality objectives found in the Regional Board's Basin Plan. CEQA is a state statute not directly related to the CWA, and the Regional Board is required to create a Basin Plan pursuant to the Porter-Cologne Water Quality Control Act, not the federal Clean Water Act. As a result, these provisions (among others) create improper, unfunded mandates. Similarly, the draft permit on page 49 requires that the County provide

educational materials to each school district in the county (including live presentations). The California State Assembly passed AB 1721 (Pavley Environmental Education) to add § 13383.6 to the CWC, relating to environmental education. AB 1721 and the CWC are state statutes and regulations and are not directly related to the CWA.

3. Expanding permit boundary. As noted above, your staff's proposed six-fold increase in the permit boundary (from the Santa Rosa Creek and Mark West Creek watersheds with some areas around Healdsburg and Graton to countywide) exceeds the Regional Board's authority under the Clean Water Act (see number 4 below).

4. Work in areas beyond municipal separate storm sewer system (MS4s). The proposed permit fails to acknowledge that most of Sonoma County is rural, without piped storm drain systems, and thus can't legally be made subject to a municipal MS4 permit.

The Regional Board has legal authority, under the Clean Water Act, to regulate discharges from a MS4. The MS4 program evolved from large and medium municipalities (over 100,000 in population) to small municipalities (between 10,000 and 100,000 in population), but stayed focused on urban centers. Regulating MS4 discharges in an urban center is understood as a pollutant discharged to an urbanized surface can easily be carried into a storm drain inlet, travel through the MS4 and be discharged to waters of the nation or waters of the state.

However, in a rural situation, where storm water conveyance systems are a wholly different system, regulating pollutant discharges into the MS4 can be problematic. Consider that in a rural situation, it is common to have a County road with a stream crossing. The stream crossing is typically constructed with a short segment of storm drain pipe underneath the roadway.

A typical scenario is that a pollutant enters the stream somewhere upstream of the county's road and associated stream crossing. The pollutant may enter the stream directly or through a private storm drain. The pollutant is then transported down the stream and passes through the County's MS4 system (the short segment of pipe below the County road) in a few seconds.

Now consider the discharge prohibition (Discharge Prohibition A.1) that prohibits the discharge of pollutants into and from the MS4. As currently written this prohibition applies to all pollutants regardless of where they first entered the waters of the nation or waters of the state and regardless of how the pollutant enters the MS4.

The County asserts that pollutant discharges that first enters waters of the nation or waters of the state, either directly or through private storm drain system, prior to or upstream of the County's MS4, are not subject to the NPDES MS4 permit. Further, the County asserts that the County should not be held responsible for or be required to regulate discharges that occur outside of the County's MS4 systems.

Further, the intent of the CWA and the MS4 program was to target urban centers with defined population thresholds. Sonoma County is primarily rural in nature with several urban centers in

the unincorporated areas ranging in size from about 7,500 to several hundred in population. The County asserts that applying the MS4 permit to a rural environment is an inappropriate expansion of and contrary to the intent of the MS4 program.

5. Porter-Cologne Water Quality Control Act. The proposed permit runs counter to the principle that the Regional Board should not specify the method and manner of compliance. In numerous instances, the proposed permit provides very specific guidance on how to achieve the permit compliance. The Porter-Cologne Act does not permit this approach, and instead allows permittees to devise the method and/or manner in which they comply with permit prohibitions or limits.

6. Expanding the applicable projects subject to SUSMP/Post-Construction BMPs. The current thresholds for requiring post construction BMPs or SUSMP measures are that the project is within the current NPDES boundary, is discretionary, and has one or more acres of new impervious surfaces or creates a new storm drain outfall or the project is in close proximity to a stream. The proposed area threshold is being reduced down to 2,500-SF for certain environmentally sensitive areas (pg. 60, draft permit).

While the draft permit requires the County to regulate even smaller sites, Regional Board staff have indicated they do not enforce any post construction measures for sites that come under the general construction storm water permit. The proposed permit thus requires the County to regulate construction sites to a higher degree than is carried out by the Regional Board staff.

7. Requiring both ministerial and discretionary projects consider potential storm water impacts. Currently, only discretionary projects are subject to post-construction storm water quality requirements. Page 60 of the proposed permit would require that "any new development and redevelopment project" consider water quality impacts. The expansion of the water quality permit into the realm of ministerial projects would require the County review more projects, and again increase the County's work load beyond the capability of existing and reasonably foreseeable future staffing levels.

8. Hydromodification Control Criteria. The requirements that development maintain the projects' pre-development storm water runoff rates, time of concentration, volume and duration (not alter the hydrograph) will be extremely difficult to implement, even with the use of well designed infiltration galleries to remove runoff. The proposed permit nevertheless requires that new development and redevelopment address hydromodification (preventing changes to the flow from a site) according to 1) flow rates, 2) time of concentration, 3) volume, and 4) duration. Currently, engineers have been able to meet the requirement of limiting the post-project peak discharge to pre-project discharge, but the full constraints of "maintaining the project's pre-development storm water runoff" are extremely difficult.

In contrast, a recently released Phase I permit for the Sacramento area specifies "The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial

uses and stream habitat due to increased erosive forces." This performance based standard is a far more reasonable approach.

9. Requirement of Local Storm Water Pollution Prevention Plan (Local SWPPP).

A SWPPP is already required for sites of 1 acre or more under the State Board's general construction storm water permit and the Regional Board is required to inspect those sites for compliance with the SWPPP. Requiring the County to require a Local SWPPP that is essentially the same as the state's SWPPP is clearly an effort to shift responsibility from the Regional Board to the County.

Finding 49 of the draft permit correctly states that the permittees can't enforce the State Board's NPDES General Permits. Our current permit recognizes this intent and the County has agreed to assist by informing applicants of the general construction storm water permit by letting our applicants know when they have exceeded the state permit thresholds and that a general construction permit is needed and by notifying the Regional Board if one of our applicants is a non-filer for the general construction permit. In this regard, the County is acting in good faith as a partner.

The proposed permit would improperly delegate the Regional Board's duties and responsibilities to the County. The proposed permit requires the submittal of the Local SWPPP to the County as well as a review and written approval of the Local SWPPP by the County. Under the current general construction permit, SWPPPs are not required to be submitted to the Regional Board. The SWPPPs are not reviewed by the Regional Board and the Regional Board does not approve (written or otherwise) the SWPPPs on a programmatic level. The proposed permit requires the County to regulate construction sites to a higher degree when compared to the regulatory activities currently carried out by the Regional Board staff.

10. Schedule too short for completion of new tasks. Of the nearly 90 new tasks in the draft permit 23 are due within 180-days of adoption. Two of those new tasks are to develop and implement a strategy to measure effectiveness of in-school water quality programs (pg. 49) and coordinate and develop outreach programs for watershed specific pollutants (pg. 49). All together the draft permit has an exceedingly aggressive schedule for completion that our current staffing levels can not accommodate.

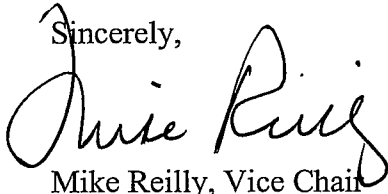
In summary, Sonoma County has implemented a robust storm water program in good faith for the last several years, and remains committed to doing the same in the future. We have an outstanding compliance record, and have exceeded the scope of our current permit.

Our actions have been rewarded with a proposed permit that would improperly regulate on a level equivalent to an urban, Phase I community. Sonoma County's urban populations are an order of magnitude below the Phase I population thresholds. All other municipalities, excluding the County, Water Agency and the City of Santa Rosa, are permitted under the State Board's Small MS4 permit (Phase II permit) and no other county is being asked to do what Sonoma County currently does.

The County requests a fair and equitable permit that would ensure a level playing field for similarly sized municipalities and that would attempt to have all parties (federal, state and local governments) share in the responsibility to protect water quality. The County is strongly committed to protecting water quality, but local government cannot and should not be carrying the burden alone.

Thank you for your consideration of our comments on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Reilly". The signature is fluid and cursive, with the first name "Mike" and last name "Reilly" clearly distinguishable.

Mike Reilly, Vice Chair
Sonoma County Board of Supervisors

cc: Regional Board Members
Sonoma County Board of Supervisors
Sonoma County Administrator
Department of Transportation & Public Works
Sonoma County Regional Parks
Sonoma County Water Agency
Sonoma County Department of Emergency Services
Permit & Resource Management Department
Department of Health Services

Enclosures: Attachment A – Synthesis of Department Comments
Attachment B – Permit & Resource Management Comments
Attachment C – Department of Emergency Services Comments
Attachment D – Regional Parks Comments