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Attorneys for THE NATURAL RESOURCES DEFENSE COUNCIL, INC.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of San Francisco Baykeeper and the Natural Resources Defense Council for Review of Action by the California Regional Water Quality Control Board, San Francisco Region, In Adopting the Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, NPDES Permit No. CAS612008

PETITION FOR REVIEW OF SAN FRANCISCO REGIONAL WATER QUALITY CONTROL BOARD ACTION OF ADOPTING ORDER NO. R2-2009-0074, NPDES NO. CAS612008
In accordance with Section 13320 of the California Water Code and Section 2050 of Title 23 of the California Code of Regulations, San Francisco Baykeeper ("Baykeeper") and the Natural Resources Defense Council ("NRDC") (collectively "Petitioners") hereby petition the State Water Resources Control Board ("State Board") to review the final decision of the California Regional Water Quality Control Board for the San Francisco Region ("Regional Board" or "Board") approving the Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, NPDES Permit No. CAS612008, Issuing Waste Discharge Requirements for the cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City, Alameda County, the Alameda County Flood Control and Water Conservation District, and Zone 7 of the Alameda County Flood Control and Water Conservation District, which have joined together to form the Alameda Countywide Clean Water Program (Alameda Permittees); the cities of Clayton, Concord, El Cerrito, Hercules, Lafayette, Martinez, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek, the towns of Danville and Moraga, Contra Costa County, the Contra Costa County Flood Control and Water Conservation District, which have joined together to form the Contra Costa Clean Water Program (Contra Costa Permittees); the cities of Campbell, Cupertino, Los Altos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale, the towns of Los Altos Hills and Los Gatos, the Santa Clara Valley Water District, and Santa Clara County, which have joined together to form the Santa Clara Valley Urban Runoff Pollution Prevention Program (Santa Clara Permittees); the cities of Belmont, Brisbane, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, and South San Francisco, the towns of Atherton, Colma, Hillsborough, Portola Valley, and Woodside, the San Mateo County Flood Control District, and San Mateo County, which have joined together to form the San Mateo Countywide Water Pollution Prevention Program (San Mateo Permittees); the cities of Fairfield and Suisun City, which have joined together to form the Fairfield-Suisun Urban Runoff Management Program (Fairfield-Suisun Permittees); and the City of Vallejo and the Vallejo Sanitation and Flood Control District (Vallejo Permittees).
The Permit regulates stormwater discharges from municipal separate storm sewer systems ("MS4s") and other designated storm water discharges within defined portions of Alameda County, Contra Costa County, San Mateo County, Santa Clara County, the Cities of Fairfield and Suisun City, and the City of Vallejo.

Prior to this Permit, the Permittees were covered by the following NPDES permits: the Alameda Permittees were subject to NPDES Permit No. CAS0029831 issued by Order No. R2-2003-0021 on February 19, 2003, and amended by Order No. R2-2007-0025 on March 14, 2007; the Contra Costa Permittees were covered by NPDES Permit No. CAS0029912 issued by Order No. 99-058 on July 21, 1999, amended by Order No. R2-2003-0022 on February 9, 2003, amended by Order Nos. R2-2004-059 and R2-2004-0061 on July 21, 2004, and amended by Order No. R2-2006-0050 on July 12, 2006; the San Mateo Permittees were subject to NPDES Permit No. CAS0029921 issued by Order No. 99-059 on July 21, 1999, amended by Order No. R2-2003-0023 on February 19, 2003, amended by Order Nos. R2-2004-0060 and R2-2004-0062 on July 21, 2004, and amended by Order R2-2007-0027 on March 14, 2007; the Santa Clara Permittees were subject to NPDES Permit No. CAS029718 issued by Order No. 01-024 on April 21, 2001, amended by Order No. 01-119 on October 17, 2001, and Order No. R2-2005-0035 on July 20, 2005; the Fairfield-Suisun Permittees were subject to NPDES Permit No. CAS0612005 issued by Order No. R2-2003-0034 on April 16, 2003, and amended by Order R2-2007-0026 on March 14, 2007; and, the Vallejo Permittees were subject to NPDES Permit No. CAS612006 issued by the United States Environmental Protection Agency (USEPA) on April 27, 1999.

1. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESSES OF THE PETITIONERS:

San Francisco Baykeeper, Inc.
785 Market St., Ste 850
San Francisco, CA 94103
(415) 856-0444
Attention: Jason Flanders, Esq. (jason@baykeeper.org)
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401
(310) 434-2300
Attention: David S. Beckman, Esq. (dbeckman@nrdc.org)
Noah Garrison, Esq. (ngarrison@nrdc.org)

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioners seek review of the Regional Board’s October 14, 2009 approval of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, NPDES Permit No. CAS612008. A copy of the Order is attached as Exhibit A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

The Regional Board approved the Permit at issue on October 14, 2009.

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

In approving the Permit, the Regional Board failed to act in accordance with relevant governing law, acted arbitrarily and capriciously, without substantial evidence, and without adequate findings. Specifically, but without limitation, the Regional Board:

   A. Failed to assure that the Permit (and associated programs and activities described in the administrative record and Permit) satisfies the Clean Water Act’s mandate to require “controls to reduce the discharge of pollutants to the maximum extent practicable,” including but not limited to failing to require specific, measurable, numeric performance criteria, feasible technological controls, deadlines, and well-defined best management practices, including but not limited to low-impact development. 33 U.S.C. §

B. Failed to make sufficient findings “to bridge the analytical gap between the raw evidence and ultimate decision” to approve the Permit. Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515. The Board acted arbitrarily and capriciously because the ultimate decision of adopting the Permit is not supported by the findings and the findings are not supported by the weight of the evidence in the administrative record, thus resulting in an abuse of discretion. Cal. Code Civ. Proc. § 1094.5;

C. Failed to require in the Permit objective and measurable criteria for the amount of runoff that must be treated or infiltrated onsite. In the Matter of Cities of Bellflower, et al., State Water Resources Control Board, Order WQ 2000-11, pp. 16-18;

D. Failed to include in the Permit clear, integrated, and sufficient limitations to alternative compliance and in-lieu program provisions applicable to new development and redevelopment necessary to assure pollution reduction to the maximum extent practicable and attainment of water quality requirements;

E. Improperly adopted provisions allowing for biofiltration that fail to assure the basic low-impact development performance standards will be met, or assure that the discharge of pollutants will be reduced to the maximum extent practicable;

F. Failed to include receiving water limitations and discharge prohibitions, including but not limited to end of pipe effluent limitations, that implement both federal and state water quality standards, and further failed to estimate reduction of pollutant loadings, to demonstrate compliance with such
G. Failed to include necessary reporting requirements to ensure transparency and compliance with applicable water quality standards;

H. Illegally delegated authority to the co-permitees and the Regional Board Executive Officer to develop critical elements of the Permit, without well-defined performance standards and adequate provision for public review. *Envtl. Def. Ctr. v. EPA*, 344 F.3d 832 (9th Cir. 2003); Cal. Water Code § 13223(a);

I. Relied upon provisions and terms that are unduly vague, ill-defined, and result in a lack of certainty and meaningful oversight to ensure that all relevant standards under state and federal law are met, including but not limited to water quality standards, TMDLs, BMPs, and pollution reductions to the maximum extent practicable;

J. Failed to adequately state in the Permit that Waste Load Allocations ("WLAs") established by applicable Total Maximum Daily Loads ("TMDLs") are enforceable permit effluent limitations. 40 C.F.R. § 122.44(d)(1)(vii)(B). The permit further failed to provide substantial evidence to quantify the WLA reductions expected to occur from the actions required by the permit to achieve established WLAs, and failed to require the implementation of specific feasible measures proven to reduce the discharge of such pollutants;

K. Failed to prohibit the discharge of pollutants to the MS4 with the potential to cause or contribute to a violation of water quality standards from "new sources" or "new dischargers." 40 C.F.R. § 122.4(i);
L. Improperly exempted certain types of non-storm discharges from the Clean Water Act's requirement that permits for discharge from municipal sewers effectively prohibit non-stormwater discharges. 33 U.S.C. § 1342(p)(3)(B)(ii); and,

M. Failed to adequately respond to factually and legally specific comments from public interest organizations concerning significant matters at issue, such as the Permit's compliance with the maximum extent practicable standard, efficacy and practicability of low-impact development standards, implementation of TMDL WLAs, and other related matters.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

Petitioners are non-profit, environmental organizations that have direct interests in protecting the quality of the San Francisco Bay, tributaries to the San Francisco Bay, and coastal waters. NRDC represents over 100,000 members in California, including members in the region affected by the Permit. San Francisco Baykeeper is a regional non-profit organization dedicated reversing the environmental degradation of the past, and promoting new strategies and policies to protect the water quality of the San Francisco Bay, for the protection and promotion of the San Francisco Bay ecosystem and interdependent human communities. Petitioners' members directly benefit from San Francisco Bay region waters in the form of recreational swimming, fishing, surfing, photography, bird watching, and boating, each of which uses have been, are, and will continue to be adversely impacted by the addition of pollutants to San Francisco Bay region waters from the subject Permittees. Petitioners' members are therefore aggrieved by the Permit's inadequacy to control the discharge of polluted urban stormwater, or to support the beneficial uses of the receiving waters, in accordance with the Clean Water Act, California Water Code, and respective implementing regulations.

The Regional Board's failure to adequately control urban stormwater runoff through this Permit, or to assure that the Permit's provisions meet the requirements of the Clean Water Act, California Water Code, and respective implementing regulations, and assure that pollution in
stormwater discharges will be reduced to the maximum extent practicable, has enormous
consequences for the region and its residents. Urban stormwater runoff is one of the largest
sources of pollution to the coastal and other receiving waters of the nation, and is particularly
problematic in this region. Pollutants in stormwater pollution adversely impact avian, aquatic, and
plant life in receiving waters and can cause serious human health impacts. Receiving waters in the
Permittees’ jurisdiction continue to be impaired for a variety of pollutants, and monitoring data
show that stormwater discharges continue to contain pollutants at levels that can cause or
contribute to these impairments.

Urban development increases impervious land cover and exacerbates problems of storm
water volume, rate, and pollutant loading. Consequently, the San Francisco Bay Area’s
urbanization and water quality problems demand that the most effective stormwater management
tools be required. The Permit, however, lacks clear, enforceable standards to ensure that new and
redevelopment projects in the region employ best management practices based on low-impact
development techniques ("LID")—demonstrated to be the most effective tools to control storm
water runoff volume and pollutant loading—to the maximum extent practicable. The Permit also
fails to require pollution controls mandated by statewide design standards for SUSMPs.

Petitioners and their members are further aggrieved by the Regional Board’s failure to
implement meaningful and enforceable limits and reductions for TMDL WLAs, including but not
limited to, WLAs for PCBs and mercury. High mercury levels in the Bay make regular
consumption of Bay fish unsafe. PCBs are toxic and persistent organic pollutants that cause
adverse health effects to humans and wildlife, including cancer, liver damage, skin irregularities,
and impacts to child development. Urban stormwater discharges have and will continue to add
unhealthy levels of these toxic contaminants to Bay waters. Petitioners’ members are therefore
aggrieved by the Permit’s inadequacy to control the discharge of pollutants with these and other
established TMDLs, in accordance with the Clean Water Act.

All of these documented facts demonstrate the considerable negative impact on Petitioners’
members and the environment that continues today as a result of the Regional Board’s inability to
control storm water pollution through the Permit.
6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS:

Petitioners seek an Order by the State Board that:

Overtorns the Regional Board's approval of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, NPDES Permit No. CAS612008; and,

Remands the matter to the Regional Board with specific direction to the Board to remedy each of its violations of law as further described herein.

7. A STATEMENT IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:

See section 4, above. Petitioners request that this Petition be held in abeyance, and reserve the right to supplement the legal arguments and authorities in support of this Petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS IF NOT THE PETITIONER:

A true and correct copy of this Petition, with exhibits, was mailed via First Class mail on November 13, 2009 to the Regional Board and the Principal Permittees. A letter notifying Permittees of the Petition's filing was also mailed via First Class mail on November 13, 2009 to all remaining Permittees. (See Proof of Service, attached hereto.)

9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE THE REGIONAL BOARD:

Petitioners have previously raised and presented all the issues addressed in this Petition in comment letters submitted to the Regional Board on, including but not limited to, April 3, 2009, April 2, 2009, February 29, 2008, September 17, 2007, July 17, 2007, December 8, 2006, and November 8, 2006, or in live oral testimony at public hearings on May 13, 2009 and October 14, 2009.
Dated: November 13, 2009

NATURAL RESOURCES DEFENSE COUNCIL, INC.

[Signature]

David S. Beckman,
Noah Garrison,
Counsel for the Natural Resources Defense Council, Inc.

Dated: November 13, 2009

SAN FRANCISCO BAYKEEPER

[Signature]

Jason Flanders
Staff Attorney, San Francisco Baykeeper
PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1314 Second Street, Santa Monica, California 90401.

On November 13, 2009 I served the within document described as PETITION FOR REVIEW OF SAN FRANCISCO REGIONAL WATER QUALITY CONTROL BOARD ACTION OF ADOPTING ORDER NO. R2-2009-0074, NPDES NO. CAS612008 on the following interested parties in said action by placing a true copy thereof in the United States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

Andy Walker
Public Works Department
City of Fairfield
1000 Webster Street
Fairfield, California 94533
James Scanlin
Program Manager
Alameda Countywide Clean Water Program
951 Turner Court
Hayward, CA 94545-2698

Clara Spaulding
Development Services Office
Santa Clara County
70 West Hedding, East Wing, 7th Floor
San José, CA 95110
Jeannette L. Bashaw
Legal Analyst, Office of Chief Counsel
State Water Resources Control Board
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Daniel Kasperson
Interim Public Works Director
Suisun City
701 Civic Center Blvd.
Suisun City, CA 94585
Rich Lierly
Senior Civil Engineer
Contra Costa County
255 Glacier Drive
Martinez, CA 94553

Daniel Woldesenbet
Director of Public Works
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Hayward, CA 94544-1395
Ron Matheson
District Manager
Vallejo Sanitation and Flood Control District
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Vallejo, CA 94590

Donald P. Freitas
Program Manager
Contra Costa Clean Water Program
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Martinez, CA
c/o City/County Association of Governments
San Mateo Countywide Water Pollution Prevention Program
2000 Alameda De Las Pulgas, Suite 100
San Mateo, CA 94403
On November 13, 2009 I additionally served a letter notifying parties that the document described as PETITION FOR REVIEW OF SAN FRANCISCO REGIONAL WATER QUALITY CONTROL BOARD ACTION OF ADOPTING ORDER NO. R2-2009-0074, NPDES NO. CAS612008 has been served on the above referenced parties, on the following interested parties in said action by placing a copy of said letter in the United States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

Adam Olivieri
Program Manager
SCVURPPP
1410 Jackson Street
Oakland, CA 94612

Laura Hoffmeister
Assistant to the City Manager
City of Clayton
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Clayton, CA 94517

Al Oxonian
Senior Civil Engineer
City of Campbell
70 North First Street
Campbell, CA 95008-1423

Lawrence Rosenberg
Director of Public Works
City of Piedmont
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Piedmont, CA 94611
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<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Organization</th>
<th>Address</th>
<th>City, State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alex Ameri</td>
<td>Deputy Director of Public Works</td>
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<tr>
<td>Lesley Estes</td>
<td>Watershed Program Supervisor</td>
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<tr>
<td>Alex Stroup</td>
<td>Assistant Engineer</td>
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<td>Lorrie Gervin</td>
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<tr>
<td>Lynne Scarpa</td>
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<td>Ann Chaney</td>
<td>Director of Community Development</td>
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<td>Anthony Docto, Jr.</td>
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<tr>
<td>Mark Lander</td>
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<td>Martha DeBry</td>
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<td>Cathleen Terentieff</td>
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<td>Mary Lim</td>
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<td>CHERI DONNELLY</td>
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<td>Name</td>
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<td>Organization</td>
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<td>Chris McCann</td>
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<td>Erwin Blancaflor</td>
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**Note:** The table above contains information about various individuals and their roles, locations, and contact details.
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Kathy Cote  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2009, at Santa Monica, California.

[Signature]
Jessica Wall