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February 21, 2023

Submitted via Email to philip.wyels@waterboards.ca.gov and RB2-MRP@waterboards.ca.gov

Mr. Philip Wyels
Assistant Chief Counsel
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

**Subject: CONSIDERATION OF OWN MOTION REVIEW OF ALTERNATIVE
COMPLIANCE PROVISIONS OF MUNICIPAL REGIONAL STORMWATER NPDES
PERMIT, ORDER NO. R2-2022-0018, NPDES PERMIT NO. CAS612008 (MRP 3.0) –
SWRCB/OCC FILE No. A-2791(c)**

Dear Mr. Wyels:

On behalf of the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP), a program of the City/County Association of Governments of San Mateo County (C/CAG), I appreciate the opportunity to respond to your November 28, 2022 request for comment on the above referenced matter on behalf of SMCWPPP and C/CAG's member agencies. C/CAG is a Joint Powers Authority comprised of the 20 cities/towns in San Mateo County and the County of San Mateo. C/CAG administers SMCWPPP on behalf of its member agencies and the San Mateo County Flood and Sea Level Rise Resilience District (referred to as OneShoreline) to support compliance with the Municipal Regional Stormwater Permit (current Order No. R2-2022-0018 "MRP 3.0"), which regulates discharges of municipal stormwater to creeks, the San Francisco Bay, and the Pacific Ocean.

Based on the complete and comprehensive reissuance process of MRP 3.0, the clear consistency of the reissued permit with the State Water Resource Control Board's (State Board) principles and guidance on alternative compliance options as detailed in Order WQ 2015-0075,¹ and the State Board's provision of flexibility to regional water boards to develop effective alternative compliance programs, an own motion review of MRP 3.0's alternative compliance provisions is unwarranted and unnecessary, and would lead to an undesirable waste of limited public funds and set a negative precedent for State Board review of future stormwater permits.

SMCWPPP respectfully urges the State Board not to proceed with an own motion review of MRP 3.0 for the following reasons:

1. In the State Board's Order WQ 2015-0075, reviewing the 2012 Los Angeles (LA) County Regional Municipal NPDES Stormwater Permit, the State Board directed regional water boards to consider the Watershed Management Plan and Enhanced Watershed Management Plan approach set forth in Order WQ 2015-0075, but, importantly, the State Board also

¹ See *In the Matter of Review of Order No. R4-2012-0175 Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4*, Order WQ 2015-0075 (Order WQ 2015-0075), pp. 51-52, 77-78.

acknowledged regional differences and, for that reason, did not mandate that all regional water boards adopt the LA region's approach to alternative compliance. Rather, the State Board provided clear guidance, summarized below, to ensure alternative compliance programs throughout the state provide consistent and enforceable pathways to comply with Receiving Water Limitations, while providing regional water boards the discretion to develop and implement region-specific effective alternative compliance programs.

In order to provide guidance to regional water boards preparing Phase 1 MS4 permits, we lay out several principles to be followed in drafting receiving water limitations compliance alternatives: Phase 1 MS4 permits should (1) continue to require compliance with water quality standards in accordance with our Order WQ 99-05; (2) allow compliance with TMDL requirements to constitute compliance with receiving water limitations; (3) provide for a compliance alternative that allows permittees to achieve compliance with receiving water limitations over a period of time as described above; (4) encourage watershed-based approaches, address multiple contaminants, and incorporate TMDL requirements; (5) encourage the use of green infrastructure and the adoption of low impact development principles; (6) encourage the use of multi-benefit regional projects that capture, infiltrate, and reuse storm water; and (7) require rigor, accountability, and transparency in identification and prioritization of issues in the watershed, in proposal and implementation of control measures, in monitoring of water quality, and in adaptive management of the program. We expect the regional water boards to follow these principles unless the regional water board makes a specific showing that application of a given principle is not appropriate for region-specific or permit-specific reasons.²

While structured differently than the alternative compliance path in the LA region, MRP 3.0's alternative compliance path, addressed in MRP 3.0 provisions C.9 through C.12, C.14, C.18, and C.19.c-f, is consistent with the requirements of Order WQ 2015-0075. Section C.1. of the MRP 3.0 Fact Sheet (Attachment A) thoroughly demonstrates how MRP 3.0 satisfies all seven of the factors identified in Order WQ 2015-0075 listed above. Additional details pertaining to the adequacy of MRP 3.0 in this regard are provided in pages A-97 through A-105 of the MRP 3.0 Fact Sheet. In short, an own motion review of MRP 3.0 is unnecessary because its approach to alternative compliance is legally permissible and well within the discretion afforded by the State Board to regional water boards.

Contrary to assertions by San Francisco Baykeeper (SF Baykeeper), there are significant differences between the LA region MS4 permits and MRP 3.0. Importantly, MRP 3.0 does not extend alternative compliance status to municipalities based on future development and submission of watershed management plans containing control measures and criteria that might or might not pass muster relative to water quality improvement, or upon a further regional water board approval of those plans. Instead, MRP 3.0 relies on highly evolved stormwater management programs and control measures, with associated demonstrated concrete improvements in water quality, that were developed initially by SCVURPPP permittees several permit cycles ago, and subsequently adopted by other Bay Area MRP permittees, including the SMCWPPP permittees. MRP 3.0 continues the region's successful approach of using the MRP to spread the effective watershed-based programs and control measures developed prior to the

² Order WQ 2015-0075, pp. 77-78.

MRP to the other municipalities throughout the San Francisco Bay Area, and to make them more rigorous and demanding over time. In contrast to the LA region permits, and in compliance with the criteria developed by the State Board, MRP 3.0 sets forth (within Provisions C.9 through C.12, C.14, C.18 and C.19.c-f) transparent, highly refined, and thoroughly considered and prioritized compliance obligations and associated accountability measures in the form of specific pollutant-waterbody loading reductions and other limitations. MRP 3.0 requires permittees to assess compliance with the specific reductions through specified monitoring efforts, and to meet reductions on specific timelines, for permittees to remain in alternative compliance status.

2. Proceeding with the own motion review would create significant uncertainty about whether the requirements set forth in MRP 3.0 will remain in effect and could undermine the significant investments the MRP co-permittees, including SMCWPPP's permittees, have made over the course of multiple MRP terms. State Board review of the existing alternative compliance options in the MRP, which, as stated above clearly meet the State Board's standards, could result in millions of previously invested public funds being rendered obsolete.

As an example, in partnership with Regional Water Board staff and other countywide stormwater programs and permittees operating under the MRP, SMCWPPP has developed a multi-permit term programmatic approach to addressing PCBs and Mercury load reductions mandated by the permit and the associated TMDLs for the San Francisco Bay. The Source Property Identification and Abatement portion of this programmatic approach, which began with initial monitoring in 2009 under MRP 1.0 and emphasizes the most cost-effective strategy for reducing PCBs in stormwater runoff, has been a focus for SMCWPPP over the past two permit cycles. Since the expanded level of effort for evaluating, investigating, and coordinating potential source property abatements and referrals was established in 2015, SMCWPPP has invested approximately \$2.2 million to support this cost effective and critical component of the alternative compliance program designed by the MRP to achieve the PCBs TMDL objectives in a timely and technically rigorous manner. At the regional scale, the co-permittees under the MRP have invested millions in additional stormwater program funding, including a \$5 million Environmental Protection Agency Water Quality Improvement Fund Grant awarded to the Bay Area Stormwater Management Agencies Association in 2010 to develop the scientific basis for demonstrating mercury and PCBs load reductions via a variety of stormwater control options. Substantial investments have also been made to implement other core components of MRP 3.0, including the trash requirements under Provision C.10, where entire trash assessment methods and control programs have been developed over the course of the MRP. In supporting its permittees with trash load reduction planning and implementation efforts, SMCWPPP has invested approximately \$3 million since MRP 2.0 was adopted. Modification of key provisions in the middle of the permit term would not only cause unnecessary and severe challenges to stormwater program implementation at this juncture, it also has the potential to waste a significant amount of previously invested public funds.

3. Proceeding with an own motion review would undermine the State Board's rules for filing administrative appeals by effectively reviving SF Baykeeper's late petition. State law and the State Board's implementing regulations are designed to achieve a balance between review and oversight, and stability and certainty. Review and oversight provisions are necessary to ensure permits achieve legal compliance (which MRP 3.0 has done, as summarized above). But the legal framework is also designed to provide stability and certainty to enable permittees to

confidently invest in compliance with lawfully adopted permit provisions. For these reasons, deadlines must be adhered to, and an own motion review under the circumstances presented here would undermine the sanctity of the administrative process.

I appreciate your consideration of these comments on behalf of SMCWPPP and its member agencies, and urge you to allow us to continue to optimally invest in compliance with MRP 3.0 by forgoing an own motion review.

If you have any questions, please contact me at scharpentier@smcgov.org or (415) 370-2174.

Sincerely,

Sean Charpentier
Executive Director
City/County Association of Governments, San Mateo County

cc: San Francisco Bay Regional Water Quality Control Board
SMCWPPP program staff and municipal representatives