



**CALIFORNIA
ALLIANCE
FOR JOBS**



LEAGUE OF
**CALIFORNIA
CITIES**



**Transportation
CALIFORNIA**



**CALIFORNIA COALITION
FOR RURAL HOUSING**



California-Nevada Conference of
Operating Engineers



**CALIFORNIA BLACK
CHAMBER OF COMMERCE**
Dedicated to Economic Empowerment



**Rural County
Representatives of
California**

August 13, 2021

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: We oppose stormwater Draft Permit Proposal that Would Lead to Massive Cost Increases and jeopardize critical public works and other construction projects

As organizations representing infrastructure, transportation, education, labor, agriculture, local government, water, business and others, we would like to share our concerns about the proposed statewide construction stormwater general permit (Permit) that would apply to all public and private construction projects throughout California.

The Permit as currently drafted is unworkable and would significantly increase the cost of and jeopardize the completion of thousands of projects throughout the state including state and local transportation infrastructure, school construction, electric and water utility infrastructure, housing projects and more.

The Permit proposes Numeric Effluent Limits (NEL) as a means of compliance for watersheds that cover thousands of square miles in California. To comply with these strict standards, projects will be required to install costly active treatment systems as well as test water runoff samples to ensure stormwater runoff does not exceed the particular pollutant level for that surface water body.

The NEL approach is unworkable and technically infeasible. The thresholds proposed are so low they cannot be achieved through the use of any existing best management practices (BMPs), triggering immediate permit violations and enforcement. In fact, even the Biden Administration's Environmental Protection Agency, in its recently released draft construction stormwater permit, did not incorporate NELs as a means of compliance.

This burdensome permit proposal would substantially increase costs for public works, infrastructure and private economic development projects by hundreds of





millions of dollars – dramatically driving up costs for consumers and taxpayers – without any benefits to water quality. For instance, a Caltrans analysis found that complying with this mandate would increase compliance costs four-fold.

Additionally, the proposed language on what qualifies as “routine maintenance” is ambiguous for road and highway projects and could greatly expand the scope of the proposed CGP to include city, county and state road paving and repair projects (asphalt grind and overlay work) that do not require coverage under the current CGP. The updated language states that certain road and highway projects are still considered routine maintenance, “but not when the activity exposes the underlying soil or pervious subgrade.” It is unclear what is intended by “pervious subgrade” and this change has the potential to require CGP coverage for a variety of maintenance projects – driving up costs and jeopardizing their completion.

We are also concerned that the permit proposal opens the door to new “bounty hunter lawsuits,” where unscrupulous lawyers know that the threat of filing a lawsuit is enough to get someone to pay up to make it go away. Developers and construction companies bear the burden of proving compliance, thus further disincentivizing future projects.

Instead, we encourage the Board to adopt a permit that improves water quality by relying on a Best Management Practices (BMP) approach building off what occurs today and numeric action levels which would require permittees to address problems that arise without fear of incurring fines, penalties, and increased legal exposure.

We strongly encourage the Board to abandon the NEL approach and pursue an alternative plan that will improve water quality without jeopardizing infrastructure and economic development projects as discussed in the comments submitted by the California Alliance for Jobs.

Sincerely,

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