



Ventura Countywide Stormwater Quality Management Program

Participating Agencies October 16, 2014

Camarillo

County of Ventura

Fillmore

Moorpark

Ojai

Oxnard

Port Hueneme

San Buenaventura

Santa Paula

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OW-2011-0880

Subject: **COMMENTS ON THE EPA AND U.S. ARMY CORPS OF ENGINEER'S
DEFINITION OF 'WATERS OF THE UNITED STATES' UNDER THE
CLEAN WATER ACT**

On behalf of the Ventura County Watershed Protection District, County of Ventura, and the cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Santa Paula, Simi Valley, Thousand Oaks, and Ventura who have joined together to form the Ventura Countywide Stormwater Quality Management Program (Program,) thank you for providing this opportunity to provide comments on the United States Environmental Protection Agency (EPA) and Army Corps of Engineers (the Corps) (collectively the "Agencies") Proposed Definition of 'Waters of the United States', Under the Clean Water Act (Proposed Rule). This rule is proposed in an effort to clarify the historically murky definition of 'waters of the United States' (WOTUS), and to better communicate to the regulated community what the Agencies will consider when determining whether a water body falls under its jurisdiction pursuant to the Clean Water Act (CWA).

The Proposed Rule's suggestion that some types of storm water facilities, infrastructure projects, and associated facilities could be regulated within the scope of a definitional WOTUS poses uncertainty and potential confusion among both the regulating entities and the regulated entities, and may increase the regulatory burden associated with implementation of MS4 permit requirements. The Ventura Countywide Stormwater Quality Management Program supports the California Stormwater Quality Association's (CASQA) recommendations that the Agencies revise the Proposed Rule to clarify that MS4s are *not* WOTUS, and that certain types of storm water related facilities discussed herein are also *not* considered to be WOTUS. Specifically, certain exclusions within the Proposed Rule need to be expanded to include MS4



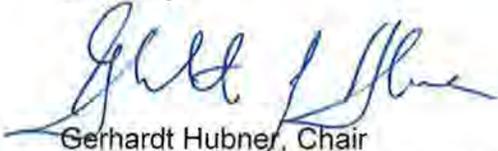
conveyance facilities and other related facilities. Exclusions needing expansion include: waste treatment system, artificial lakes, ditches, and swales. The Program also supports the revisions to the Proposed Rule provided in CASQA's comment letter. These issues are summarized below:

1. MS4s are *not* WOTUS
2. New definition of 'tributary' could improperly include MS4 facilities
3. New definition of 'adjacent' could improperly include MS4 and other important water resource facilities
4. 'Other waters' approach goes beyond the case-by-case significant nexus test
5. The exclusions for waters that are *not* WOTUS must be revised to incorporate MS4 conveyance and other related facilities

The Proposed Rule creates new and significant uncertainty with respect to how it would be applied to storm water related facilities. Under the newly proposed definitions, groundwater recharge facilities, storm water conveyance channels, and other storm water related facilities could now be found to be a WOTUS. The exclusions in the Proposed Rule do not adequately cover or incorporate these types of facilities. Unless the Proposed Rule is further revised to address this uncertainty by clearly excluding the types of facilities discussed herein, significant confusion will result with respect to what constitutes a WOTUS. Moreover, if such facilities are found to be WOTUS, the regulatory burden associated with establishing, maintaining, and operating these facilities will increase, and result in significant costs to municipal ratepayers. However, considering that these facilities are highly regulated for the protection of water quality, these increased burdens and costs will not result in better environmental protection. Storm water managers will also be left guessing as to their legal responsibilities, and storm water agencies could be open to legal liability from third parties. The Program recommends that the Proposed Rule be revised to avoid these results.

Please consider the approach presented by CASQA to resolve these issues which will affect MS4s. Thank you for your consideration. If you have any questions, please contact me at (805) 654-5051 or Gerhardt.Hubner@ventura.org.

Sincerely,



Gerhardt Hubner, Chair

On Behalf of the Entire Ventura County Stormwater Quality Management Committee

cc: Ventura County Stormwater Quality Management Committee