Via US Mail and Email: clope2@contracosta.courts.ca.gov

Steven Conlin, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CITY OF ANTIIOCH RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S THE PLAN AND WHERE'S THE MONEY?"

Dear Jury Foreperson Conlin:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Antioch (City) is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa County Flood Control and Water Conservation District (District), hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 Federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement...
Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP.

CCCWP'S RESPONSES TO GRAND JURY FINDINGS 1-11

GRAND JURY FINDING #1
“In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.”

RESPONSE: Agree. However, it is the City’s understanding that the violation is for a specific element/provision within the unincorporated County’s storm water program, not with the City, and was not a violation of overall compliance of all Permittees or the CCCWP.

GRAND JURY FINDING #2
“Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

RESPONSE: Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund. The City currently does not supplement its stormwater program with contributions from its General Fund or other sources. With dedicated funding estimated to run out within 2 – 3 years and given the City’s already strained General Fund, it is difficult to determine where additional funding will come from to maintain compliance activities.

GRAND JURY FINDING #3
“Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”

RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require Federal and State
assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

GRAND JURY FINDING #4
“The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.”

RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with State law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5
“Permittees disagree on what reasonable/practical program requirements should entail.”

RESPONSE: Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

GRAND JURY FINDING #6
“All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.”

RESPONSE: Agree. Given the City’s $13M decrease in its annual General Fund since 2007 and critical public safety needs, it is difficult to determine from where the additional funding will come.

GRAND JURY FINDING #7
“The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.”

RESPONSE: Agree.

GRAND JURY FINDING #8
“As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.”
RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

GRAND JURY FINDING #9
“It is unclear what the impact of non-compliance status will be for a Permittee.”

RESPONSE: Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Thus, the Permittees face regulatory actions and private lawsuits in the event of even relatively minor noncompliance. These private lawsuits brought by aggressive plaintiffs’ attorneys are a reality. This double level of enforcement is unnecessary and costly and needs to be remedied by Federal and State legislators.

GRAND JURY FINDING #10
“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

RESPONSE: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits. However, if local, State, and Federal legislators and agencies don’t appreciate these serious issues, then better communication on all ends is needed.

GRAND JURY FINDING #11
“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

RESPONSE: Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

CCCWP’S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
“The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

GRAND JURY RECOMMENDATION #2:
“The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently
exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**
"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** Future expenditure requirements were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

**GRAND JURY RECOMMENDATION #4:**
"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** CCCWP will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. State and Federal legislators also need to be aware of the permitting and funding issues and work with all stakeholders to address impacts of noncompliance with the laws they draft. If the issue is not the laws, but how the regulating agencies are expanding those laws, then the administrations of the Governor and President need to be held accountable.

**GRAND JURY RECOMMENDATION #5:**
"The CCCWP consider immediately beginning to re-align its activities and operating costs with: (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

**GRAND JURY RECOMMENDATION #6:**
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable
provisions of the California Water Code. Again, State and Federal legislators need to be conscious of the funding issues facing Permittees in obtaining compliance with the Provisions they set, especially given these are all unfunded mandates, while remaining cognizant of the ability to get voters to accept additional revenue measures.

The City thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Phil Hoffmeister, NPDES Compliance Manager at (925) 779-6169 should you need additional information.

Sincerely,

Wade Harper, Mayor
City of Antioch

cc: Tom Dalziel, CCCWP Manager
    Rinta Perkins, CCCWP Management Committee Chair
BOARD OF SUPERVISORS RESPONSE TO CONTRA COSTA COUNTY GRAND JURY REPORT 1305:
GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN AND WHERE’S THE MONEY?
Responding for Contra Costa County and the Contra Costa County Flood Control and Water Conservation District (for the District and on behalf of the Contra Costa Clean Water Program)

I. FINDINGS:

1. “In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.”

RESPONSE: Agree.

2. “Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

RESPONSE: Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

3. “Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”

RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their National Pollutant Discharge Elimination System (NPDES) permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

4. “The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.”

RESPONSE: Agree. San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards) staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), Contra Costa Clean Water Program (CCCWP)
Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

5. "Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee (the CCCWP's decision making body), continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. "All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

7. "The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

8. "As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. "It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution
prevention and control measure implementation further impacting funding for stormwater compliance activities.

10. “The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

RESPONSE: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

11. “Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

RESPONSE: Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

II. RECOMMENDATIONS:

1. “The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. “The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

3. “Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

RESPONSE: The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the
regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

4. "Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP’s website. This action will be considered in August and, if approved, implemented in October 2013.

5. "The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP’s response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

6. "Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.
August 16, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM’S RESPONSE TO GRAND JURY REPORT NO. 1305, “GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN AND WHERE’S THE MONEY?”

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Brentwood (“City”) is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

The Contra Costa Clean Water Program (“CCWCP”) consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa Flood Control and Water Conservation District (“District”), hereinafter referred to collectively as “Permittees.”

In November 1990, the United States Environmental Protection Agency (“USEPA”) published final stormwater rules implementing the 1987 federal Clean Water Act (“CWA”) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (“NPDES”) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCWCP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (“Water Boards”). The municipal NPDES permits are reissued approximately every five years.
The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers ("MS4s"). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee.

The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP’s decision-making body. The following responses are provided by the City.

**City of Brentwood’s Responses to Grand Jury Findings 1-11**

**Grand Jury Finding #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**Response:** Agree.

**Grand Jury Finding #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**Response:** Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

**Grand Jury Finding #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**Response:** Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects.
Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**Grand Jury Finding #4**
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**Response:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association ("BASMAA"), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit ("MRP") to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**Grand Jury Finding #5**
"Permittees disagree on what reasonable/practical program requirements should entail."

**Response:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**Grand Jury Finding #6**
"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**Response:** Agree.

**Grand Jury Finding #7**
"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**Response:** Agree.

**Grand Jury Finding #8**
"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."
Response: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

Grand Jury Finding #9
"It is unclear what the impact of non-compliance status will be for a Permittee."

Response: Agree.

Grand Jury Finding #10
"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

Response: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates and that non-compliance with current and future permits may result in significant fines, costly remediation, and/or third-party lawsuits.

Grand Jury Finding #11
"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

Response: Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

City of Brentwood’s Responses to Grand Jury Recommendations 1-6

Grand Jury Recommendation #1:
"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

Response: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

Grand Jury Recommendation #2:
"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."
Response: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

Grand Jury Recommendation #3:
“Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

Response: The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

Grand Jury Recommendation #4:
“Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.”

Response: This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP’s website. This action will be considered in August and, if approved, implemented in October 2013.

Grand Jury Recommendation #5:
“The CCCWP consider immediately beginning to re-align its activities and operating costs with: (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP’s response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

Grand Jury Recommendation #6:
“Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.”
Response: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Miki Tsubota, Assistant Public Works Director, at (925) 516-5173 should you need additional information.

Sincerely,

[Signature]
Paul R. Eldridge, City Manager
City of Brentwood

cc: Honorable Mayor and City Council of the City of Brentwood
Damien Brower, City Attorney

kd
July 31, 2013

Contra Costa Civil Grand Jury, 2012-2013
Attn: Marc Hamaji, Foreperson
725 Court Street
P O Box 431
Martinez, CA 94553-0091

Re: Contra Costa County Civil Grand Jury Report No. 1305, FY 2012-13
“Getting to Clean Water in Contra Costa County”

Dear Mr. Hamaji:

In behalf of the Clayton City Council, this letter responds to the Contra Costa Civil Grand Jury’s Report No. 1305 regarding its impressions of the Contra Costa Clean Water Program, the 2012 Community Clean Water Initiative, and matters related to the municipal National Pollutant Discharge Elimination System (NPDES) permit program. The Clayton City Council met in a noticed special public meeting on July 30, 2013 to consider Report No. 1305 and therein authorized this written response.

Pursuant to California Government Code section 933.5(a), the City of Clayton does hereby respond to the Civil Grand Jury’s required Findings (Nos. 1 thru 11) and Recommendations No. 1 through 6, as contained within Report No. 1305:

FINDINGS

Finding #1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.

The City agrees with this finding.

Finding #2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments, etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

The City partially disagrees with this finding. The City of Clayton is not currently expending more than the total amounts collected from fees and assessments designated and restricted for purposes related to the City’s Clean Water programs. Further, the City of Clayton has not supplemented its Clean Water unfunded-mandate programs with General Fund monies (yet).
Finding # 3: Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

The City partially disagrees with this finding. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with its NPDES permit if monitoring data show an exceedance, and exposes each to considerable liability, including fines and costly remediation.

Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will compel substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas.

Due to these compulsory actions, current dedicated funding in Clayton is insufficient to meet all existing and future NPDES-compliant permit requirements. New revenue sources dedicated to these public policy unfunded mandates will be necessary for the City of Clayton to adequately design, construct, operate and maintain stormwater drainage infrastructure improvements in the future.

Finding # 4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

The City agrees with this finding. Regional Water Quality Control Board staff determines the process for negotiating the terms and conditions of the next municipal permit in accordance with state law and public policy. Recently through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Regional Water Quality Control Board staff regarding cost-benefit terms and scope of conditions in the next permit. As one of the smallest public agencies in the Bay Area, the Clayton City Council is increasingly concerned about the local financial burdens of this well-intended yet unfunded state mandate.
Finding # 5: Permits disagree on what reasonable/practical program requirements should entail.

The City partially disagrees with this finding. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of restricted funds. Despite these local differences, Permittees, through representation on the Contra Costa County Clean Water Program’s (CCCWP’s) Management Committee, rarely disagree as to reasonable/practical programs and continue to maintain consensus regarding permit negotiating positions and the successful implementation of unfunded mandated program requirements.

Finding # 6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

The City agrees with this finding.

Finding # 7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

The City agrees with this finding. As the smallest city in Contra Costa County, Clayton expressly values the benefits of working collectively with other municipalities in sharing ideas, successful programs, and realizing taxpayer savings through economies of scale.

Finding # 8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

The City disagrees with this finding. Clayton can only imagine in a frightening way what its setting would be like if faced alone with stormwater regulators. There are indeed significant disparities between the expectations and views of the regulators and those of the Permittees; however, this friction is typical of most regulatory processes. It must be noted that non-governmental organizations (NGOs) and other interest groups inject critical influence into the NPDES decision-making process.
Finding # 9: It is unclear what the impact of non-compliance status will be for a Permittee.

The City partially disagrees with this finding. Permittees and this City have been advised repeatedly by regulators that civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may also be assessed if imposed by a Superior Court. Further, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Within these guidelines Regional Water Quality Control Boards have discretion on their own enforcement actions yet Clayton and Permittees would not know what action the Board would engage until it actually acts on a violation.

Finding # 10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

The City disagrees with this finding. The CCCWP and the City of Clayton have consistently communicated and broadcast that funding deficits for mandated stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines, costly remediation and/or third party lawsuits. The more definitive Finding would have been: “is anyone listening?”

Finding # 11: Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

The City agrees with this finding. It is an unfathomable challenge to plan for the unfunded programmatic mandates of a state regulator which relies on an open check book of a local Permittee.

RECOMMENDATIONS

Recommendation # 1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

The recommendation has been implemented. The permit negotiation process is dynamic and must adapt to the exchange between the state regulator and the Permittees. This is an on-going process performed in cooperation between BASMAA and the Regional Water Quality Control Board staff. BASMAA committees, Water Board staff, and Permittee
representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

**Recommendation # 2:** The CCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

The recommendation has been implemented. BASMAA and the Regional Water Quality Control Board staff have agreed to a permit negotiation process that includes Permittee representatives. Further, Permittee representatives and Water Board staff continue to meet regularly to discuss permit issues in BASMAA committees.

**Recommendation # 3:** Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative [ballot measure], and funding plans are difficult to develop (ref. response to Finding #11.) Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of this regulatory permit process. The City of Clayton does not have the resources or magic crystal ball to provide a meaningful prediction of the outcomes of future negotiations in order to generate future funding plans at this time.

**Recommendation # 4:** Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including the discussion of potential, but realistic, impacts of non-compliance.

The recommendation requires further analysis. As a member of CCWP, the CCWP acts as the City’s agent in matters related to NPDES permit requirements. The CCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCWP’s website. This action will be considered in August 2013, and if approved, implemented in the last quarter of calendar year 2013.
Recommendation # 5: The CCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

This recommendation has been partially implemented. In response to Item (a) of this recommendation, please refer to the City’s response to Recommendation # 3 above. In response to Item (b) and Item (c), through the CCWP our City continually evaluates its activities and operating costs based on projected available funding and constituent needs.

Recommendation # 6: Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

This recommendation will not be implemented as it is not within this Permittee’s power or authority to ensure that the objectives, timelines, or provisions of its NPDES unfunded mandated permit are reasonable. Tests of reasonableness, if used, are applied by the Regional Water Quality Control Board pursuant to the applicable provisions of the California Water Code. Again, state and federal legislators need to be more conscious of the forced funding mandates facing Permittees in obtaining compliance with the unfunded provisions and requirements they set while remaining cognizant of the fact Permittees are constrained in ability and capacity to get voters to accept additional revenue measures for state and federal unfunded mandates.

We appreciate the time and effort the Civil Grand Jury spent researching and considering these matters, and we trust this response will be helpful in its endeavors.

Sincerely,

Julie K. Pierce
Mayor
July 24, 2013

Mr. Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

Re: Response to Grand Jury Report No. 1305 entitled *Getting to Clean Water in Contra Costa County*

Dear Mr. Hamaji,

Thank you for the opportunity to respond to the findings and recommendations of the Contra Costa County Civil Grand Jury with regard to outsourcing municipal services for the City of Concord. The Concord City Council reviewed this letter of response at its July 23, 2013 City Council meeting.

For ease of reading, I have incorporated into this letter the language from your report for each finding and recommendation that the City has been asked to address. The City's response is directly below each finding and recommendation. Please also note that in each case this response reflects only the information as it reflects to the City of Concord. The City does not have knowledge of the financial information of the other responding organizations.

**Findings**

1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

   **Response:** The City of Concord agrees with the finding.
2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

**Response:** The City of Concord agrees with the finding.

Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments. The respondent is unaware of how other Permittees cover funding shortfalls.

3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

**Response:** The City of Concord partially agrees with the finding.

The City of Concord will maintain compliance with future permit requirements as long as the permit is compliant with Federal and State law. However, future compliance requirements are unknown at this time.

Additionally, the 9th Circuit Court of Appeals decision in NRDC v. County of LA (9th Cir., July 13, 2011, no. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation.

Permittees, regulators and watershed stakeholders agree that compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing Municipal Separate Storm Sewer Systems (MS4s). Currently, stormwater treatment and flow control measures are required on many development projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas.

Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary to construct, operate and maintain stormwater drainage infrastructure improvements.
4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

Response: The City of Concord agrees with the finding.

The San Francisco Regional Water Quality Control Board (SFRWQCB) staff determines the process by negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with SFRWQCB staff regarding the terms and conditions of the next permit.

5. Permittees disagree on what reasonable/practical program requirements should entail.

Response: The City of Concord partially disagrees with the finding.

Each municipality has different water-quality issues, pollutant sources, drainage system characteristics, availability of funds, and priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

Response: The City of Concord agrees with the finding.

7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

Response: The City of Concord agrees with the finding.
8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

Response: The City of Concord disagrees with the finding.

There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month SFRWQCB staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the SFRWQCB attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. It is unclear what the impact of non-compliance status will be for a Permittee.

Response: The City of Concord agrees with the finding.

Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.

Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc.), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.
10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

Response: The City of Concord disagrees with the finding.

The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates, and that non-compliance with current and future permits may result in significant fines, costly remediation, and/or third-party lawsuits.

11. Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

Response: The City of Concord agrees with the finding.

Following the failure of the 2012 Community Clean Water Initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

Recommendations

1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

Response: This recommendation is being implemented in cooperation with BASMAA and SFRWQCB staff. BASMAA committees, SFRWQCB staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

Response: This recommendation is being implemented in cooperation with BASMAA and SFRWQCB staff. Specifically, BASMAA and SFRWQCB staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and SFRWQCB staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.
3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

Response: This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements at this time for the yet to be negotiated reissued permit is premature as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete.

Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A time frame for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the SFRWQCB pursuant to applicable provisions of the California Water Code.

4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

Response: This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the City of Concord’s website. This action will be considered in August and, if approved, implemented in October 2013.

5. The CCCWP consider immediately beginning to re-align it activities and operating costs with: (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: This recommendation has been implemented. CCCWP activities are: (a) aligned to facilitate the Permittees’ compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP’s Management Committee, which is comprised of Permittee representatives.
6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

Response: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the SFRWQCB pursuant to the applicable provisions of the California Water Code.

Thank you for your work with regard to this very important issue in municipal governance and for the opportunity to respond.

Respectfully,

[Signature]

Valerie J. Barone
City Manager, City of Concord

cc: Mayor and City Council Members
    City Clerk
    City Attorney
July 17, 2013

Honorable John T. Laettner
Judge of the Superior Court
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091


Dear Judge Laettner:

Pursuant to California Penal Code Section 933.05, this letter responds to Contra Costa County Grand Jury Report No. 1305, “Getting to Clean Water in Contra Costa County – What’s the Plan and Where’s the Money.” This response was reviewed and authorized by the Town Council at a duly noticed Town Council meeting on July 16, 2013.

The Town of Danville is a co-permittee under the Contra Costa Clean Water Program (CCCPW). As requested in the Grand Jury report, Danville will respond to each Finding and Recommendation separately.

Grand Jury Findings

Finding #1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.

Response: Danville agrees with Finding #1.

Finding #2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

Response: Danville partially disagrees with Finding #2. Danville is not currently spending more than the total amounts collected from fees and assessments designated to
July 17, 2013
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fund the Town’s Clean Water program and has not supplemented the Clean Water Program with General Fund monies.

Finding #3: “Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”

Response: Danville partially disagrees with Finding #3. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its National Pollutant Discharge Elimination System (NPDES) permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permits if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Currently Danville’s dedicated funding is sufficient to meet the regulatory requirements contained in the current Municipal Regional Permit (MRP). However the ability to meet future regulations to be contained in the upcoming MRP to be issued in 2014 is uncertain. New revenue sources will be necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements in the future.

Finding #4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

Response: Danville agrees with Finding #4. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Recently, through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

Finding #5: Permittees disagree on what reasonable/practical program requirements should entail.
Response: Danville partially disagrees with Finding #5. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Despite these differences, Permittees, through the Contra Costa Clean Water Program (CCCWP)’s Management Committee rarely disagree and continue to maintain consensus regarding permit negotiating positions and the successful implementation of program requirements.

Finding #6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

Response: Danville agrees with Finding #6.

Finding #7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

Response: Danville agrees with finding #7. Furthermore, Danville recognizes the benefits of working collectively with other municipalities and realizing cost savings through economies of scale.

Finding #8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

Response: Danville disagrees with Finding #8. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. Non-governmental organizations also play a critical role in the decision-making process.

Finding #9: It is unclear what the impact of non-compliance status will be for a Permittee.

Response: Danville partially disagrees with Finding #9. Danville has been advised that civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards (RWQCBs); fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. However, the Clean Water Act also provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation
regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Within these guidelines the RWQCB has leeway on their enforcement actions, the Town would not know what action the RWQCB would take until they actually act on a violation.

Finding #10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

Response: Danville disagrees with Finding #10. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines, costly remediation and/or third-party lawsuits.

Finding #11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

Response: Danville agrees with Finding #11.

Grand Jury Recommendations

Recommendation #1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

Response: The recommendation has been implemented. Danville is a co-permittee under the CCCWP. The CCCWP is implementing this recommendation in cooperation with Bay Area Stormwater Management Agencies Association (BASMAA) and Water Board staff.

Recommendation #2: The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

Response: The recommendation has been partially implemented. In Danville, this recommendation has been implemented through the CCCWP in cooperation with BASMAA and Water Board staff. Specifically, most recently BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.
Recommendation #3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

Response: The recommendation has partially been implemented. The Town has identified expenditure requirements associated with the current MRP. Estimating future expenditure requirements for the reissued 2014 permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete. Additionally, the permit reissuance process is just getting underway and there is currently no draft permit available for review. A time frame for further implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Regional Water Quality Control Board and pursuant to applicable provisions of the California Water Code. A funding plan will be developed once the permit requirements in the new MRP are established.

Recommendation #4: Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

Response: The recommendation has not yet been implemented, but may be upon adoption of the new MRP. Danville can work through the CCCWP to prepare a "fact sheet" addressing these issues. It is expected that the information would be posted on the Town and CCCWP web sites after the next MRP is adopted and the requirements established in order to determine the projected costs.

Recommendation #5: The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: The recommendation has been implemented. The CCCWP's activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

Recommendation #6: Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.
Response: The recommendation will not be implemented because it is not warranted. It is not within the Permittee’s power or authority to ensure that all stakeholders reach consensus on the objectives, timelines, or provisions of the next NPDES permit or future funding requests. Tests of reasonableness, if used, must be applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The Town appreciates the time and effort spent by His Honor and the Grand Jury in consideration of these matters.

Sincerely,

TOWN OF DANVILLE

[Signature]

Newell Americh
Mayor
Via U.S. Mail and Email

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553
Email: eloce2@contracosta.courts.ca.gov

SUBJECT: EL CERRITO'S RESPONSE TO GRAND JURY REPORT NO. 1305,
“GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY –
WHAT'S THE PLAN AND WHERE'S THE MONEY?”

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of El Cerrito is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report. The City is one of 19 members (hereinafter referred to collectively as “Permittees”) of the Contra Costa Clean Water Program (CCCWP), which was formed in 1991 by a program agreement to apply for a joint municipal NPDES permit from the San Francisco Bay and Central Valley Regional Water Quality Control Boards.

EL CERRITO’S RESPONSES TO GRAND JURY FINDINGS 1-11

GRAND JURY FINDING #1:
“In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.”

RESPONSE: Agree.

GRAND JURY FINDING #2:
“Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

RESPONSE: Agree. The City of El Cerrito supplements its shortfall from other special funds; not from the General Fund at this time. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.
GRAND JURY FINDING #3:
"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

RESPONSE: Agree. The Ninth Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and therefore exposes those public agencies to considerable liability, including fines and costly remediation. Permittees, regulators, and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating, and maintaining stormwater drainage infrastructure improvements.

GRAND JURY FINDING #4:
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5:
"Permittees disagree on what reasonable/practical program requirements should entail."

RESPONSE: Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop, and implement group permit compliance activities.

GRAND JURY FINDING #6:
"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

RESPONSE: Partially disagree. The City does not have information to determine whether all permittees are forecasting that a majority will be out of compliance in 2 to 5 years, but it is our understanding that many permittees believe a significant number of permittees will be unable to comply fully in 2 to 5 years.
GRAND JURY FINDING #7:
"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

RESPONSE: Agree.

GRAND JURY FINDING #8:
"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done, and what happens if it is not done."

RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. A key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators with a goal to work through these differences.

GRAND JURY FINDING #9:
"It is unclear what the impact of non-compliance status will be for a Permittee."

RESPONSE: Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

GRAND JURY FINDING #10:
"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

RESPONSE: Disagree. Both the City of El Cerrito and the CCCWP have consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

GRAND JURY FINDING #11:
"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

RESPONSE: Partially disagree. The City of El Cerrito was the only jurisdiction in which a majority of voters/property owners supported that Initiative. As a result, the City is considering pursuing and has undertaken preliminary steps toward a similar measure locally.
EL CERRITO'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

GRAND JURY RECOMMENDATION #2:
"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

GRAND JURY RECOMMENDATION #3:
"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

RESPONSE: The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative. Permittees that are considering the pursuit of local funding measures for permit requirements, such as the City of El Cerrito, will be developing funding plans as part of those processes. Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The City of El Cerrito and the CCCWP do not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

GRAND JURY RECOMMENDATION #4:
"Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

RESPONSE: This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the City and CCCWP's websites. This action will be considered in August and, if approved, implemented in October 2013.

GRAND JURY RECOMMENDATION #5:
"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs."

CITY HALL 10890 San Pablo Avenue El Cerrito, CA 94530 FAX (510) 233-5401
RESPONSE: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP’s response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

GRAND JURY RECOMMENDATION #6:
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

RESPONSE: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of El Cerrito thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact me at (510) 215-4382 should you need additional information.

Sincerely,

Yvette Ortiz
Interim Public Works Director / City Engineer
City of El Cerrito

cc: Scott Hanin, City Manager, City of El Cerrito
    Toni Dalziel, CCCWP Manager
July 15, 2013

Steven Duran

Mr. Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
P.O. Box 431
Martinez, CA 94553

RE: Response To Grand Jury Report No. 1305, "Getting To Clean Water In Contra Costa County - What’s The Plan And Where’s The Money?"

Dear Mr. Hamaji:

The City of Hercules has reviewed Grand Jury Report No. 1305, “Getting To Clean Water In Contra Costa County – What’s The Plan And Where’s The Money?” Responses to Findings and Recommendations are provided below and meet the requirements of California Penal Code Sections 933.05(a) and 933.05(b).

BACKGROUND

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In Response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The City of Hercules is a Permittee. The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as “Group Activities”). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the Contra Costa County Flood Control and Wastewater Conservation District (District) and each individual Permittee. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District
manager designates one representative to participate on a Management Committee, which is the CCCWP’s decision-making body.

City Of Hercules Responses To Grand Jury Findings 1-11

Finding No. 1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.

Response: The City Council agrees with this finding.

Finding No. 2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

Response: The City Council agrees with this finding.

Finding No. 3: Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

Response: The City Council agrees with this finding.

Finding No. 4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

Response: The City Council agrees with this finding.

Finding No. 5: Permittees disagree on what reasonable/practical program requirements should entail.

Response: The City Council agrees with this finding. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

Finding No. 6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

Response: The City Council agrees with this finding.

Finding No. 7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.
Response: The City Council agrees with this finding.

Finding No. 8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

Response: The City Council disagrees with this finding. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process and these differences do not lead to a conclusion that the CCCWP is failing.

Finding No. 9: It is unclear what the impact of non-compliance status will be for a Permittee.

Response: The City Council agrees with this finding.

Finding No. 10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

Response: The City Council disagrees with this finding. The CCCWP, on behalf of Permittees, has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

Finding No. 11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

Response: The City Council agrees with this finding. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

City Of Hercules Responses To Grand Jury Recommendations 1-6

Recommendation No. 1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

Response: The recommendation will be implemented in coordination with other Permittees through the CCCWP.

Recommendation No. 2: “The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

Response: The recommendation will be implemented in coordination with other Permittees and the CCCWP.
Recommendation No. 3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

Response: The recommendation has not yet been implemented, but will be implemented in the future. Implementation is subject to funding and staffing limitations.

Recommendation No. 4: Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

Response: The recommendation has not yet been implemented, but will be implemented in the future. Implementation is subject to funding priorities and limitations.

Recommendation No. 5: The CCCWP consider immediately beginning to re-align its activities and operating costs with: (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: The recommendation will be implemented in coordination with other Permittees and the CCCWP.

Recommendation No. 6: Before any Permitee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

Response: The recommendation will not be implemented, as neither Permittees nor the District can ensure that the Water Board, the District and Permittees will agree to what is reasonable in terms of objectives and timelines.

The Hercules City Council thanks the Grand Jury for its service. If you have any questions or need additional clarification, please do not hesitate to contact us at (510) 799-8200.

Sincerely,

[Signature]

Steve Duran
City Manager
July 8, 2013

Marc Hamaji, Foreperson
2012-2013 Contra Costa County Civil Grand Jury
725 Court Street
Martinez, CA 94553

Dear Mr. Hamaji:

In reply to Grand Jury Report No. 1305, “Getting to Clean Water In Contra Costa County” please see the City of Lafayette’s responses.

City of Lafayette’s Responses to Grand Jury Report Findings:

1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.
   The respondent agrees with the finding.

2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.
   The respondent partially disagrees with the finding.
   Shortfalls are also being covered by Cities’ program reserve funds.

3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.
   The respondent agrees with the finding.
   The Contra Costa Clean Water Program provides additional information based on the 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017)
determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California, in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear. The respondent agrees with the finding. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy.

5. Permittees disagree on what reasonable/practical program requirements should entail. The respondent agrees with the finding. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage systems, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Through the CCCWP's Management Committee, municipalities strive to maintain consensus in identifying, developing and implementing group permit compliance activities.

6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years. The respondent agrees with the finding.

7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring. The respondent agrees with the finding.

8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.
The respondent disagrees with the finding.

Significant differences between the expectations and views of the regulators and those of the Permittees and the regulator’s unresponsiveness to local jurisdictions’ direct comments and comments provided through the CCCWP have contributed to the unsuccessful resolution of what needs to be done, how it should be done and what happens if it is not done. The CCCWP is assisting Permittees in meeting requirements in the existing permit that are significantly enhanced from the previous permit and require advanced technical knowledge and skills to deal with permit requirements such as monitoring and pilot projects and working through joint efforts required by the consolidation of the six municipal stormwater NPDES permits.

9. It is unclear what the impact of non-compliance status will be for a Permittee.

The respondent agrees with the finding.

There are both government enforcement and citizen suit provision measures in place to ensure compliance with the Clean Water Act and NPDES permits. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees.

10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

The respondent disagrees with the finding.

The City of Lafayette City Council approves its SUA funding every year at a public meeting. A staff report highlighting concerns regarding future permit requirements and the ability of the City to meet those requirements is provided in meeting documents on the City’s website and is available to all residents at City Hall or at the public meeting. Public hearings regarding SUA assessments are held at the County level by the Board of Supervisors of Contra Costa County. Funding needs and requirements were communicated to the public through direct mail to property owners through the Clean Water Initiative process. The CCCWP has communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits. City Council is addressing future funding needs for stormwater pollution prevention as part of the public meeting and public hearing budget process.

11. Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

The respondent partially disagrees with the finding.

The situation has left the City with no choice but to try to address the future anticipated short
fall of funds needed to meet increasing permit requirements. As addressed in Finding 10 above, the City is discussing viable plans to meet anticipated future funding needs.

City of Lafayette’s Responses to Recommendations to Grand Jury Report:

1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.
   The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
   The City of Lafayette will communicate with the regulator that there is an immediate need for the regulator to provide a negotiation process directly involving Permittees. Significant differences between the expectations and views of the regulators and the Permittees must be addressed.
   The process followed in the past where the regulator held public hearings and then held numerous meetings with the Permittees (via the Bay Area Stormwater Management Agencies Association) and other key stakeholders to negotiate the permit; is not acceptable. Following those meetings the regulator issued a large MRP permit document and additional attachments of over 200 pages with significant differences between the expectations and views of the regulators and the Permittees not having been addressed and resolved.
   The regulator has time allocated to communicate directly to Permittees at regular monthly meetings of the CCCWP. If these times are not acceptable to meet directly with Permittees, other specific times will be requested to meet with the regulator to negotiate prior to the upcoming permit issuance.

2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.
   The recommendation has not yet been implemented.
   The City of Lafayette looks forward to opportunities for direct communications between the City and regulatory authorities before the next permit issuance. Communications should begin immediately and continue up to the time of issuance of the permit.
   One example of confusing communication from the regulator:
   The Grand Jury report says, “The regulatory personnel indicate that when the SUA structure was enacted, many of the cities immediately shifted the funding of certain program-eligible activities (such as street sweeping and other elements of public works) out of their general funds to be funded out of the new stormwater assessments. While this may have been beneficial to cities in the short term, in the long run it removed funds which should have been available for the long-term growth and development of the stormwater program, which all understood would necessarily grow increasingly more complex and rigorous over time.”
   At a recent CCCWP Management Committee meeting, Water Board staff speaking about ways
to meet new permit requirements for trash management stated that "effective street sweeping and on land pickup is probably as effective as full trash capture." If these and other public works activities have been and are continuing to meet permit requirements, why shouldn’t they be funded through the City’s stormwater assessments?

3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.  
The recommendation has not yet been implemented but will be implemented in the future, with a time frame for implementation.  
The City of Lafayette has prepared a stormwater pollution prevention fund 10-year forecast. The City Council will set aside a reserve fund over each of the next ten years to fully fund the program through fiscal year 2022-23. The fund will start with a reserve contribution of $50,000 in the fiscal year 2013/2014 and be increased by an additional $10,000 each following year. Additional re-evaluation will be done through the new permit negotiation process with consideration of the 3 a, b, and c points made within the Grand Jury Report: a) negotiation of more realistic, better-defined compliance terms that take into account differences in participant demographics; b) implementation of more efficient and effective operating practices of the Contra Costa Clean Water Program; and, c) identification of ways to make the impacted communities more aware of the importance of the program and the challenges ahead.

4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but unrealistic, impacts of non-compliance.  
The recommendation has been implemented.  
The City Council has discussed in public meetings the need for a funding reserve to fulfill their NPDES permit requirements. The City will continue to provide information to the public surrounding funding to fulfill NPDES permit requirements.

5. The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs. The recommendation requires further analysis.  
The CCCWP has an accurate perspective of projected available funding by the Permittees and of the constituents’ needs to keep costs down and concentrate their efforts on effective pollution prevention activities within each of their municipalities. The CCCWP might have some idea of the probable outcomes from the negotiation of the next permit’s compliance requirements but both the CCCWP and the Permittees will need to have more input and clarification from the regulator as to what will be included in the permit.

6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes
articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishments of those objectives.

The recommendation requires further analysis.
The City of Lafayette has no current plans to approach its citizens with another request for additional funding. Reaching a consensus plan for the path forward with all stakeholders is a goal Permittees strive for and will appreciate when it is reached allowing for available funding to be used in the most effective way possible to best prevent stormwater pollution within the City.

The CCCWP provides this response: It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

We hope this letter is responsive to your request.

Sincerely,

Michael Anderson

Mayor
July 25, 2013

Via US Mail and Email: elopec2@contracosta.county.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
P.O. Box 431
Martinez, CA 94553

SUBJECT: CITY OF MARTINEZ'S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY — WHAT'S THE PLAN AND WHERE'S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Martinez (City) is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal
entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP’s decision-making body. The following responses are provided on behalf of the CCCWP’s Management Committee.

CITY’S RESPONSES TO GRAND JURY FINDINGS 1-11

GRAND JURY FINDING #1
“In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.”

CITY RESPONSE: Agree; however the City of Martinez did not receive a Notice of Violation. Contra Costa County along with the other cities and towns within the County are responsible for implementing their permit and each are individually subject to enforcement from the Water Board.

GRAND JURY FINDING #2
“Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

CITY RESPONSE: Agree; however the City of Martinez is currently fully funding their permit implementation with Stormwater assessments collected by the County Assessor on behalf of the City.

GRAND JURY FINDING #3
“Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”

CITY RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. While current funding source is sufficient for exiting water quality compliance requirements, current dedicated funding is insufficient to meet future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.
GRAND JURY FINDING #4
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

CITY RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5
"Permittees disagree on what reasonable/practical program requirements should entail."

CITY RESPONSE: Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

GRAND JURY FINDING #6
"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

CITY RESPONSE: Agree.

GRAND JURY FINDING #7
"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

CITY RESPONSE: Agree.

GRAND JURY FINDING #8
"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

CITY RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.
GRAND JURY FINDING #9
“It is unclear what the impact of non-compliance status will be for a Permittee.”

CITY RESPONSE: Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc…), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

GRAND JURY FINDING #10
“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

CITY RESPONSE: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

GRAND JURY FINDING #11
“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

CITY RESPONSE: Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds and gas tax, have significant negative consequences.

CITY’S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
“The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

CITY RESPONSE: This recommendation is being implemented in cooperation with BASMMAA and Water Board staff. BASMMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

ROB SCHRODER, MAYOR
GRAND JURY RECOMMENDATION #2:
“The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

CITY RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

GRAND JURY RECOMMENDATION #3:
“Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

CITY RESPONSE: The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

GRAND JURY RECOMMENDATION #4:
“Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.”

CITY RESPONSE: This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the City’s and CCCWP’s website. This action will be considered in August and, if approved, implemented in October 2013.

GRAND JURY RECOMMENDATION #5:
“The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

CITY RESPONSE: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP’s response to Recommendation #3 above. In response to (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.
GRAND JURY RECOMMENDATION #6:
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

CITY RESPONSE: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Martinez thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Tim Tucker, City Engineer at (925) 372-3562 should you need additional information.

Sincerely,

Rob Schroder, Mayor
City of Martinez
August 29, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN AND WHERE’S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the Contra Costa County Flood Control and Water Conservation District (District) is submitting, on behalf of the Contra Costa Clean Water Program, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND:

The Town of Moraga is part of the Contra Costa Clean Water Program (CCCWP) which consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as “Permitees.”

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permitees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permitees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permitees conduct many of these mandated activities collectively (referred to as “Group Activities”). Costs for Group Activities are shared among the Permitees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permitees are outlined in the Program Agreement, which
was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP's Management Committee.

RESPONSES TO GRAND JURY FINDINGS 1-11:

GRAND JURY FINDING #1:
"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

RESPONSE: Agree.

GRAND JURY FINDING #2:
"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

RESPONSE: Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

GRAND JURY FINDING #3:
"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and development projects. Pilot studies and projects are being conducted under current municipal NPDES permits through the CCCWP to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

GRAND JURY FINDING #4:
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

RESPONSE: Agree. CCCWP staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area
Stormwater Management Agencies Association (BASMAA), CCCWP Permittees including the Town of Moraga have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5:**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6:**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7:**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8:**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP which the Town of Moraga is a part of is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

**GRAND JURY FINDING #9:**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a
citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

GRAND JURY FINDING #10:
“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

RESPONSE: Disagree. The CCCWP which the Town of Moraga is a part of has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

GRAND JURY FINDING #11:
“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

RESPONSE: Agree. Following the failure of the funding initiative, many Permittees like the Town of Moraga are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
“The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

GRAND JURY RECOMMENDATION #2:
“The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives including the Town of Moraga and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.
GRAND JURY RECOMMENDATION #3:
"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

RESPONSE: This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements for the yet to be negotiated reissued permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete. Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A timeframe for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Water Board pursuant to applicable provisions of the California Water Code.

GRAND JURY RECOMMENDATION #4:
"Permittees consider identifying funds to disclose to the public the issues surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

RESPONSE: This recommendation requires further analysis. The CCCWP’s Management Committee which the Town of Moraga is a part of will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP’s website, and, if appropriate, may also be posted on the Town’s website. This action will be considered in August and, if approved, implemented in October 2013.

GRAND JURY RECOMMENDATION #5:
"The CCCWP consider immediately beginning to re-align its activities and operating costs with: (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs."

RESPONSE: This recommendation has been implemented. CCCWP activities are: (a) aligned to facilitate Town of Moraga and other Permittees’ compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP’s Management Committee, which is comprised of Permittee representatives.

GRAND JURY RECOMMENDATION #6:
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

RESPONSE: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or
provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The Town of Moraga thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Tom Dalziel, CCCWP Manager at (925) 313-2392 or myself at (925) 888-7025 should you need additional information.

Sincerely,

Jill Keimach
Moraga Town Manager

cc: Moraga Town Council
     Tom Dalziel, CCCWP Manager
June 26, 2013

Contra Costa County Civil Grand Jury
Attn: Mark Hamaji, Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091
Clope2@contracosta.courts.ca.gov

RE: Response to Grand Jury Report No. 1305 “Getting to Clean Water in Contra Costa County”

Mr. Hamaji:

Thank you for the opportunity to respond to the Grand Jury’s recent Report No. 1305. Below are our replies regarding each Finding and Recommendation requested of the City of Oakley.

**Finding #1:** Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.

*City’s Response:* We agree with this finding.

**Finding #2:** Many permittees are currently spending more than the total amounts collected from fees/taxes/assessments, etc. designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

*City’s Response:* We agree with this finding, though we are aware that some municipalities supplement their stormwater programs sources other than, or in addition to, their general funds.

**Finding #3:** Despite the current levels of money being spent on the stormwater control initiatives, many Permitees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

*City’s Response:* We agree with this finding.
Finding #4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

City's Response: We agree with this finding.

Finding #5: Permitees disagree on what reasonable/practical program requirements should entail.

City's Response: We agree with this finding.

Finding #6: All Permitees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

City's Response: We agree with this finding.

Finding #7: The CCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

City's Response: We agree with this finding.

Finding #8: As an intermediary between the Permitees and the regulatory bodies, the CCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permitees. There are dramatically different perspectives of what needs to be done and what happens if it is not done.

City's Response: We don't agree with this finding. The regulatory process often produces disagreements and different interpretations.

Finding #9: It is unclear what the impact of non-compliance status will be for a Permitee.

City's Response: We agree with this finding. It appears that the federal Clean Water Act allows any one to file a suit against any person who has allegedly violated the law. The results of any given claim may be different and the exact impact of non-compliance is not clear.
Finding #10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

City’s Response: We disagree with this finding. Representing the Permittees, the CCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

Finding #11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

City’s Response: We mostly agree with this finding. We are not aware of all cities’ activities/plans; however, Oakley is still evaluating options and alternative plans to comply.

Recommendation #1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

City’s Response: This recommendation is being implemented by CCWP in cooperation with the Bay Area Stormwater Management Agencies Association (BASMAA) and the Water Board staff.

Recommendation #2: The CCWP immediately being to implement more direct communication between the individual Permittees and the regulatory authorities.

City’s Response: This recommendation is being implemented by CCWP in cooperation with the Bay Area Stormwater Management Agencies Association (BASMAA) and the Water Board staff. There is an agreement for a process for permit negotiations.

Recommendation #3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

City’s Response: Oakley prepared an estimated future expenditure requirement as a part of the Engineer’s Report for the 2012 Community Clean Water Initiative. Continued evaluation, out of necessity, will be conducted.
**Recommendation #4:** Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including discussion of potential, but realistic, impacts of non-compliance.

**City’s Response:** This information was presented during the 2012 Community Clean Water Initiative and CCWP has committed to develop a fact sheet that can be used by all Permittees that will be made public.

**Recommendation #5:** The CCWP consider immediately beginning to re-align its activities and operating costs.

**City’s Response:** CCWP activities are aligned to facilitate the Permittees’ compliance with permit requirements, including foresight of potential future permit requirements, implemented efficiently with the available budget, and responsive to the direction of CCWP’s Management Committee, which is comprised of Permittee representatives.

**Recommendation #6:** Before any Permittee makes any effort to approach its citizens with another request for additional funding and all stakeholders reach a consensus on a plan for the path forward.

**City’s Response:** It is difficult to determine if all stakeholders could reach a consensus, particularly if some provisions of the NPDES permit are deemed to be reasonable by the Permittees. With that said, Oakley is willing to participate in any discussion to seek such a consensus.

Again, we thank you for the opportunity to respond to the Grand Jury’s recent Report No. 1305. If you have any questions or need any assistance, please contact me directly at (925) 625-7025 or at montgomery@ci.oakley.ca.us.

Sincerely,

![Signature]

Bryan H. Montgomery
City Manager

cc: City Council
August 29, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CITY OF ORINDA’S RESPONSE TO GRAND JURY REPORT NO. 1305,
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S
THE PLAN AND WHERE’S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, I am submitting, on behalf of the City of Orinda, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

The City of Orinda is a member of the Contra Costa Clean Water Program (CCCWP) which consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa County Flood Control and Water Conservation District, hereinafter referred to collectively as “Permittees.”

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as “Group Activities”).
Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010.

**CITY OF ORINDA’S RESPONSES TO GRAND JURY FINDINGS 1-11**

**GRAND JURY FINDING #1**

“In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.”

**RESPONSE:** Agree.

**GRAND JURY FINDING #2**

“Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

**RESPONSE:** Agree. Orinda supplements its stormwater program with funding from the general fund.

**GRAND JURY FINDING #3**

“Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”

**RESPONSE:** Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**GRAND JURY FINDING #4**

“The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.”

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area...
Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

**GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil
penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

GRAND JURY FINDING #10
"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

RESPONSE: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

GRAND JURY FINDING #11
"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

RESPONSE: Partially disagree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences. Although these are not realistic alternative plans, we are continuing to seek solutions.

CITY OF ORINDA'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

GRAND JURY RECOMMENDATION #2:
"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.
GRAND JURY RECOMMENDATION #3:
"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

RESPONSE: The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

GRAND JURY RECOMMENDATION #4:
"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

RESPONSE: This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

GRAND JURY RECOMMENDATION #5:
"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

RESPONSE: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP's response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

GRAND JURY RECOMMENDATION #6:
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

RESPONSE: This recommendation continues to be implemented. It is the City's goal to approach and inform its citizens regarding any objectives mandated to the Clean Water Program which may require another future request for additional funding. However, it is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.
On behalf of the City of Orinda, thank you for the opportunity to respond to the Contra Costa County Grand Jury's concerns.

Sincerely,

Amy R. Worth
Mayor, City of Orinda

cc: Charles Swanson, Director of Public Works and Engineering Services
    Larry Theis, Senior Civil Engineer

Q:\NPDEs\Grand Jury\Orinda Response Grand Jury Report No. 1305 Getting to Clean Water.docx
August 22, 2013

Sent Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

Dear Mr. Hamaji:

Enclosed, please find the City of Pinole response to Grand Jury Report Number 1305, "Getting to Clean Water in Contra Costa County – What’s the Plan and Where’s the Money?"

Grand Jury Findings:

1. "In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program."

Response: The City of Pinole agrees with this finding.

2. "Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

Response: The City of Pinole agrees with this finding. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the General Fund.

3. "Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."


Response: The City of Pinole agrees with this finding.

4. "The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

Response: The City of Pinole agrees with this finding.

5. "Permittees disagree on what reasonable/practical program requirements should entail."

Response: The City of Pinole partially agrees. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. "All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

Response: The City of Pinole agrees with this finding.

7. "The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

Response: The City of Pinole agrees with this finding.

8. "As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

Response: The City of Pinole Disagrees with this finding. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay
Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. "It is unclear what the impact of non-compliance status will be for a Permittee."

Response: The City of Pinole Agrees with this finding.

10. "The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

Response: The City of Pinole Disagrees with this finding. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

11. "Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

Response: The City of Pinole Agrees with this finding. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

Grand Jury Recommendations:

1. "The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

Response:

This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. "The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."
Response:

This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

3. "Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

Response:

This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements for the yet to be negotiated reissued permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete.

Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A time frame for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Water Board pursuant to applicable provisions of the California Water Code.

4. "Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

Response:

This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.
5. "The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

Response:

The City of Pinole has implemented this recommendation through the CCCWP activities including: (a) aligned to facilitate the Permittees’ compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP’s Management Committee, which is comprised of Permittee representatives.

6. "Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.”

Response:

The City of Pinole will not implement this recommendation because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

If you have any questions about the above, please do not hesitate to contact me at (510) 724-8933.

Sincerely,

Belinda B. Espinosa
City Manager

C Mayor and Council
  Ben Reyes, City Attorney
  Patricia Athenour, City Clerk
August 12, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN AND WHERE’S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Pittsburg is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

In 1987, the U.S. Congress began requiring NPDES permits for all non-point source discharges of stormwater runoff entering waters of the state. Permit compliance responsibilities are vested with the State Water Quality Control Board (SWQCB). In 1993, the City of Pittsburg joined with the Contra Costa County Flood Control and Water Conservation District, Contra Costa County, and nineteen other cities to create the Contra Costa Clean Water Program (the "Clean Water Program") to effectively respond to the federal and state requirements regulating local discharges of stormwater into the San Joaquin / Sacramento River Delta and other waters of the state. The Clean Water Program conducts many of these mandated activities collectively ("Group Activities"). As a member of the Clean Water Program, the City is required to fund its pro-rata share of the Clean Water Program costs and the cost of its own City staff, which carry out many of the mandates at the local level.

City of Pittsburg’s responses to G 1-11 and Jury Findings

GRAND JURY FINDING #1

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

RESPONSE: Agree.
GRAND JURY FINDING #2
"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

RESPONSE: Agree. The City of Pittsburg’s stormwater control activities are supplemented by the City’s solid waste fund, as funds are available. This supplement supports the City’s stormwater efforts with regard to street sweeping and management of illegal dumping.

GRAND JURY FINDING #3
"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements. The City of Pittsburg is judicious about how stormwater funds are expended. The availability of supplemental funding for the stormwater program varies from year to year. Therefore, the City makes every effort to choose and / or implement the most effective compliance activities for the monies available.

GRAND JURY FINDING #4
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5
"Permittees disagree on what reasonable/practical program requirements should entail."

RESPONSE: Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-
making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

GRAND JURY FINDING #6
“All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.”

RESPONSE: Agree.

GRAND JURY FINDING #7
“The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.”

RESPONSE: Agree.

GRAND JURY FINDING #8
“As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.”

RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

GRAND JURY FINDING #9
“It is unclear what the impact of non-compliance status will be for a Permittee.”

RESPONSE: Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforces are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

GRAND JURY FINDING #10
“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

RESPONSE: Partially disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts
to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits. More effort must be made by the permittee to convey to the general public that this funding source also funds the maintenance of many Cities’ storm drainage infrastructure. Therefore any funding deficits could also impact the City’s ability to provide needed response services during emergencies and to address all maintenance services in a timely fashion.

GRAND JURY FINDING #11
“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

RESPONSE: Partially agree. The City of Pittsburg anticipated that funding available for stormwater program permit compliance would inevitably become insufficient to address both the maintenance demands of the City’s aging stormwater conveyance system, as well as the increasingly stringent mandates of a dynamic NPDES municipal permit. To help defray these increased costs of permit compliance, the Pittsburg City Council passed a resolution allowing the use of solid waste funds to help defray the costs of trash-related NPDES compliance mandates. In addition, the City continues to be as judicious as possible, expending funds for compliance activities that would produce the most meaningful results. Redirection of monies from the General Fund would have significant impacts to other City services obligated to the public.

CITY OF PITTSBURG’S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
“The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

GRAND JURY RECOMMENDATION #2:
“The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

GRAND JURY RECOMMENDATION #3:
“Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

RESPONSE: The recommendation will not be implemented because it is not reasonable. Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the
fluctuating and unpredictable nature of the regulatory permit process. The City of Pittsburg does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP’s website. This action will be considered in August and, if approved, implemented in October 2013.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City’s response to Recommendation #3 above. In response to items (b) and (c), the City and CCCWP continually evaluate the activities and operating costs based on projected available funding and constituent needs.

**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** If this recommendation refers to the pursuit of a city-wide funding measure, the City would ensure that the objectives and expectant milestones of the proposed measure would clearly be articulated to its public. However, if this recommendation refers to a forward path for the permittee to implement measures for permit compliance, then this recommendation will not be implemented because finding consensus amongst all stakeholders is difficult. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Pittsburg thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Jolan Longway at (925) 252-4803 should you need additional information.

Sincerely,

[Signature]

Joe Sbranti
City Manager

cc: Jolan Longway, Civil Engineer II
August 29, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM’S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S THE PLAN AND WHERE'S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the Contra Costa County Flood Control and Water Conservation District (District) is submitting, on behalf of the Contra Costa Clean Water Program, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

BACKGROUND

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which...
was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP.

**CCCWP’S RESPONSES TO GRAND JURY FINDINGS 1-11**

**GRAND JURY FINDING #1**
"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

**GRAND JURY FINDING #2**
"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. City of Richmond supplements the stormwater program with funding from grants when awarded and the general fund.

**GRAND JURY FINDING #3**
"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**GRAND JURY FINDING #4**
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."
RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5
"Permittees disagree on what reasonable/practical program requirements should entail."

RESPONSE: Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

GRAND JURY FINDING #6
"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

RESPONSE: Agree.

GRAND JURY FINDING #7
"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

RESPONSE: Agree.

GRAND JURY FINDING #8
"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

GRAND JURY FINDING #9
"It is unclear what the impact of non-compliance status will be for a Permittee."

RESPONSE: Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees.
GRAND JURY FINDING #10
"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

RESPONSE: Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

GRAND JURY FINDING #11
"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

RESPONSE: Disagree. Following the failure of the funding initiative, the City of Richmond is in the process of evaluating options and alternative plans. This includes working with State legislators to change the mechanism of raising fees for stormwater compliance.

CCCWP’S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

GRAND JURY RECOMMENDATION #2:
"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

GRAND JURY RECOMMENDATION #3:
"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

RESPONSE: Future expenditure requirements were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

GRAND JURY RECOMMENDATION #4:
"Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** The Contra Costa Clean Water Program (CCCWP) will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP’s website.

**GRAND JURY RECOMMENDATION #5:**
"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees’ compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP’s Management Committee, which is comprised of Permittee representatives including the city of Richmond.

**GRAND JURY RECOMMENDATION #6:**
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** It is not within the City of Richmond’s power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Richmond thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Lynne Scarpa, Environmental Manager at (510) 307-8135 should you need additional information.

Sincerely,

Bill Lindsay  
City Manager  
City of Richmond

cc: Lynne Scarpa, Environmental Manager  
Tom Dalziel, CCCWP Manager
August 6, 2013

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: Contra Costa County Grand Jury Report No. 1305 “Getting to Clean Water in Contra Costa County – What’s the Plan and Where’s the Money?”

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of San Pablo is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report. The City of San Pablo appreciates the time and effort that the Grand Jury spent considering these matters.

GRAND JURY FINDINGS
1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.
RESPONSE: Agree.

2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.
RESPONSE: Agree. The City of San Pablo supplements the stormwater program with funding from the general fund.

3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.
RESPONSE: Agree.

4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.
RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit. Through the Bay Area Stormwater
Management Agencies Association (BASMAA), and as a member of the Contra Costa Clean Water Program (CCCWP), the City of San Pablo has joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

5. Permittees disagree on what reasonable/practical program requirements should entail.
RESPONSE: Partially disagree. Each municipality has different water-quality issues, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.
RESPONSE: Agree.

7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.
RESPONSE: Agree.

8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.
RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. A key function of the CCCWP is to represent Permittees while acting as a liaison between Permittees and federal and state regulators. It should be noted that Water Board staff is invited every month to attend the CCCWP Management Committee meetings to directly communicate with Permittees but they seldom attend.

9. It is unclear what the impact of non-compliance status will be for a Permittee.
RESPONSE: Agree. Civil penalties of up to $10,000 per day plus $10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to $25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc.), which may require
additional programs further impacting funding for stormwater compliance activities. The Grand Jury interviewed only one regulator and one NGO who indicated a more lenient treatment, however, that information is not conclusive or binding.

10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.
RESPONSE: Disagree. The CCCWP has stated in public outreach materials that funding deficits for stormwater pollution prevention will hinder Permittees’ efforts to comply with federal and state mandates; and, that non-compliance with NPDES permits, may result in significant fines, costly remediation, and/or third-party lawsuits. These issues are also communicated to the public through City Council presentations and staff reports.

11. Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.
RESPONSE: Agree. Following the failure of the funding initiative, the City of San Pablo is still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting General Fund monies, have significant negative consequences.

GRAND JURY RECOMMENDATIONS
1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.
RESPONSE: This recommendation is being implemented in cooperation with BASMMA and Water Board staff. BASMMA committees, Water Board staff, and Permittee representatives including San Pablo staff are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.
RESPONSE: This recommendation is being implemented in cooperation with BASMMA and Water Board staff. Specifically, BASMMA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permitte representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMMA committees.

3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.
RESPONSE: The recommendation will not be implemented because it is not reasonable at this time. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding
the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance. RESPONSE: This recommendation requires further analysis (see Finding #9 above). The CCCWP's Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP's website. This action will be considered this fall.

5. The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs. 
RESPONSE: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City’s response to Recommendation #3 above. In response to items (b) and (c), the City and CCCWP annually evaluate the activities and operating costs based on projected available funding and constituent needs.

6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives. 
RESPONSE: This recommendation will not be implemented because it is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of San Pablo appreciates the opportunity to respond to the Contra Costa County Civil Grand Jury concerns. Please feel free to contact Karineh Samkian, Environmental Program Analyst, at (510) 215-3064 if you have any further questions.

Sincerely,

[Signature]

Matt Rodriguez
City Manager

Cc: San Pablo City Council
August 14, 2013

Via U.S. Mail and Email: clope2@contracosta.courts.ca.gov

Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553


Dear Mr. Hamaji,

On behalf of the City of San Ramon, this letter responds to the Contra Costa Grand Jury Report No. 1305: “Getting to Clean Water in Contra Costa County – What’s the Plan and Where’s the Money”. The City of San Ramon appreciates the time and effort that you and the Grand Jury spend considering these matters. As required by California Penal Code §933.05, the City’s response to the overall findings and recommendations is provided below.

Finding #1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.

City Response: The City of San Ramon agrees with this finding.

Finding #2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

City Response: The City of San Ramon agrees with this finding.

Finding #3: Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

City Response: The City of San Ramon agrees with this finding.
Finding #4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

City Response: The City of San Ramon agrees with this finding.

Finding #5: Permittees disagree on what reasonable/practical program requirements should entail.

City Response: The City of San Ramon partially disagrees with this finding. While disagreements do occur as part of discussions related to stormwater management practices and priorities, Permittees consistently reach a consensus on matters related to county-wide efforts and initiatives. Each Permittee manages challenges and issues unique to their municipal stormwater conveyance system which creates a fluctuation of priorities from one municipality to another.

Finding #6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

City Response: The City of San Ramon agrees with this finding.

Finding #7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

City Response: The City of San Ramon agrees with this finding.

Finding #8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

City Response: The City of San Ramon disagrees with this finding. Significant differences between the expectations and views of the regulators and Permittees exist due to the complexity of municipal stormwater conveyance systems; the detection and management of pollutants; and the ability to fund maintenance, monitoring, and pollutant mitigation activities.

Finding #9: It is unclear what the impact of non-compliance status will be for a Permittee.

City Response: The City of San Ramon agrees with this finding.

Finding #10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

City Response: The City of San Ramon disagrees with this finding. Non-compliance and funding deficit risks are communicated accurately to the public through public presentations, City Council staff reports, and outreach campaigns.
Finding #11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

City Response: The City of San Ramon partially disagrees with this finding. The uncertainty of future permit requirements creates a situation in which the projection of long term funding needs is not possible; therefore municipalities must wait for adopted permits in order to create realistic long-term alternate plans. The City of San Ramon continues to discuss alternatives with a range of funding options, some of which could lead to a reduction of services.

Recommendation #1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

City Response: This recommendation has been implemented through coordination between the CCCWP, Bay Area Stormwater Management Agencies Association (BASMAA), and the Regional Water Board staff.

Recommendation #2: The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

City Response: The recommendation has been implemented. The CCCWP implemented procedures to ensure individual permittees are well informed of negotiations between BASMAA and the regulatory authorities. Permittees are made aware of meetings with regulatory authorities and are encouraged to participate in those meetings directly should a permittee choose to do so. Regulators have a standing invitation with a dedicated agenda item to attend CCCWP Management Committee meetings in order to directly communicate with permittees.

Recommendation #3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

City Response: The recommendation will not be implemented because it is not reasonable. Estimates of future expenditure requirements associated with a range of negotiation outcomes is not feasible due to the complexity of the issues surrounding the management of a municipal storm water management conveyance system coupled with the number of permit requirements and the fluctuating nature of the regulatory permit process. Permittees and the CCCWP do not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time. Future expenditure requirements can be estimated after a permit is adopted. The Engineer’s Report for the 2012 Community Clean Water Initiative estimated future expenditures and developed a funding plan for the current permit cycle.
Recommendation #4: Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

City Response: The recommendation has not been implemented but will be implemented through the CCCWP in the near future.

Recommendation #5: The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

City Response: The recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City response to Recommendation #3. In response to (b) and (c), the City and CCCWP continually evaluate the activities and operating costs based on projected available funding and constituent needs.

Recommendation #6: Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

City Response: The recommendation will not be implemented because it is not reasonable. The City of San Ramon faces a funding shortfall under the current permit terms. Based on information from Regional Water Board staff and the history of prior permit cycles, the next permit will increase the cost of compliance for all Permittees. Most Permittees do not have the resources to wait for a consensus from all stakeholders before exploring options to generate additional funding to cover existing shortfalls. The nature of the negotiation process combined with the complexity of the issue and the five-year term of the permit fosters a situation where reaching a consensus is an ongoing and dynamic process. In addition, it is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of San Ramon appreciates the work performed by the Grand Jury and acknowledges the importance of the role served in oversight of local government activities.

We trust the Grand Jury will find these responses helpful to its endeavor.

Sincerely,

[Signature]

Greg Rogers
City Manager

(1) Mayor & City Council
CITY OF WALNUT CREEK
August 8, 2013

Via US Mail and Email: clope2@contracosta.courts.ca.gov

Mr. Marc Hamaji, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

SUBJECT: CITY OF WALNUT CREEK’S RESPONSE TO GRAND JURY REPORT NO. 1305,
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN
AND WHERE’S THE MONEY?"

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Walnut Creek wishes to respond to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

The City of Walnut Creek is co-permittee of the Contra Costa Clean Water Program (CCCWP), which is subsequently issued a joint municipal National Pollutants Discharge Elimination Permit (NPDES) permit issued by the San Francisco Bay Regional Water Quality Control Board. Costs for CCCWP activities are shared among the co-permittees in accordance with a cost payment agreement.

GRAND JURY FINDING #1
“In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.”

RESPONSE: Agree.

GRAND JURY FINDING #2
“Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.”

RESPONSE: Disagree. The City of Walnut Creek funds its Stormwater program solely through its Stormwater Utility Assessment and program fund reserves. The reserves are anticipated to run out in 5 years unless alternative funding source is identified.

GRAND JURY FINDING #3
“Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.”
RESPONSE: Agree. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

GRAND JURY FINDING #4
"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (RASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

GRAND JURY FINDING #5
"Permittees disagree on what reasonable/practical program requirements should entail."

RESPONSE: Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

GRAND JURY FINDING #6
"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

RESPONSE: Agree.

GRAND JURY FINDING #7
"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

RESPONSE: Agree.
GRAND JURY FINDING #8
"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

GRAND JURY FINDING #9
"It is unclear what the impact of non-compliance status will be for a Permittee."

RESPONSE: Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of administrative civil penalties of up to $27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.

GRAND JURY FINDING #10
"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

RESPONSE: Disagree. City staff has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

GRAND JURY FINDING #11
"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

RESPONSE: Disagree. Following the failure of the funding initiative, City of Walnut Creek has streamlined many activities through innovative technology to be more efficient. The City strives not to impact its General Funds to augment Stormwater program implementation.

CCCWP'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6

GRAND JURY RECOMMENDATION #1:
"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

GRAND JURY RECOMMENDATION #2:
"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water
Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**
“Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

**RESPONSE:** Future expenditure requirements were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

**GRAND JURY RECOMMENDATION #4:**
“Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.”

**RESPONSE:** The City of Walnut Creek will consider preparing a “fact sheet” addressing these issues, which would be posted on the City’s Clean Water website (www.walnut-creek.org/cleanwater).

**GRAND JURY RECOMMENDATION #5:**
“The City consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees’ compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP’s Management Committee, which is comprised of Permittee representatives.

**GRAND JURY RECOMMENDATION #6:**
“Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.”

**RESPONSE:** It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Walnut Creek thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Rinta Perkins, Clean Water Program Manager at (925) 256-3511 should you need additional information.

Sincerely,

Ken Nordhoff  
City Manager

cc: Rinta Perkins, Clean Water Program Manager