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**WESTCAS**

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June 29, 2013

US EPA Region 6  
Water Quality Protection Division  
Attn: Diane Smith  
1445 Ross Ave  
Suite 1200  
Dallas, TX 75202

Dear Ms. Smith:

The Western Coalition of Arid States (WESTCAS) appreciates the opportunity to provide comments on the public comment draft of NPDES Permit No. NMR04000MRG, the watershed-based MS4 permit for the middle Rio Grande in New Mexico.

WESTCAS (The Western Coalition of Arid States) is a grassroots organization advocating to water programs and regulations which assure adequate supplies of high quality water and protect the environment for those living in the arid regions of the United States. WESTCAS currently includes over 120 water and wastewater agencies, affiliate and associate members in Arizona, California, Colorado, New Mexico, Nevada, and Texas. During its last two decades of advocacy and activities, WESTCAS has been a significant contributor to policy, regulations, science, and legislation on Arid West water resource issues.

The arid west has unique ecosystems with annual precipitation often less than 12 inches and many months of no rain. Consequently, it is essential to protect both the quantity and quality of water supplies. Storm water in the arid west comes as short intense bursts of rain that are a challenge to manage to simultaneously prevent flooding and protect the quality of the receiving water. We believe the storm water management challenges in the arid west must be fully considered in storm water rules, regulations, and permits. We are submitting the comments below to raise awareness within EPA about how our unique challenges can be accommodated in national, regional, and local regulatory requirements.

***The Voice of Water Quality in the Arid West***

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**Comment 1:** Part I, Section D, item 2 and Permit Tables 2, 3, 5, and 6 include a permit requirement to develop ordinances or other control mechanisms by permittees. However, it violated the Constitution for the Federal government to force a legislative body (i.e. state legislature, city council) to develop new laws or ordinances. WESTCAS suggests that the mechanism for enforcing permit conditions within the MS4 should be left to discretion of the permittee. Further, it is an unfunded mandate to require a location municipality to enforce the requirements under the Federal industrial multi-sector general NPDES permit and the construction NPDES permit.

**Comment 2:** Part I, Section D, item 5 a. (v) and repeatedly throughout the permit requires MS4 Permit holders to “mimic the pre-development hydrology of the previously undeveloped site” by capturing water from the 90<sup>th</sup> percentile storm event runoff. Storm water runoff hydrology is influenced by many factors including slope, soil type, rainfall intensity, antecedent conditions. The permit does not provide references or rationale for this degree of capture or the environmental benefit from this standard. WESTCAS suggests that the permit include the opportunity for the permittees to independently establish pre-development hydrology as an alternative to the 90<sup>th</sup> percentile storm event runoff.

**Comment 3:** Part I, Section D, item 5 a. (v) and repeatedly throughout the permit is the recognition that retaining or capturing storm water must be consistent with water rights considerations in the state. WESTCAS appreciates EPA’s effort in this permit to uphold section 101(g) of the Clean Water Act which prohibits the regulation of water rights. However, Part I, Section D, item 5.b.(v) (c) states that to document the water rights constraint on a site-by-site basis, a letter from the Office of the State Engineer must be provided. This would create an unmanageable burden on a state agency. WESTCAS appreciates the recognition of this constraint on storm water management, but suggests that the permittees should be allowed to independently determine how that constraint will be documented.

**Comment 4:** Part I, Tables 2 through 10 include implementation schedules for each required element in the permit. The schedules are inordinately short, particularly for permitted entities in categories B, C, and D who may be developing their first storm water program as a result of this permit. WESTCAS recommends reasonable time frames be proposed by the permittee in the SWMP, which must be submitted with the NOI and approved by EPA.

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**Comment 5:** Part I, Tables 2 through 10 show that the draft MS4 Permit provides an incentive of increased time to comply for entities that coordinate their compliance efforts. However, very few of the elements required in the SWMPs are amenable to cooperative implementation. WESTCAS supports the underlying concept that watershed improvements will result from coordinated and cooperative actions of entities within the watershed. This watershed-based permit falls short in implementing the watershed basis by mandating numerous compliance requirements that are not cooperative in nature.

**Comment 6:** Part I, Section D, item 5 requires Low Impact Development (LID) for new development and redevelopment, to the point of requiring payment in lieu of implementing LID. WESTCAS is concerned that EPA has focused entirely on minimizing storm water runoff as the single tool for improving receiving water quality.

Storm water runoff is a resource that provides water to our rivers and maintains flow for both humans and the environment. The goal of storm water permits should be on protecting receiving water quality and should not mandate and limit the tools that can be used to meet the goal. This permit should explicitly recognize that LID practices in arid areas are but one way to achieve compliance with water quality standards.

**Comment 7:** Part I, Section D, item 5 requires Low Impact Development (LID) practices that include infiltration of storm water. WESTCAS is concerned that infiltration infrastructure will meet the definition of injection and trigger the Underground Injection Control (UIC) provisions. This would require obtaining another permit to meet the permit requirements. WESTCAS urges EPA to remove elements that would require infiltration of storm water until there is an exemption for storm water infiltration in the UIC regulations.

**Comment 8:** Part I, Section D, item 5 should recognize that requirements to implement green infrastructure, such as permeable pavement, may not be appropriate for runoff reduction in the arid west. The short duration high intensity storms that are characteristic of the arid west overwhelms the absorptive capacity pavement. Further, the lack of rain between storms result in dry conditions that are amenable to dust storms, which have the impact of plugging permeable pavements. Other concerns regarding arid LID include increased infrastructure maintenance and necessary use of potable water to maintain LID features between rain events, which is contrary to water conservation.

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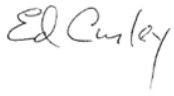
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**The Western Coalition of Arid States**  
**W E S T C A S**

**Comment 9:** Part I, Section C, item 3. b regarding Endangered Species Act (ESA) Requirements. These requirements are focused on reducing the sediment loading to the Rio Grande, ostensibly to protect the silvery minnow. The silvery minnow is listed as endangered due to loss of habitat associated with reduction in water flows in the Rio Grande. WESTCAS believes that ESA requirements in permits should only be related to the documented cause(s) of species endangerment.

Sincerely,



Ed Curley, President

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