**ORDINANCE NO. _____**

**AN ORDINANCE ESTABLISHING THE REGULATION OF STORMWATER ADDING A NEW ARTICLE TO THE MERCED COUNTY CODE**
(ADDS CHAPTER 9.53 TO TITLE 9 OF THE MERCED COUNTY CODE)

THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED ORDAINS AS FOLLOWS:

SECTION I: Merced County Code hereby adds a new Article as Chapter 9.53 to Title 9 General Health and Safety entitled "Regulation of Stormwater."

ARTICLE/CHAPTER 9.53
REGULATION OF STORMWATER

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Section 9.53.01. Title, Purpose and General Provisions

A. Title.

This Article shall be known as the "Regulation of Stormwater" of the County of Merced and may be so cited.

B. Purpose and Intent.

The purpose and intent of this Article is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. section 1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the storm drain system.

C. Definitions.

The terms used in this Article shall have the following meanings:

1. Best Management Practices (BMP). Activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and waters of the United States. Best Management Practices include but are not limited to:

a. Treatment facilities to remove pollutants from storm water;
b. Operating and maintenance procedures;
c. Facility management practices to control runoff;
d. Prevention of spillage or leaks of non-storm water;
e. Waste disposal management practices;
f. Control of drainage from materials storage;
g. Erosion and sediment control practices; and,

h. The prohibition of specific activities, practices, and procedures and such other provisions as the County determines appropriate for the control of pollutants. Please refer to the County of Merced's BMP Guidance Series, as discussed further under Section 9.53.03.A.1. herein, for specific requirements.

2. County. The County of Merced.

3. Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), and any subsequent amendments thereto.

4. Construction Activity. Construction activities subject to NPDES Construction Permits (State Water Resources Control Board, Order No. 2009-0009-DWQ (September 2, 2009), and any subsequent amendments thereto. These include construction projects resulting in land disturbance of one acre or more. Such construction activities include, but are not limited to, construction related clearing and grubbing; non agricultural, construction grading, excavating, and construction demolition.

5. Contamination. The impairment of the quality of the Waters by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease including any equivalent effect resulting from the disposal of waste, whether or not the Waters are affected. (California Water Code section 13050((l)(2).)

6. Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (California Health and Safety Code section 25117.)

7. Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 9.53.02.A.1.of this chapter.

8. Illicit Connections. An illicit connection is defined as either of the following:

a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the County.

9. Industrial Activity. Activities subject to NPDES Industrial Permits including storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas, including tank farms, for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. (40 CFR Section 122.26 (b)(14).)

10. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits. General, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The California Regional Water Quality Control Board, Central Valley Region 5 (hereinafter, “Regional Board”) and the State Water Resources Control Board have adopted general storm water discharge permits, including but not limited to, the General Construction Activity and General Industrial Activity permits.

11. Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

12. Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

13. Pollution. The human-made or human-induced alteration of the quality of the waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses. (California Water Code section 13050(l)(1).) Pollution may include contamination.

14. Porter-Cologne Act. The Porter-Cologne Water Quality Control Act and as amended (California Water Code section 13000 et seq.), and any subsequent amendments thereto.

15. Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved.

16. Storm Drain System. Publicly-owned facilities operated by the County by which storm water is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures which are within the County and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

17. Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from rain storm events.

18. Waters of the United States (Waters). Surface watercourses and water bodies as defined at 40 CFR 122.2., including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

D. Applicability.

This Article shall apply to all water entering the storm drain system generated on any and all developed and undeveloped lands lying within the unincorporated areas of the County of Merced within the geographic boundaries set forth at Attachment 1, as established by the Waste Discharge Requirements ("WDRs") for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems ("Small MS4s" April 30, 2003) issued by, and the Merced Storm Water Group Storm Water Management Program (April 2007) approved by, the State Water Resources Control Board to implement Water Quality Order No. 2003-0005-DWQ, pursuant to its authority under the NPDES General Permit No. CAS000004, and under state and federal water pollution control laws, including any amendments or revisions thereto.

E. Responsibility for Administration.

The Director of Public Works of the County shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the Director of Public Works may be delegated in writing by the Director of Public Works to persons or entities acting in the beneficial interest of or in the employ of the County.

F. Severability.

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Article.

G. Regulatory Consistency.

This Article shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and acts amendatory thereof or supplementary thereto, or any applicable implementing regulations.

H. Ultimate Responsibility of Discharger.

The standards set forth herein and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into Waters of the U.S. caused by said person. This Article shall not create liability on the part of the County of Merced, or any agent or employee thereof for any damages that result from any discharger's reliance on this Article or any administrative decision lawfully made thereunder.

Section 9.53.02. Discharge Prohibitions.

A. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to Waters of the U.S. when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Porter-Cologne Act, Clean Water Act, or this ordinance:

a. Potable water line flushing;
b. Uncontaminated pumped groundwater and other discharges from potable water sources;
c. Landscape irrigation and lawn watering;
d. Diverted stream flows;
e. Rising groundwater;
f. Groundwater infiltration to the storm drain system;
g. Uncontaminated foundation and footing drains;
h. Uncontaminated water from crawl space pumps;
i. Air conditioning condensate drains;
j. Uncontaminated non-industrial roof drains;
k. Springs;
l. Individual residential and occasional non-commercial car washing;

m. Flows from riparian habitats and wetlands;
n. Dechlorinated swimming pool discharges;
o. Street wash waters; and,
p. Flows from fire fighting.

2. The prohibition shall not apply to any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the County of Merced for any discharge to the storm drain system.

3. With prior written concurrence of the Regional Board, the County of Merced may exempt in writing other non-storm water discharges which are not a source of pollutants to the storm drain system nor Waters of the U.S.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. Waste Disposal Prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or Water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

D. Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director of Public Works prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

Section 9.53.03. Regulations and Requirements.

A. Requirement to Prevent, Control, and Reduce Storm Water Pollutants.

1. Authorization to Adopt and Impose Best Management Practices. The County will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Waters of the U.S. and may do so as a separate BMP Guidance Series. Where Best Management Practices requirements are promulgated by the County or any federal, State of California, or regional agency for any activity, operation, or facility which would otherwise cause the discharge of pollutants to the storm drain system or Water of the U.S., every person undertaking such activity or operation, or owning or operating such facility shall comply with such requirements.

2. New Development and Redevelopment. The County of Merced may adopt requirements identifying appropriate Best Management Practices to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The County shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this Article and any County storm water utility ordinance.

3. Responsibility to Implement Best Management Practices. Notwithstanding the presence or absence of requirements promulgated pursuant to subsections 1. and 2., any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the storm drain system, or Waters of the U.S., shall implement Best Management Practices to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.

Best Management Practices required by the County can be obtained from the Public Works Department by requesting the BMP manual appropriate to a commercial or industrial activity from the BMP Guidance Series. BMP's are broken into three categories: "high priority" which are required to be implemented, "medium priority" which are desirable to implement, and "low priority."

B. Requirement to Eliminate Illegal Discharge.

Notwithstanding the requirements of Section 9.53.03.A. herein, the Director of Public Works may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

C. Requirement to Eliminate or Secure Approval for Illicit Connections.

1. The Director of Public Works may require by written notice that any person responsible for an illicit connection to the storm drain system comply with the requirements of this Article to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Article.

2. If, subsequent to eliminating a connection found to be in violation of this Article, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request County approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

D. Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall refrain from contributing to that part of the watercourse trash, and debris that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain their own privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines to protect against soil erosion and degradation of the watercourse originating or contributed from their property.

E. Requirement to Remediate,

Whenever the Director of Public Works finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water, the storm drain system, or Waters of the U.S., the Director of Public Works may require by written notice to the owner of the property and/or the responsible person that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of Section 9.53.05 below.

F. Requirement to Monitor and Analyze.

The Director of Public Works may require by written notice that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges, and/or non-storm water discharges to the storm drain system or Waters of the U.S., to undertake at said person's expense such monitoring and analyses and furnish such reports to the County of Merced as deemed necessary to determine compliance with this Article.

G. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are

resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or Waters of the U.S. from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the County's Public Works Department in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the County's Public Works Department within three business days. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Section 9.53.04. Inspection and Monitoring.

A. Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this Article, or whenever the Director of Public Works has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the Director or their designee may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the County is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

B. Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Director of Public Works or their designee may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Section 9.53.05. Enforcement.

A. Notice of Violation.

Whenever the Director of Public Works finds that a person has violated a prohibition or failed to meet a requirement of this Article, the Director may order compliance by written Notice of Violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and

6. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the County or a contractor designated by the Director of Public Works and the expense thereof shall be charged to the violator pursuant to Section 9.53.05.D. below.

B. Appeal.

Per Merced County Code section 2.32.080.F, notwithstanding Sections 9.53.05.E, H. and I, below, any person receiving a Notice of Violation under Section 9.53.05.A above, may appeal the determination of the Director of Public Works to the Planning Commission. The notice of appeal must be received by the Planning Commission Secretary within five (5) days from the date of the Notice of Violation. The hearing on the appeal before the Planning Commission shall be final.

C. Abatement by County.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or , in the event of an appeal under Section 9.53.B, within ten (10) days of the decision of the Planning Commission upholding the decision of the Director of Public Works, then the County or a contractor designated by the Director of Public Works shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the County or designated contractor to enter upon the premises for the purposes set forth above.

D. Charging Cost of Abatement/Liens.

Within thirty (30) days after abatement of the nuisance by County, the Director of Public Works shall notify the property owner of the property of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the Planning Commission Secretary within fifteen (15) days. The Planning Commission Secretary shall set the matter for public hearing by the Planning Commission. The decision of the Planning Commission shall be set forth by resolution and shall be final.

If the amount due is not paid within ten (10) days of the decision of the Planning Commission or the expiration of the time in which to file an appeal under this Section, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Assessor so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Tax Collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

E. Urgency Abatement.

The Director of Public Works is authorized to require immediate abatement of any violation of this Article that constitutes an immediate threat to the health, safety or welfare of the public. If any such violation is not abated immediately as directed by the Director of Public Works, the County of Merced is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the County of Merced shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent County from seeking other and further relief authorized under this Article.

F. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. A violation of or failure to comply with any of the requirements of this Article shall constitute a misdemeanor and shall be punished as set forth in County Code Chapter 1.28.

G. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Article, the Director of Public Works may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

H. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the County at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the County.

I. Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act.

Any person who violates any provision of this Article or any provision of any requirement issued pursuant to this chapter, may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Article shall also include written notice to the violator of such potential liability.

SECTION II: EFFECTIVE DATE. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Merced State of California.

SECTION III: SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end the provisions of this Ordinance are severable.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California, at a regular meeting thereof held on the ___ day of _____, 2012, upon motion by Supervisor _____ and seconded by Supervisor _____by the following vote:

SUPERVISORS

AYES:

NOES:

ABSENT:

_____
Hubert "Hub" Walsh, Chairman
Merced County Board of Supervisors

ATTEST:

James L. Brown
Clerk of the Board of Supervisors
County of Merced

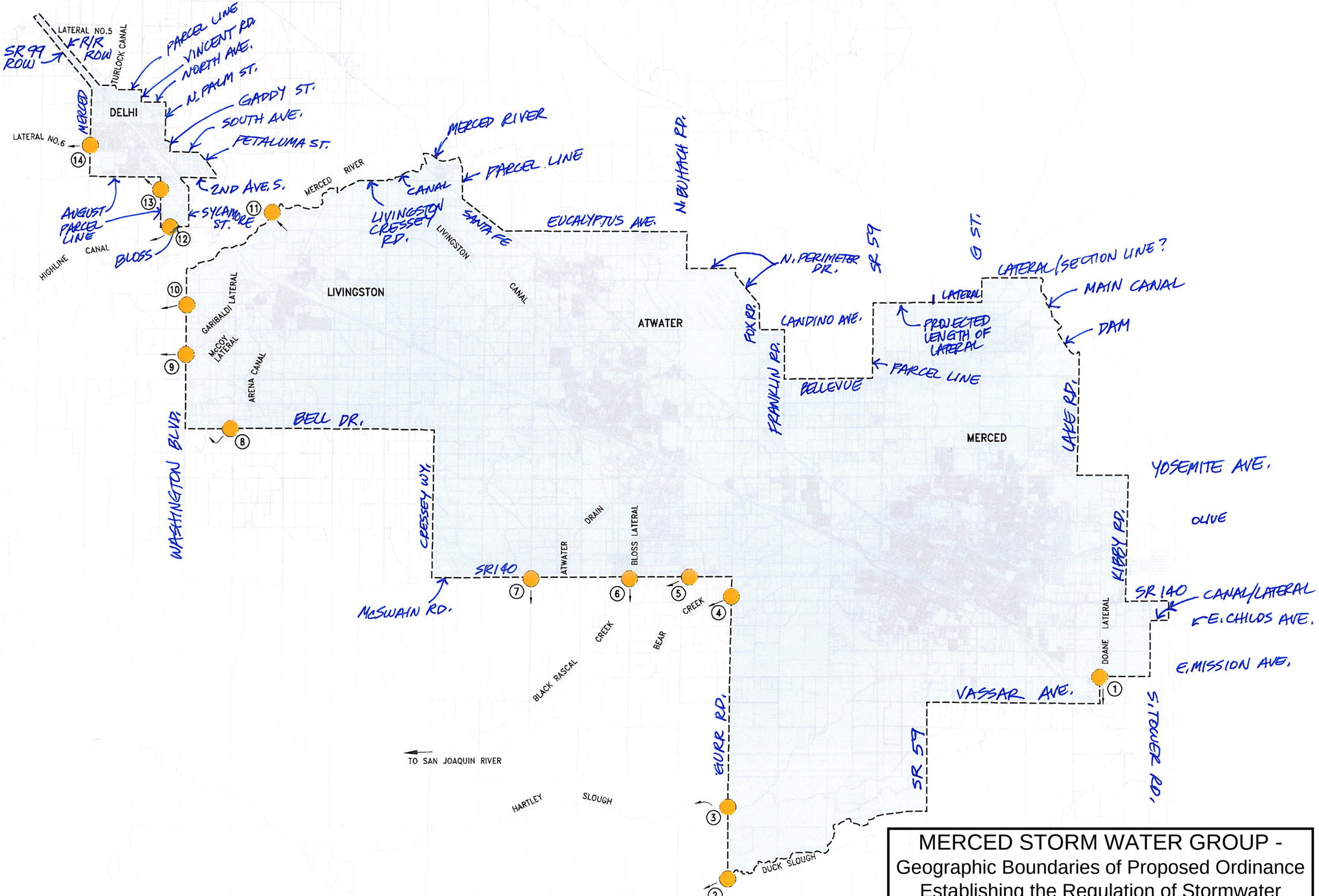
By:_____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:
MERCED COUNTY COUNSEL

By: _____
James N. Fincher

Attachment 1

Geographic Boundaries of CH 9.53 Regulation of Stormwater




MERCED STORM WATER GROUP -
Geographic Boundaries of Proposed Ordinance
Establishing the Regulation of Stormwater

9-20-2012