



California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814



Regional Council of Rural Counties
1215 K Street, Suite 1650
Sacramento, CA 95814

January 31, 2012

Dear Members of the California Congressional Delegation:

On behalf of the Regional Council of Rural Counties (RCRC) and the California State Association of Counties (CSAC), we are writing to urge you to cosponsor H.R. 2765, *The Sunshine on Conflicts Act of 2011* by Representative Gary Miller. This legislation addresses a pressing issue of concern that is hindering the ability to ensure that the most qualified individuals are considered for appointment to state water quality positions charged with the important task of regulating National Pollutant Discharge Elimination System (NPDES) permittees.

H.R. 2765 will provide for a conflict of interest approach to ensure that no state appointee may participate in a Clean Water Act (CWA) permitting decision in which he or she has a direct or indirect financial interest. The legislation is necessary to revise outdated provisions of the CWA and replace the percent of income test now applied under U.S. Environmental Protection Agency (U.S. EPA) regulation.

Section 304 of the CWA directed the U.S. EPA to develop regulations to prevent individuals who receive "significant income" from an entity that holds, or is applying for, a Clean Water Act NPDES permit from being nominated and appointed to a state water quality authority that implements the CWA. In a decades-old rule, EPA interpreted "significant income" to be 10% or more of an individual's income derived from an NPDES permit holder or an applicant seeking an NPDES permit. Additionally, the definition extends to immediate family members' income, creating an additional hurdle for qualification that has no relationship to actual conflict situations. The rule has led to numerous instances where highly qualified individuals with decades of technical experience have been prohibited from serving as state water quality regulators in the absence of any actual or perceived conflict of interest.

General and individual NPDES permits now cover the vast majority of local governments, school districts, and small businesses. For example, in California a former member of a local special district governing board was deemed ineligible for appointment to a California water quality board. The determination was made because his wife was employed by a public school district covered by the statewide general NPDES permit for small municipal stormwater discharges. In another instance, a part owner of a vineyard was ruled ineligible for appointment. The basis of this determination was simply because the vineyard sold grapes on the "open" market and the grapes were purchased by

vintners holding a general stormwater permit under the Clean Water Act. Reports of similar impacts have been experienced throughout California and in other parts of the country.

H.R. 2765 would address this inequitable situation by replacing the “significant income” definition governing eligibility with an updated and appropriate conflict standard that protects the interests of the public. The language would prevent a sitting member of a water quality authority from voting upon, or seeking to influence, any permit in which the member has a direct or indirect financial interest. This approach is familiar to virtually every town council, city council, county board of supervisors, not to mention the Congress.

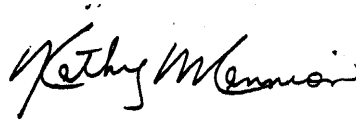
In addition to RCRC and CSAC, the following groups support H.R. 2765: California Association of Sanitation Agencies, National Association of Clean Water Agencies, Association of California Water Agencies, California Chamber of Commerce, League of California Cities, Partnership for Sound Science in Environmental Policy, and the Western States Petroleum Association.

In conclusion, RCRC and CSAC again urges that you join Representative Gary Miller and cosponsor H.R. 2765. Please feel free to contact Kathy Mannion at (916) 447-4806 or Karen Keene at (916) 327-7500 with any questions.

Sincerely,



Karen Keene, CSAC
Deputy Director, Federal Affairs



Kathy Mannion, RCRC
Legislative Advocate

cc: Congressman Gary Miller