

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

_____)	
In re:)	
)	
Buckley Air Force Base Municipal Separate)	NPDES Appeal No. 13-07
Storm Sewer System)	
)	
NPDES Permit No. CO-R042003)	
)	
_____)	

***AMICUS CURIAE* BRIEF OF NATURAL RESOURCES DEFENSE COUNCIL,
CONSERVATION LAW FOUNDATION, AND AMERICAN RIVERS
IN SUPPORT OF RESPONDENT EPA REGION 8**

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INTRODUCTION

Amicus organizations Natural Resources Defense Council, Conservation Law Foundation, and American Rivers¹ respectfully submit this *amicus* brief in opposition to the U.S. Department of the Air Force's ("Air Force's") Petition for Review of the pollutant discharge permit issued by EPA Region 8 to Buckley Air Force Base ("AFB").

Stormwater runoff from hard surfaces on developed sites – like rooftops, parking lots, and driveways – is the one of the only major sources of water pollution in the United States that is still growing. In essence, impervious surfaces create runoff because they prevent precipitation from infiltrating into the ground or being released back to the atmosphere by vegetation.

Stormwater from the built environment deposits harmful pollutants into receiving waters and scours stream banks, destroying wildlife habitat. Requirements to reduce runoff volumes, like the one at issue in this case, are imperative in order to address this enormous environmental problem. Simply put, the most effective way to restore waters degraded by stormwater, or to protect waters in developing areas that are still in good condition, is to reduce the amount of runoff generated by development – in many cases, by limiting the quantity of runoff each site generates to the amount that would be created under natural, "predevelopment" conditions.²

The "predevelopment hydrology" retention standard in Buckley AFB's permit is not only needed to maintain the quality of the rivers and streams into which the base discharges, but it is also a reasonable application of an existing federal environmental policy, and in fact is compelled by the standards that the Clean Water Act ("CWA") sets for stormwater permits. For these reasons, the Board should uphold the permit requirement.

¹ American Rivers was not among the original list of *amici* applicants approved by the EAB on Dec. 30, 2013, but seeks to join this brief. American Rivers has extensive experience with national stormwater policy and a strong interest in the standards for stormwater permits written by EPA.

² However, under certain circumstances it may be necessary to reduce runoff *beyond* predevelopment conditions in order to meet legal standards and protect water quality.

BACKGROUND

Stormwater Runoff From Developed Sites Like Those on Buckley AFB Is Impairing Rivers and Streams Throughout Colorado.

Hundreds of miles of rivers and thousands of acres of lakes in Colorado are impaired by pollutants commonly found in stormwater.³ Stormwater-related impairments are the result of urbanization and the transformation of natural landscapes to impervious areas; a study in one Colorado watershed south of Buckley AFB found that urbanization over the last several decades has significantly increased pollution and erosion in the watershed.⁴ Colorado is not alone in suffering from polluted runoff; for approximately 13 percent of rivers, 18 percent of lakes, and 32 percent of estuaries in the United States, the “primary” source of impairment is stormwater. EPA-BAFB-00001243.

Buckley AFB discharges its stormwater runoff into four primary receiving waters: East Toll Gate Creek, Granby Ditch, Murphy Creek, and Sand Creek, all of which ultimately flow into the South Platte River. EPA-BAFB-000026. Of these, East Toll Gate Creek and Sand Creek are designed by the State of Colorado as impaired by pollutants that are often found in stormwater: *E.coli* (Sand Creek) and selenium (both water bodies).⁵ EPA-BAFB-000027.

³ State of Colorado, *Integrated Water Quality Monitoring and Assessment Report B21-B22* (2012) (see Attachment 1); see also Robert Pitt, *The National Stormwater Quality Database, Version 3.1* (2011), available at http://rpitt.eng.ua.edu/Publications/4_Stormwater_Characteristics_Pollutant_Sources_and_Land_Development_Characteristics/Stormwater_characteristics_and_the_NSQD/NSQD%203.1%20summary%20for%20EPA%20Cadmus.pdf (describing the loadings of various pollutants in stormwater runoff across the country, such as metals and sediment, including data from sampling sites in Colorado) (see Attachment 2).

⁴ M.D. Harvey & C.E. Morris, American Society of Civil Engineers, “Downstream Effects of Urbanization in Fountain Creek, Colorado,” *Critical Transitions in Water and Environmental Resources Management: Proceedings of the 2004 World Water and Environmental Resources Congress* (Salt Lake City, Utah, June 27-July 1, 2004), available at <http://cedb.asce.org/cgi/WWWdisplay.cgi?142533>.

⁵ See G. Allen Burton, Jr. & Robert E. Pitt, *Stormwater Effects Handbook: A Toolbox for Watershed Managers, Scientists, and Engineers* 39 (fecal coliforms), 72 (selenium) (2001), available at http://unix.eng.ua.edu/~rpitt/Publications/BooksandReports/Stormwater%20Effects%20Handbook%20by%20%20Burton%20and%20Pitt%20book/MainEDFS_Book.html (see Attachment 3).

Reducing Runoff Volumes with Low Impact Development Techniques Is The Most Effective Method of Reducing Stormwater Pollution.

There is a broad consensus among regulators and stormwater experts that reducing runoff volumes from developed land is the most effective way to reduce stormwater pollution. The National Research Council (“NRC”) has stated, “A primary goal of stormwater management is to reduce the volume of runoff from impervious surfaces.” EPA-BAFB-00001439. Because greater runoff volumes lead to more pollution, reducing stormwater runoff by retaining it on-site can dramatically reduce pollutant loads from development. EPA-BAFB-00001230. On-site retention of stormwater prevents 100% of the pollutants in the retained runoff from mobilizing and reaching receiving waters. EPA-BAFB-00001304.

For this reason, the NRC recommends that stormwater management efforts focus on maintaining the predevelopment hydrology of a site – the natural conditions that existed prior to any development occurring there.⁶ Citing the NRC’s findings, EPA has stated that municipal separate storm sewer system (“MS4”) permit conditions should typically be “based on maintaining or restoring predevelopment hydrology.” EPA-BAFB-0000506. In many situations, it may be necessary to reduce runoff even beyond predevelopment hydrology conditions in order to protect receiving waters due to the increase in pollutant loading from development as compared with natural, undeveloped land.

EPA has drawn from and built on this broad consensus to conclude that the most effective method of reducing runoff pollution is a suite of practices collectively known as “low impact development” (LID), also known as “green infrastructure.” LID focuses on management of runoff as close as possible to its source, maintaining as much of a site’s natural hydrology as possible, using both site design (for example, the use of fewer impervious surfaces) and

⁶ National Research Council, *Urban Stormwater Management in the United States* 119 (2009), available at http://www.nap.edu/catalog.php?record_id=12465 (see Attachment 4).

infiltration practices like rain gardens, porous pavement, and grass swales. 40 C.F.R. § 122.34(b)(5)(iii); 64 Fed. Reg. 68,722, 68,759 (Dec. 8, 1999) (stating that “minimization of impervious areas, maintenance or restoration of natural infiltration, wetland protection, use of vegetated drainage ways and use of riparian buffers have been shown to reduce pollutant loadings in stormwater runoff from development areas”). These practices can be integrated into the design of a newly developed or redeveloped site in the first instance, or can be integrated into an existing developed site by retrofitting.

According to the National Research Council, many studies have “clearly demonstrated” a greater reduction in runoff from developments that employ LID compared to those that do not. EPA-BAFB-00001452. Additionally, EPA has found that, “[i]n the vast majority of cases,” implementation of LID is more affordable for property owners than traditional stormwater management practices that rely on curbs, gutters, pipes, and other hard infrastructure.⁷

ARGUMENT

I. The Permit Implicates No New Policy Considerations, But Rather Implements the Federal Government’s Existing Policies on Stormwater Management.

The Air Force argues in its petition that the permit implicates important policy considerations that the Board should review. However, federal policy on stormwater management is already well settled, including within the Department of Defense, and the permit’s requirements conform to that preexisting policy.

In 2009, the President issued Executive Order 13514, “Federal Leadership in Environmental, Energy, and Economic Performance.” Exec. Order No. 13,514, 74 Fed. Reg. 52,117 (Oct. 5, 2009). The presidential directive stated: “In order to ... safeguard the health of

⁷ U.S. EPA, *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices* iii (2008), available at http://water.epa.gov/polwaste/green/upload/2008_01_02_NPS_lid_costs07uments_reducingstormwatercosts-2.pdf (see Attachment 5).

our environment, the Federal Government must lead by example. It is therefore the policy of the United States that Federal agencies shall ... conserve and protect water resources through efficiency, reuse, and stormwater management....” *Id.* The order further stated that “the head of each agency *shall* ... ensur[e] that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.” *Id.* at 52,119 (emphasis added). The Guiding Principles, in turn, direct newly constructed federal buildings to “maintain or restore the predevelopment hydrology of the site with regard to temperature, rate, volume, and duration of flow using site planning, design, construction, and maintenance strategies.”⁸

The Department of Defense has publicly committed, by signing a memorandum of understanding with its fellow federal agencies, to comply with these Guiding Principles.⁹ In recognition of this commitment, DOD issued “Unified Facilities Criteria for Low Impact Development” in 2010, providing planning, design, and construction criteria for stormwater management at all Defense agency construction projects.¹⁰ In the policy memorandum transmitting those criteria, DOD established the maintenance of predevelopment hydrology at construction projects over 5,000 square feet as official Department policy. *Id.* at 2. Further, DOD explicitly acknowledged that “Low Impact Development (LID) will help to protect natural resources from continuing degradation,” and that “LID techniques can be used to manage site civil costs.” *Id.* at Revision Summary Sheet.

⁸ U.S. Department of Energy, *High Performance and Sustainable Buildings Guidance* at 7 (Dec. 1, 2008), available at http://www1.eere.energy.gov/femp/pdfs/guidance_hpsb.pdf (updating the original Guiding Principles established in 2006) (see Attachment 6).

⁹ *Federal Leadership in High Performance and Sustainable Buildings: Memorandum of Understanding* (2006), available at http://www.wbdg.org/pdfs/sustainable_mou.pdf (see Attachment 7).

¹⁰ U.S. Department of Defense, *Unified Facilities Criteria (UFC): Low Impact Development* (Nov. 15, 2010), available at http://www.wbdg.org/ccb/DOD/UFC/ufc_3_210_10.pdf (see Attachment 8).

These specific stormwater management policies follow from a long history of federal commitment to protecting water quality. Indeed, the Air Force itself issued a policy directive twenty years ago, stating: “Achieving and maintaining environmental quality is an essential part of the Air Force mission. The Air Force is committed to: ... planning its future activities to minimize environmental impacts; ... and eliminating pollution from its activities wherever possible.”¹¹

In conclusion, the permit at issue in this case implicates no new policy considerations that require review by this Board. Rather, it simply implements a preexisting federal policy that has been affirmed at every relevant level of the executive branch, from the President of the United States to the entirety of the Department of Defense to the Air Force itself.

II. The Permitting Authority, Not the Permittee, Has the Responsibility of Determining Whether the Chosen Pollution Controls Will Reduce the Discharge of Pollutants to the Maximum Extent Practicable.

The Air Force characterizes the MS4 permitting requirements of the Clean Water Act as one in which the permittee has the ultimate authority to select pollution controls that it believes will satisfy the standards of the Act. However, the CWA establishes a technology-based standard for MS4 permits in Section 402(p), which ensures that permitting authorities “shall require controls to reduce the discharge of pollutants to the maximum extent practicable” (also known as the “MEP standard”). 33 U.S.C. § 1342(p)(3)(b)(iii).

The Air Force’s petition expresses in numerous places an assumption that it, the permittee, has the final say about whether its chosen runoff controls meet this standard. *See* Petition at 7 (“The Phase II Rule requires an operator of a small MS4 to develop, implement, and enforce a storm water management program (‘SWMP’) designed to reduce the discharge of

¹¹ Secretary of the U.S. Air Force, *Air Force Policy Directive 32-70: Civil Engineering – Environmental Quality* at 1 (July 20, 1994), available at <http://infohouse.p2ric.org/ref/10/09620.pdf> (*see* Attachment 9).

pollutants from the MS4 to the maximum extent practicable”), 18 (“The base-specific SWMP, developed to support the permit, is the appropriate vehicle for the Buckley AFB MS4 to provide the specifics on how it will run the stormwater program to reduce the discharge of pollutants under the MEP standard...”). The Air Force specifically argues that EPA cannot omit from the permit a proviso that the base maintain predevelopment hydrology “to the maximum extent practicable” or “to the maximum extent technically feasible,” implying a view that the Air Force, not EPA, gets to determine what is practicable or feasible. *See* Petition at 10, 15.

The Air Force’s characterization of the law conflicts with the Clean Water Act. Courts have agreed that the statute’s MEP standard “imposes a clear duty *on the agency* to fulfill the statutory command to the extent that it is feasible or possible.” *Defenders of Wildlife v. Babbitt*, 130 F.Supp.2d 121, 131 (D.D.C. 2001) (emphasis added; internal citations omitted); *see also Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 (8th Cir. 1995) (“feasible” means “physically possible”). While the term “practicable” is not defined in the municipal stormwater context, “practicable” as used in a different section of the Clean Water Act has been defined as meaning that technology is required unless the costs are “wholly disproportionate” to pollution reduction benefits. *Rybachek v. EPA*, 904 F.2d 1276, 1289 (9th Cir. 1990).

Critically, it is the responsibility of the permitting authority—not the permittee—to determine the level of pollutant control that will meet the MEP standard. *Environmental Defense Center v. EPA*, 344 F.3d 832, 855-56 (9th Cir. 2003) (hereinafter “*EDC*”). In *EDC*, the U.S. Court of Appeals for the Ninth Circuit invalidated the part of EPA’s Phase II Rule that allowed small MS4s to develop their own stormwater management programs without EPA oversight. The court held that the regulating entity must be the one to ensure that permittees’ programs meet the MEP standard. *Id.* This responsibility may not be delegated to the permittee, as there is

a risk that an MS4 operator might “misunderstand[] or misrepresent[] its own stormwater situation and propos[e] a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.” *Id.*

This reasoning was adopted by the U.S. Court of Appeals for the Second Circuit when it ruled that permittee pollution control programs developed under a different section of the Clean Water Act must also be reviewed by the permitting authority to ensure that they meet legal standards. *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 498-502 (2d Cir. 2005). That court stated, “Under the Act, permits authorizing the discharge of pollutants may issue only where such permits *ensure* that every discharge of pollutants will comply with all applicable effluent limitations and standards.” *Id.* at 498 (emphasis original).

In sum, the responsibility to determine whether a particular pollution control measure satisfies the MEP standard lies with the permitting authority, which in this case is EPA. In this case, drawing from the substantial scientific research and consensus described above, and as discussed in additional detail below, EPA reasonably determined that a predevelopment hydrology design standard for development at Buckley AFB was necessary to reduce the discharge of pollutants to the maximum extent practicable. The Air Force may not like that determination, but because its petition does not show that the determination constitutes clear error, the Board must uphold the Agency’s decision.

III. EPA Had Not Only the Discretion, But Also the Obligation, to Include in the Permit a Post-Construction On-Site Retention Standard for Stormwater Runoff.

The Air Force argues that EPA exceeded its statutory authority under the Clean Water Act by establishing a predevelopment hydrology retention requirement; EPA, in turn, defends the permit requirement as a reasonable exercise of discretion under 33 U.S.C. § 1342(p)(3)(B)(iii).

In fact, however, EPA had not just the authority or discretion, but the *obligation*, to impose this requirement in the permit.

A. Because a predevelopment hydrology retention standard has been shown to be practicable, EPA was obligated to include that requirement in this permit in order to satisfy the Clean Water Act's MEP standard.

As discussed above, pursuant to the Clean Water Act's MEP standard, "Permits for discharges from municipal storm sewers ... *shall* require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii) (emphasis added). In other words, EPA must require the use of the control that will achieve maximum pollutant reductions as long as it is practicable.

As established in the Factual Background, on-site retention of stormwater using low impact development is the most effective "management practice" or "control technique" that can be used to reduce pollutant loadings, and EPA found that a predevelopment hydrology standard would achieve maximum reductions in this case. Further, EPA has determined that this approach is practicable for Buckley AFB after considering a number of nationwide and site-specific factors. In its brief, EPA included many examples of permits, both inside and outside of Region 8, containing similar requirements to the one at issue here. EPA Response at 25-27. Some of those requirements are being implemented at properties in denser urban environments than an Air Force Base, by entities with far fewer resources than the U.S. military. Moreover, EPA also reasonably concluded that a predevelopment hydrology standard was practicable at Buckley AFB itself, obviating the need for a technical infeasibility proviso in the permit.

Because this standard is both practicable and the most effective approach for Buckley AFB, EPA was obligated to require it in the permit in order to satisfy the CWA's MEP standard. The Washington Pollution Control Hearings Board (the "PCHB") applied the same test to determine a permitting authority's legal duty under the MEP standard in deciding a challenge to Washington State's statewide stormwater permits. *Puget Soundkeeper Alliance v. Ecology*, 2008 WL 5510412 (Wash. PCHB Aug 7, 2008). In that case, after an extensive hearing involving weeks of testimony from many fact and expert witnesses, the PCHB concluded that the permits were obligated to require the use of low impact development for stormwater management because it was more effective than other methods and because it was practicable throughout the state.

The PCHB found that traditional structural engineered stormwater management practices are, on their own, inadequate to address municipal stormwater pollution and that the use of LID techniques for the reduction and control of stormwater pollutants at the site, parcel and subdivision level is a necessary requirement of the permit in order to meet the MEP requirements of federal law. *Id.* at *12, *18, *26-27. The PCHB concluded that there is "no dispute" that a combination of aggressive use of LID techniques, coupled with best conventional engineering techniques and land use action to preserve a high percentage of native land cover, is "necessary to reduce pollutants in stormwater to the maximum extent and to preserve water quality." *Id.* at *18. Additionally, the PCHB found that the concept of LID is "well-established," and that LID is often less costly than traditional methods of addressing stormwater pollution. *Id.* at *14, *18, *20. In short, the PCHB found that "[r]equiring municipalities to impose parcel and subdivision-level LID best management practices represents a cost-effective, practical advancement in stormwater management." *Id.* at *18.

The same rationale, applied in this case, leads to the conclusion that a predevelopment hydrology standard, being both practicable and necessary to improve water quality, must be included in Buckley AFB's MS4 permit to satisfy the Clean Water Act's MEP standard. EPA translated the general "maximum extent practicable" standard into a site-specific stormwater management requirement, as it was required to, leaving the Air Force with flexibility to determine how best to implement the mandate. Not only did EPA not commit a clear error in imposing this requirement, it would have done so if it had *not* included it.

B. To the extent that EPA found the predevelopment hydrology standard was needed to ensure compliance with Colorado water quality standards, the Agency was obligated to include that requirement in the permit to satisfy the Clean Water Act's water quality-based provisions.

Contrary to how both the Air Force and EPA characterize the state of the law, Petition at 9 and EPA Response at 6, this Board has already held that MS4 permits must ensure compliance with water quality standards. While it is not necessary for the Board to reach this issue because the predevelopment hydrology retention requirement is needed to satisfy the MEP standard, to the extent that the retention standard was found necessary to ensure compliance with Colorado's water quality standards, EPA was required to include it in the permit for that reason as well.

The stated goal of the Clean Water Act is the complete elimination of the discharge of pollutants into the Nation's waters. 33 U.S.C. § 1251(a). In keeping with this goal, the Act requires each state to adopt and submit for federal approval water quality standards for all waters within its boundaries. 33 U.S.C. §§ 1311(b)(1)(C), 1313. When Congress enacted the 1972 amendments that created the modern Clean Water Act, Council on Environmental Quality (CEQ) Chairman Train explained the role of water quality standards, stating, "Speaking very generally, the whole permit program is tied to the water quality program standards and is a mechanism designed to reach those standards." 92 Cong. S4340 (June 22, 1971).

For this reason, the Act and implementing regulations require that all NPDES permits must include conditions adequate to “ensure compliance” with applicable water quality standards. 40 C.F.R. § 122.4(d); *see also* 33 U.S.C. §§ 1311(b)(1)(C), 1342(a). Further, the regulations require each NPDES permit to contain limitations on all pollutants or pollutant parameters that “are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.” 40 C.F.R. § 122.44(d)(1)(i).

The EAB has held that this requirement applies equally to MS4 permits. *In re Government of the District of Columbia Municipal Separate Storm Sewer System*, 10 E.A.D. 323, 329, 335-43 (EAB 2002) (requiring “imposition of conditions [that] ensure compliance with the applicable water quality requirements of all affected states”). Soon after the enactment of the municipal stormwater permit requirements, EPA’s General Counsel similarly stated, “[t]he better reading of Sections 402(p)(3)(B) and 301(b)(1)(C) [of the Clean Water Act] is that all permits for MS4s must include any requirements necessary to achieve compliance with WQS.”¹² As EPA observed in promulgating the Phase II stormwater rule:

Any NPDES permit issued under today’s rule must, at a minimum, require the operator to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from a regulated system to the MEP, to protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act (see MEP discussion in the following section). *Absent evidence to the contrary*, EPA presumes that a small MS4 program that implements the six minimum measures in today’s rule does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. As discussed further below, however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. *If the program is inadequate to protect water quality, including water quality standards, then the permit*

¹² Memorandum from E. Donald Elliott, Assistant Administrator and General Counsel, EPA, re: Compliance with Water Quality Standards in NPDES Permits Issued to Municipal Separate Storm Sewer Systems (Jan. 9, 1991) at 1 (*see* Attachment 10).

will need to be modified to include any more stringent limitations necessary to protect water quality.

64 Fed. Reg. at 68,752 (emphasis added).

In sum, while the technology-based MEP standard sets the minimum baseline for the pollutant reductions that MS4s must achieve, water quality-based limitations require MS4s to take additional actions, and to reduce pollutants beyond what technology-based standards would require, in order to ensure that water quality standards are attained.

In characterizing the MEP standard as “replac[ing]” the Clean Water Act’s water quality-based requirements, Petition at 9, and contending that MS4 permits are “[u]nlike other NPDES permits” because they are “subject to the unique requirements of CWA section 402(p)(3)(B) rather than the requirements of CWA § 301(b),” EPA Response at 6, the Air Force and EPA have both misstated the applicable law. As this Board has already held, MS4 permits, like the one for Buckley AFB, are required to ensure compliance with all applicable water quality standards. *In re Government of the District of Columbia*, 10 E.A.D. at 335-43; *see also* 33 U.S.C. §§ 1311(b)(1)(C), 1342(a); 40 C.F.R. § 122.4(d)(1)(i).¹³ In fact, EPA seemingly recognized this requirement in the statement of basis for this permit, in which the agency stated that the “measures included in this permit are the means through which Buckley AFB complies ... with the water quality related provisions of the CWA.” EPA-BAFB-000030.

In developing Buckley AFB’s permit, EPA found that changing development patterns in the watershed were “affecting the hydrology of the receiving waters for the MS4 discharges.” EPA Response at 9. In the permit’s statement of basis, the agency explained that the permit included “[c]ontrols for stormwater runoff from new developments and redevelopments” because

¹³ The cases EPA cites to support its mistaken assertion to the contrary are not binding on this Board or the 10th Circuit. *See* EPA Response at 6 (citing *Natural Res. Def. Council v. EPA*, 966 F.2d 1292, 1308 (9th Cir. 1992) and *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999)).

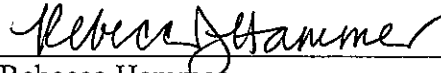
of the potential for receiving waters to be “more significantly impacted” by additional development on the base and in the surrounding urban area. EPA-BAFB-000038.

To the extent that these statements represent a finding that development on the base had the potential to contribute to water quality impairments, and that a requirement for new developments to maintain predevelopment hydrology was necessary to ensure compliance with water quality standards, EPA was obligated to include that requirement in the permit. Indeed, as discussed in the introduction, at least two of the base’s receiving waters are already impaired by pollutants associated with stormwater, so a requirement to reduce pollutant loads from development is both rational and necessary.

CONCLUSION

For the foregoing reasons, the Air Force’s petition should be denied in its entirety.

Respectfully submitted this 14th day of April, 2014.



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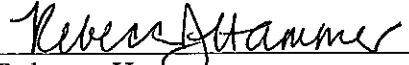
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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

I, Rebecca Hammer, hereby certify, in accordance with 40 C.F.R. § 124.19(d)(1)(iv), that this *Amicus Curiae* Brief of Natural Resources Defense Council, Conservation Law Foundation, and American Rivers in Support of Respondent EPA Region 8, including all relevant portions, contains 4,713 words.

Date: 4/14/14



Rebecca Hammer
Natural Resources Defense Council

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Extension of Time in the matter of Buckley Air Force Base Municipal Separate Storm Sewer System, NPDES Appeal No. 13-07, were served:

Via the EAB's E-Filing System to:

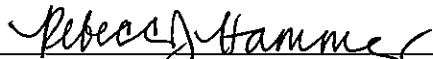
Clerk of the Board
United States Environmental Protection Agency
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1341 G Street NW, Suite 600
Washington, DC 20005

Via E-Mail and U.S. Mail to:

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Date: 4/14/14



Rebecca Hammer
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LIST OF ATTACHMENTS

- ATTACHMENT 1: State of Colorado, *Integrated Water Quality Monitoring and Assessment Report* (2012).
- ATTACHMENT 2: Robert Pitt, *The National Stormwater Quality Database, Version 3.1* (2011).
- ATTACHMENT 3: G. Allen Burton, Jr. & Robert E. Pitt, *Stormwater Effects Handbook: A Toolbox for Watershed Managers, Scientists, and Engineers* (2001), Chapters 2 and 3.
- ATTACHMENT 4: National Research Council, *Urban Stormwater Management in the United States* (2009), Chapter 2.
- ATTACHMENT 5: U.S. EPA, *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices* (2008).
- ATTACHMENT 6: U.S. Department of Energy, *High Performance and Sustainable Buildings Guidance* (Dec. 1, 2008).
- ATTACHMENT 7: *Federal Leadership in High Performance and Sustainable Buildings: Memorandum of Understanding* (2006).
- ATTACHMENT 8: U.S. Department of Defense, *Unified Facilities Criteria (UFC): Low Impact Development* (Nov. 15, 2010), available at http://www.wbdg.org/ccb/DOD/UFC/ufc_3_210_10.pdf.
- ATTACHMENT 9: Secretary of the U.S. Air Force, *Air Force Policy Directive 32-70: Civil Engineering – Environmental Quality* (July 20, 1994).
- ATTACHMENT 10: Memorandum from E. Donald Elliott, Assistant Administrator and General Counsel, EPA, re: Compliance with Water Quality Standards in NPDES Permits Issued to Municipal Separate Storm Sewer Systems (Jan. 9, 1991).