

## State Water Resources Control Board

February 26, 2016

### VIA EMAIL ONLY

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Dear Ms. Hayat, and Messrs. Cooper, Pugsley, and Unger,

PETITION OF NATURAL RESOURCES DEFENSE COUNCIL, HEAL THE BAY, AND LOS ANGELES WATERKEEPER FOR REVIEW OF APPROVAL OF WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD ORDER R4-2012-0175: WEB POSTING OF OFFICE OF CHIEF COUNSEL COMMUNICATIONS WITH PETITIONERS AND INTENT TO PROPOSE OWN MOTION ORDER

### **SWRCB/OCC FILE A-2386**

On February 1, 2016, the State Water Resources Control Board (State Water Board) received a Public Records Act (PRA) request from the law firm of Richards, Watson, and Gershon. The firm represents several cities participating in the Watershed Management Programs that are the subject of the above petition. The PRA request sought disclosure of communications between the State Water Board Office of Chief Counsel and the Natural Resources Defense Council and Los Angeles Waterkeeper (Petitioners) regarding the above matter as well as communications within the Office of Chief Counsel referring to or memorializing such communications. This letter serves to inform all interested persons that the State Water Board is hereby providing the non-privileged documents responsive to the PRA request (as narrowed by requestors) to all interested persons by posting them on its web site, accessible through a link at [http://www.swrcb.ca.gov/public\\_notices/petitions/water\\_quality/a2386\\_losangeles\\_wmp.shtml](http://www.swrcb.ca.gov/public_notices/petitions/water_quality/a2386_losangeles_wmp.shtml)

On May 28, 2015, Petitioners simultaneously petitioned both the State Water Board and the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board), requesting review of the Los Angeles Water Board Executive Officer's conditional approval of several Watershed Management Programs under Los Angeles Water Board Order R4-2012-0175. The Executive Officer subsequently found that the conditions of the conditional approval were satisfied and

approved the Watershed Management Programs in full. On July 3, 2015, the Los Angeles Water Board notified all parties that it would consider the petition at a September 10, 2015, Board meeting. On August 14, 2015, the Office of Chief Counsel of the State Water Board contacted Petitioners to suggest that they put the State Water Board petition into abeyance pending the September 10, 2015, Los Angeles Water Board meeting, in order to allow the State Water Board the benefit of the Los Angeles Water Board's determination on the petition prior to State Water Board consideration. On August 24, 2015, Petitioners submitted a (revised) letter, requesting that the petition be put into abeyance through November 9, 2015.

On September 10, 2015, the Los Angeles Water Board ratified the determination of the Executive Officer with regard to the Watershed Management Programs in question. Petitioners' May 28, 2015, petition requested State Water Board review of the petition, absent an action by the Los Angeles Water Board to invalidate the Executive Officer's conditional approval and deny the Watershed Management Programs. The Office of Chief Counsel concluded that the May 28, 2015, petition was still before the State Water Board following the Los Angeles Water Board ratification of the Executive Officer's action. By letter dated September 17, 2015, and copied to all interested persons, the State Water Board stated that the petition is in abeyance and explained that, because the petition had already been active for 88 days, the petition could be dismissed just three days after it was activated in accordance with the State Water Board's new petition regulations. Anticipating the need to make a determination as to whether or not to issue a 30-day letter commencing the petition review process, the Office of Chief Counsel contacted Petitioners on September 22, 2015, to inquire as to whether they expected to activate the petition prior to November 9, 2015. Because the Office of Chief Counsel also anticipated that the State Water Board consideration of the petition would be informed by actions of the Los Angeles Water Board in reviewing the petition, the Office of Chief Counsel requested that the Petitioners supplement their petition and submit an addendum.<sup>1</sup> The telephonic conversation between the Office of Chief Counsel and Petitioners was memorialized in a letter dated September 24, 2015, and an e-mail exchange dated September 28, 2015; however the letter and e-mail exchange were not copied to all interested persons. Petitioners submitted the petition addendum on October 30, 2015.

The State Water Board thereafter received requests by the Los Angeles Water Board and several interested persons to reject the petition addendum on a number of procedural grounds. By e-mail notice to all interested persons dated January 28, 2015, the State Water Board indicated that it would resolve the requests in a future draft order, but also informed interested persons that Petitioners had submitted the petition addendum to the State Water Board in accordance with a phone conversation and e-mail exchange in which the State Water Board authorized the submission.

The State Water Board Office of Chief Counsel may generally communicate directly with parties to a petition on procedural matters, without copying all parties. Nevertheless, the Office of Chief Counsel recognizes that this communication appears to have generated concern among interested persons with regard to the transparency of the proceedings. Accordingly, as stated above, the State Water Board is posting all communications between the State Water Board and the Petitioners on this matter, as well as all non-privileged internal communications referencing communications between the Office of Chief Counsel and Petitioners.

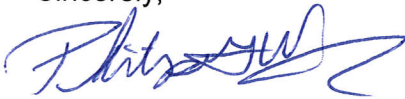
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<sup>1</sup> The State Water Board has discretion under California Code of Regulations section 2050.5, subdivision (b), to allow additional submissions in petition proceedings.

Further, the Office of Chief Counsel will take the additional step of proposing an order for the State Water Board to review, on its own motion, the actions of both the Los Angeles Water Board's Executive Officer and of the Los Angeles Water Board with regard to the Watershed Management Programs. The Office of Chief Counsel will do so to ensure that a full review of the approved Watershed Management Programs is not impeded by procedural objections because the State Water Board believes the issues raised by all parties in this matter are significant legal and policy issues requiring resolution, and further because Petitioners relied on the direction from the Office of Chief Counsel in submitting a petition addendum, rather than a new petition. The State Water Board will provide notice to all interested persons regarding the own motion order at a future date.

If you have any questions regarding this letter, please contact me at (916) 341-5178 or at [philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov).

Sincerely,



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