

Office of the City Manager



November 30, 2016

Jeanine Townsend  
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RE: SWRCB/OCC File A-2455 (a thru m)  
Comments to A-2455 (a thru m) – December 6 Board Item (Own Motion Order)

Dear Ms. Townsend:

We request that you provide this comment letter to the State Board members for their consideration of the draft Own Motion Order noticed for its meeting on December 6, 2016.

The City of Berkeley's Petition A-2455(i) urges the State Board to adopt an Own Motion Order in this action currently pending before the State Board at your meeting on December 6, 2016, so as to assure that the action is taken within the 270 day period provided by state regulations. We appreciate the Board's desire to avoid unnecessary or premature litigation if the 270 day limitation were to expire prior to adoption of an Own Motion Order. The City is supportive of this objective. However, as stated below we object to the open-ended extension of your consideration of our petition that is dependent on resolution on another matter before the Board.

The City is mindful of the need for the State Board to have sufficient time to review the important issues set forth in our Petition and the other petitions for review filed in this matter. This matter was deemed complete by the Board on March 15, 2016, and it would seem that the Board has already had sufficient time to consider the issues raised in our petition over the course of the last eight months. We have been implementing the San Francisco Bay Regional Board Order for almost a year at substantial cost, including those provisions challenged in our petition. In addition, we have concerns with the open-ended time frame for your consideration of our petition in the draft Own Motion Order.

The notification and the draft Order provides that the Board believes that it is appropriate to completely review the Watershed Management Programs (WMPs) under an MS4 permit issued by the Los Angeles Regional Water Board prior to addressing the challenges to the San Francisco Bay MS4 Order. We fail to understand why these issues must be consider sequentially and cannot proceed at the same time as do most other matters before the Board.

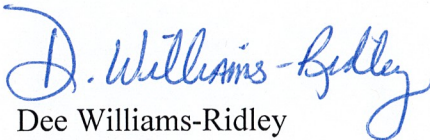


The issues raised in our Petition are significantly different from those raised in the Petition for Review in the Los Angeles MS4 permit matter. The issues raised in our Petition include the following: 1) several Regional Board procedural issues such as Regional Board member recusals, non-disclosure of Regional Board member emails, statement of Board member tentative conclusions prior to receiving public testimony, consideration of last-minute supplemental revisions without sufficient opportunity for public comment, and issues regarding closed session; 2) visual assessment of trash reduction outcomes; 3) trash load reduction receiving water monitoring; and 4) achievement of mercury and PCB load reductions as numeric effluent limitations as opposed to numeric action levels. The review of the Los Angeles WMPs does not involve these issues. The only issue common to the two petition proceedings before the Board is the "deemed in compliance" receiving water and prohibition related issue raised in the San Francisco Baykeeper petition.

In conclusion, we are not opposed to agreeing to a 60-day extension of time to allow for review of our petition to be completed, or to the adoption of an alternative Own Motion Order providing for completion of review within a reasonable and measurable period of time. We believe that the State Board should identify an expedited schedule for addressing our Petition, one which has little or no overlap with resolution of the issues raised in the Los Angeles matter. The Regional Board MRP 2 was adopted almost one year ago, and it is time that the issues presented in our petition are resolved.<sup>1</sup>

Thank you for your consideration.

Sincerely,



Dee Williams-Ridley  
City Manager

cc: A-2455 (a thru m) Distribution List

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<sup>1</sup> We have also requested in a separate letter that our Petition be placed in abeyance status to prevent having to evaluate an alternative legal course of action in case an Own Motion Order is not timely adopted and/or to provide the State Board with a reasonable amount of time to review the matter in a more appropriately framed Own Motion Order.

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