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December 2, 2016

VIA U.S. MAIL AND EMAIL: commentletters@waterboards.ca.gov



Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments to A-2455 (a-m)-December 6, 2016 Board Item [Own Motion Order]

Dear Ms. Townsend:

The City of San Jose ("San Jose") wishes to comment on the State Water Resources Control Board's proposed adoption of the draft Own Motion Order. While San Jose encourages the adoption of an Own Motion Order that would allow the State Water Resources Control Board ("State Board") reasonable time to fully consider Water Quality Petitions A-2455 (a-m), San Jose urges the State Board not to adopt the draft Own Motion Order in its current form. The draft Own Motion Order as proposed fails to include a definitive timeline for considering the issues identified in Water Quality Petitions A-2455 (a-m). Instead, the draft Own Motion Order ties review of the Water Quality Petitions on the San Francisco Municipal Regional Permit, NPDES Permit No. CAS612008 ("MRP 2.0") to the review of the Los Angeles MS4 Permit Watershed Management Programs.

Admittedly, there is one common issue in the Los Angeles Watershed Management Programs and the Baykeeper Petition challenging MRP 2.0. San Jose's Petition however, seeks State Board review of several matters unrelated to the Water Management Programs. The procedural defects in adoption of MRP 2.0 are wholly unrelated to the Los Angeles Permit's Watershed Management Programs, as are the effluent limitations and other concerns raised in San Jose's Petition A-2455(g).

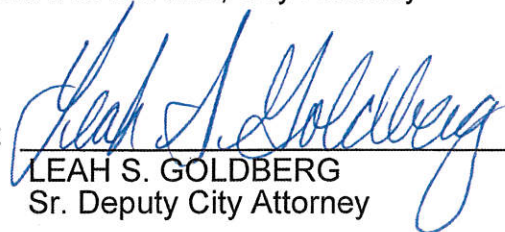
San Jose filed its Water Quality Petition almost 12 months ago and for the past 11 months, San Jose has been complying with MRP 2.0 in good faith pending review by the State Board.¹ The regulatory timelines to act were designed to give the regulated community concrete timeframes within which issues and concerns would be considered. As noted above, San Jose does not object to an Own Motion Order that contains a definitive timeline for reviewing the City's petition, but an open ended extension while San Jose continues to comply with MRP 2.0 is both contrary to the regulatory scheme and prejudicial to the City.

Should the State Board choose to adopt the draft Own Motion Order, San Jose urges the State Board to decouple the review of Water Quality Petitions A-2455(a-m) from the Los Angeles Watershed Management Programs review and to include a reasonable and definitive schedule for review of the A-2455 Petitions. If the State Board cannot commit to reviewing the Water Quality Petitions A-2455(a-m) within the next 60 to 90 days, San Jose urges the State Board to stay the implementation of MRP 2.0 until such time as the State Board can review the noted petitions.

Sincerely yours,

RICHARD DOYLE, City Attorney

By:


LEAH S. GOLDBERG
Sr. Deputy City Attorney

LSG/lsg

¹ Please note that on November 10, 2016, San Jose placed its Petition into abeyance. This comment letter is in no way intended as an action to remove San Jose's petition from abeyance.

All Petitioners and Their Counsel of Record
and All Interested Persons

A-2455(a thru m) Distribution List

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A-2455(b)

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A-2455(c)

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A-2455(d)

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