

November 10, 2016

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***By Email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)***

12/6/16 Board Meeting-Item 3  
Comments to A-2455  
Deadline: 12/5/15 12:00 noon

Ms. 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 - December 6, 2016 Board Item [Own Motion Order]**

To Whom It May Concern:

This comment letter is submitted on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) with respect to the above referenced matter.<sup>1</sup> SCVURPPP opposes adoption of the subject "Own Motion" in its current form and particular opposes the adoption of any own motion that defers review of Water Quality Petitions A-2455(a)-(m) on an open-ended basis based on forthcoming review of water quality petitions addressing the unrelated approval of watershed management plans by the Executive Officer of the Los Angeles Area Regional Water Quality Control Board.

While SCVURPPP is not opposed to agreeing to a 60-day extension of time to allow for review of Petitions 2455(a)-(m) to be completed or even the adoption of an alternative "own motion" providing for completion of review of Petitions 2455(a)-(m) within several additional months beyond that, the State Board needs to identify a reasonable and transparent schedule for addressing these Petitions, which present issues with little or no overlap with those arising in the Los Angeles matter.

SCVURPPP submitted Water Quality Petition A-2455(c) on December 16, 2015, requesting review of the California Regional Water Quality Control Board, San Francisco Bay Region's (Region 2's) November 19, 2015 action in adopting NPDES Permit No. CAS612008 (MRP 2.0) on both specified procedural and substantive grounds.<sup>2</sup> This Petition was deemed

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<sup>1</sup> The 15 municipal co-permittee agencies comprising SCVURPPP are: the cities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale; the County of Santa Clara; and the Santa Clara Valley Water District.

<sup>2</sup> The substantive issues raised in SCVURPPP's Petition do not involve permit provisions regarding watershed management plans or water quality improvement plans, neither of which are elements of MRP 2.0.

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complete and accepted for review by the State Board on March 15, 2016, just a day before it would have been deemed denied by operation of law, leaving the procedurally flawed and substantively unjustified actions of Region 2 to be reviewed and addressed on a timely basis by the State's courts.<sup>3</sup>

In its March 15, 2016 letter accepting SCVURPPP's Petition for Review and the other associated petitions and "activating" those that had been put into abeyance, the State Board indicated that it "will begin its review" and suggested thereby that it would undertake the review process with diligence and pursue it to conclusion in good faith so as to avoid prejudice to the petitioners (who remain subject to MRP 2.0 and its requirements pending the outcome of the review process).

Now more than a full year has passed since Region 2 adopted MRP 2.0 and over eight months have passed since the State Board decided to exercise its option to activate review while knowing that MRP 2.0's requirements are not subject to a stay. The State Board's lack of meaningful action on this Petition to date and, more so, its proposed Own Motion, which lacks any commitment to completing review within an identified and reasonable timeline (and instead has that timeline turn on review of a different and largely distinct matter which itself lacks a concrete schedule), is now calling its own credibility into question and further prejudicing the petitioners with each passing day.<sup>4</sup>

SCVURPPP therefore requests that the State Board remedy this situation by modifying its proposed Own Motion to either commit itself to a measurable timeline for completing review of the A-2455 petitions or to stay MRP 2.0's further effectiveness until such time as the State Board's review is completed along an unspecified timeline.<sup>5</sup>

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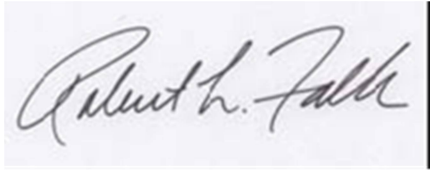
<sup>3</sup> To avoid a potential loss of their judicial review rights in the face of the then-imminent statutory deadline for the State Board to determine whether it would grant or deny review, on March 12, 2016, Petitioners requested that their Petition be put into abeyance. However, on March 15, 2016, they were informed by the State Board that their and all other petitions related to MRP 2.0 would be removed from abeyance and activated in light of the State Board's decision to grant review.

<sup>4</sup> Having relied on the State Board "initiating" review for almost nine months, SCVURPPP's members want to be clear that they are not requesting that the State Board now summarily deny or allow their Petition to be deemed denied so that they can now pursue the matter in the courts at this late point – indeed, SCVURPPP has instead separately requested that it be placed back into abeyance to avoid having to evaluate such an alternative course of action on a near term basis and to provide for a reasonable amount for the State Board to review the matter pursuant to a more appropriately framed own motion and/or stay.

<sup>5</sup> The State Board can issue such a stay on its own motion.

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Thank you for your consideration.

A handwritten signature in black ink, reading "Robert L. Falk", is enclosed in a thin black rectangular border. The signature is written in a cursive style.

Robert L. Falk  
Program Legal Counsel  
Santa Clara Valley Urban Runoff  
Pollution Prevention Program

cc: Bruce Wolfe, Executive Officer, RWQCB, Region 2  
Michael Lauffer, Chief Counsel, SWRCB  
Matt Fabry, SMCWPPP (for further distribution to its co-permittees)  
SCVURPPP Co-Permittees