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27 STATE WATER RESOURCES CONTROL BOARD

28 In the Matter of the Petition of NRDC, Los Angeles Waterkeeper, and Heal the Bay, for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region, in Adopting the Los Angeles County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2012-0175; NPDES Permit No. CAS004001)
) RESPONSE TO STATE WATER
) RESOURCES CONTROL BOARD
) REQUEST FOR COMMENT ON
) RECEIVING WATER LIMITATIONS
) AND OPPOSITION TO PETITIONS
) FOR REVIEW ON LIMITED
) RECEIVING WATER LIMITATION
) ISSUES

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 2. The central issues litigated in *L.A. County Mun. Stormwater* were resolved against the Dischargers and are identical to the core issues presented by the Dischargers here. 31

 3. The prior litigation resulted in a final judgment on the merits. 37

 4. The Parties in this action are the same or are in privity with those in *L.A. County Mun. Stormwater*. 37

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1 **I. INTRODUCTION**

2 Both the 2012 Los Angeles County Municipal Separate Storm Sewer System (“MS4”)
3 Permit,¹ and the process the Los Angeles Regional Water Quality Control Board (“Regional
4 Board”) followed to adopt it, are unlawful and inadequate to protect the region’s waters or public
5 health.² The principal legal deficiency is the 2012 Permit’s retreat from rigorous compliance with
6 Receiving Water Limitations (“RWLs”) adopted in the 2001 Los Angeles County MS4 permit.³
7 The 2001 Permit’s RWLs properly required compliance with water quality standards which form
8 the cornerstone of the federal Clean Water Act—designed to protect millions of waders,
9 swimmers, and surfers, as well as marine life, from harmful bacteria in the ocean, trash in rivers,
10 and toxic metals in estuaries. Rather than maintaining the 2001 Permit’s strict prohibition against
11 discharges that cause or contribute to an exceedance of these water quality standards, the 2012
12 Permit nominally maintains the RWL language, but incorporates several “safe harbors” that create
13 broad exemptions to the RWLs, in certain circumstances rendering the limitations inoperative.
14 The Regional Board’s action to adopt this permit reverses its consistent defense of the 2001 Permit
15 and its RWL requirements against numerous challenges.

16 Accordingly, the Natural Resources Defense Council (“NRDC”), Heal the Bay, and Los
17 Angeles Waterkeeper (collectively, “Environmental Groups”) filed a petition with the State Water
18

19
20 ¹ Regional Board, Waste Discharge Requirements for Municipal Separate Storm Sewer System
21 (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except Those
22 Discharges Originating From the City of Long Beach, Order No. R4-2012-0175, NPDES Permit
23 No CAS004001 (Nov. 8, 2012) (“2012 Permit” or “Permit”).

24 ² For a full explanation of how the permit violates the law, see Memorandum of Points and
25 Authorities in Support of Petition of NRDC, Heal the Bay and Los Angeles Waterkeeper for
26 Review of Action by the California Regional Water Quality Control Board, Los Angeles Region,
27 in Adopting the Los Angeles County Municipal Separate Stormwater National Pollutant Discharge
28 Elimination System (NPDES) Permit; Order No. R4-2012-0175; NPDES Permit No. CAS004001,
December 10, 2012, (“Environmental Groups’ Petition”), SWRCB/OCC File No. A-2236(m).
(Attached as Exhibit “A”).

³ Regional Board, Waste Discharge Requirements for Municipal Separate Storm Sewer and Urban
Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein, Except
the City of Long Beach, Order No. 01-182, NPDES Permit No. CAS004001 (Dec. 13, 2001)
(“2001 Permit”).

1 Resources Control Board (“State Board”), which we incorporate in its entirety here by reference,
2 demonstrating that the 2012 Permit is illegal for four principal reasons: (1) safe harbor exemptions
3 adopted in the Permit—which in some instances excuse compliance with water quality standards
4 in the Permit’s RWL section—violate federal anti-backsliding requirements; (2) the safe harbors
5 violate state and federal antidegradation requirements; (3) the safe harbors violate requirements for
6 incorporation of TMDLs into National Pollutant Discharge Elimination System (“NPDES”)
7 permits; and (4) the Regional Board failed to make sufficient findings or provide evidence in the
8 record to support the inclusion of the safe harbors in the 2012 Permit.

9 Although the 2012 Permit suffers from these critical legal deficiencies, thirty-seven
10 municipalities regulated under the Permit (“Dischargers”) have petitioned its adoption to the State
11 Board, though they fail to identify legitimate legal flaws in the Permit. Indeed, the Dischargers
12 instead raise a series of stale, recycled arguments that have already been resolved against them in
13 multiple venues, including in a direct challenge to the 2001 Permit’s RWLs in California state
14 court.⁴ The Dischargers, more than half of whom were parties to this earlier litigation, universally
15 fail to mention, much less acknowledge the implications of, the state court’s decision upholding
16 the RWL language. As will be more fully explained in separate briefing to the State Board,⁵ the
17 Board should find Dischargers’ claims without merit and dismiss those petitions. Moreover,
18 because the issues raised related to RWLs have been litigated and resolved previously with respect
19 to the 2001 Permit, the Dischargers cannot raise them again here.

20 The State Board has requested information not only on the legality of the safe harbors and
21 2012 Permit’s approach to RWL compliance, but also on whether revisions to the 2012 Permit
22 might be sufficient to render the Permit and its approach lawful under state and federal regulations.
23 Environmental Groups’ demonstrated in our petition of December 10, 2012 that the violations of
24

25 ⁴ See, *In re L.A. County Mun. Storm Water Permit Litigation*, No. BS 080548 at 5 (L.A. Super. Ct.
26 Mar. 24, 2005)

27 ⁵ In accord with the State Board’s notices of July 15 and July 29, 2013, Environmental Groups will
28 submit a response to issues raised in Dischargers’ petitions other than the Receiving Water
Limitations approach on Sept. 20, 2013. Environmental Groups may additionally respond to
specific issues raised in Dischargers’ original petitions that are related to the RWLs at that time.

1 law in the 2012 Permit, and the potential resulting impacts to the health of Los Angeles County’s
2 waters, present compelling reasons for the State Board to exercise its statutory duty to correct the
3 unlawful actions of the Regional Board and strike the safe harbors from the Permit outright. We
4 maintain that this is the proper course of action and have provided more details below regarding
5 where the Permit deletions should occur. However, in addition to our discussion of relevant law
6 and evidence, we present a potential alternative compliance pathway for the Board’s consideration
7 statewide that would comply with the Clean Water Act while providing more certainty for
8 dischargers in their implementation of the receiving water language.

9 **A. Factual Background**

10 **1. Stormwater Runoff Discharged from MS4s is a Leading Source of Surface**
11 **Water Pollution in California**

12 Water discharged from municipal storm drains, including from the Los Angeles County
13 MS4 regulated by the 2012 Permit, discharge bacteria, metals, and other pollutants at unsafe levels
14 to rivers, lakes, and beaches in California. This pollution causes increased rates of human illness,
15 harm to the environment, and an economic loss of tens to hundreds of millions of dollars every
16 year from public health impacts alone. The U.S. Environmental Protection Agency (“EPA”)
17 considers urban runoff to be “one of the most significant reasons that water quality standards are
18 not being met nationwide.”^{6,7} As the EPA has stated:

19 Most stormwater runoff is the result of the man-made hydrologic modifications that
20 normally accompany development. The addition of impervious surfaces, soil
21 compaction, and tree and vegetation removal result in alterations to the movement
22 of water through the environment. As interception, evapotranspiration, and
23 infiltration are reduced and precipitation is converted to overland flow, these
24 modifications affect not only the characteristics of the developed site but also the
25 watershed in which the development is located. Stormwater has been identified as
26 one of the leading sources of pollution for all waterbody types in the United States.

26 ⁶ U.S. General Accounting Office (June 2001) *Water Quality: Urban Runoff Programs*, Report
27 No. GAO-01-679, at 37.

28 ⁷ Unless noted as an Exhibit, all documents referenced in this brief were timely submitted to the
Regional Board or submitted to the State Board for notice with Environmental Groups’ Petition.

1 Furthermore, the impacts of stormwater pollution are not static; they usually
2 increase with more development and urbanization.⁸

3 Moreover, a recent study of the effects of urban development on stream ecosystems by the
4 U.S. Geological Survey showed that urban development impacts stream chemistry,
5 hydrology, habitat, and species composition, and that communities of invertebrate species
6 “Begin to Degrade at the Earliest Stages of Urban Development.”⁹

7 Numerous receiving waters around the region do not meet water quality standards, thus
8 failing to fully support beneficial uses.¹⁰ The Regional Board itself acknowledges:

9 Discharges of storm water and non-storm water from the . . . Los Angeles County
10 [MS4s] convey pollutants to surface waters throughout the Los Angeles Region. . . .
11 the primary pollutants of concern in these discharges . . . are indicator bacteria, total
12 aluminum, copper, lead, zinc, diazanon, and cyanide. Aquatic toxicity, particularly
13 during wet weather, is also a concern. . . .

14 Pollutants in storm water and non-storm water have damaging effects on both
15 human health and aquatic ecosystems. Water quality assessments conducted by the
16 Regional Water Board have identified impairment of beneficial uses of water
17 bodies in the Los Angeles Region caused or contributed to by pollutant loading
18 from municipal storm water and non-storm water discharges.

19 (2012 Permit, at p. 13, Finding A.)

20 ⁸ U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through*
21 *Low Impact Development (LID) Strategies and Practices*, at v.

22 ⁹ U.S. Geological Survey (2012) *Effects of Urban Development on Stream Ecosystems in Nine*
23 *Metropolitan Study Areas Across the United States*, at 4; see generally, 1-5. (“Exhibit B,” available
24 at <http://pubs.usgs.gov/circ/1373/>.)

25 ¹⁰ This issue is not confined to the Los Angeles Region. For example, 79 percent of the Sierra
26 Nevada’s vast network of rivers and streams have stretches too polluted for fishing, and 83 percent
27 of the region’s waterways have stretches too polluted for swimming. (Timmer, K., et al. (March
28 2006) *State of Sierra Waters: A Sierra Nevada Watershed Index*, Sierra Nevada Alliance.
(Attached as “Exhibit C”).) Notably, water originating in the region provides more than 60
percent of California’s (and most of northwestern Nevada’s) developed water supply. (See,
Anderson, C. and Hickson, P. (August 2008) *Planning for Waterwise Development in the Sierra: A*
Water and Land-Use Policy Guide, Sierra Nevada Alliance. (Attached as “Exhibit D”).)
Additionally, the San Diego Regional Water Quality Control Board (“San Diego Regional Board”)
has stated that findings “indicate that runoff discharges are causing or contributing to water quality
impairments, and are a leading cause of such impairments in the San Diego Region.” (San Diego
Regional Board (May 8, 2013) Order No. R9-2013-0001, Finding 14. (Attached as “Exhibit E”).)

1 The pollutants that impair the region’s waters come in large part from the MS4s subject to
2 the 2012 Permit. Monitoring data from mass emission stations in area streams and rivers
3 demonstrate that the MS4s persistently contribute to violations of Water Quality Standards and
4 cleanup targets (total maximum daily loads or “TMDLs”) in Los Angeles area water bodies.
5 Monitoring revealed 1,105 violations since 2003 of water quality limits for fecal bacteria, various
6 heavy metals, ammonia, pH, and cyanide, among other constituents, in Ballona Creek, Malibu
7 Creek, the Los Angeles River, Santa Clara River, Dominguez Channel, and Coyote Creek.¹¹
8 California Ocean Plan standards and fecal bacteria TMDL limits established to protect the health
9 of beachgoers have been exceeded on thousands of occasions. Monitoring identified 3,369
10 exceedances of beach bacteria TMDL limits at 65 Los Angeles County beach monitoring locations
11 during the April – October dry weather season from 2006 through 2011, exposing the public to
12 various well-documented health risks associated with recreating in polluted water.¹² Further
13 evidence and details of monitoring that demonstrate persistent violations of water quality standards
14 in the Los Angeles Region’s waters were also provided in Environmental Groups’ Petition.¹³

15 **2. Stormwater Pollution Threatens Public Health**

16 Polluted urban runoff increases bacteria levels and illness rates among swimmers.¹⁴
17 Contact with waters contaminated by stormwater runoff can lead to fever, chills, ear infections and
18 discharge, coughing and respiratory ailments, vomiting, diarrhea and other gastrointestinal illness,
19

20 ¹¹ Los Angeles County, Dept. of Public Works, Stormwater Monitoring Reports for 2003-2004
21 (Aug. 15, 2004), 2005-2006 (Aug. 22, 2006), 2006-2007 (Sept. 4, 2007), 2007-2008 (Aug. 20,
22 2008), 2008-2009 (Aug. 25, 2009), 2009-2010 (Aug. 12, 2010), 2010-2011 (Aug. 11, 2011),
(selected data tables attached and full documents available at
http://dpw.lacounty.gov/wmd/NPDES/report_directory.cfm, last visited August 14, 2013).

23 ¹² See, Environmental Groups Petition Exhibits: Ex. F: Heal the Bay, Santa Monica Bay Bacteria
24 TMDL Tally; see also Ex. G: Los Angeles Waterkeeper, Area of Special Biological Significance
25 [ASBS] Malibu Data Revised March 27, 2012; Ex. H: Los Angeles Waterkeeper, Non-ASBS and
26 Malibu Creek Data Revised March 27, 2012.

26 ¹³ Environmental Groups’ Petition, at 2-4.

27 ¹⁴ Curriero et al. (August 2001) *The Association Between Extreme Precipitation and Waterborne*
28 *Disease Outbreaks in the United States, 1949-1994*, American Journal of Public Health, 91:8
1194-1199. See also, Letter from Dr. Jennifer Jay to Mr. Sam Unger, Executive Officer and
Members of the Board, Regional Board re: MS4 Permit for Los Angeles County, July 23, 2012.

1 and skin rashes.¹⁵ Scientists reviewing 22 epidemiological studies found that 19 of them showed
2 that adverse health effects were significantly related to fecal indicator bacteria or bacterial
3 pathogens.¹⁶ One local analysis investigated health risks of people exposed to storm drain runoff
4 while swimming in Santa Monica Bay and found that swimmers exposed directly in front of a
5 storm drain experienced increased health risks of approximately 50-100 percent compared with
6 people swimming more than 400 yards away from the drain.¹⁷

7 The Regional Board itself has acknowledged that the harm to the public from exceeding
8 bacteria standards “is dramatic both in terms of health impacts to exposed beachgoers, and the
9 economic cost to the region associated with related illnesses.” (2001 Permit (as amended by Order
10 R4-2009-0130), at p. 16, Finding E.32.) These health impacts come at tremendous cost—one
11 study demonstrated that swimming at polluted beaches in Los Angeles and Orange Counties
12 caused between 627,800 and 1,479,200 excess cases of gastroenteritis per year, resulting in annual
13 health costs of between \$21 and \$51 million, or \$176 and \$414 million per year (depending on
14 whether only market costs or both market and non-market costs, such as willingness-to-pay not to
15 get sick, were considered).¹⁸

16 **3. Controlling stormwater pollution provides numerous economic benefits,** 17 **while stormwater pollution creates many economic harms**

18 Controlling pollution from MS4 systems has far-reaching economic and social benefits for
19 the state. According to a report to California’s Resources Agency, “California has the largest

20
21 ¹⁵ See, e.g., Haile, et al. (1999) *The Health Effects of Swimming in Ocean Water Contaminated by*
22 *Storm Drain Runoff*, *Epidemiology* 10(4): 355-63, at 356-57; Haile, R. W. et al (1996) *An*
23 *Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica*
24 *Bay*, Santa Monica Bay Restoration Project, 70 pp, at 3.

25 ¹⁶ Pruss, A. (1998) *Review of epidemiological studies on health effects from exposure to*
26 *recreational waters*, *International Journal of Epidemiology* 27:1-9, at 3.

27 ¹⁷ Haile, R. W. et al (1996) *An Epidemiological Study of Possible Adverse Health Effects of*
28 *Swimming in Santa Monica Bay*, Santa Monica Bay Restoration Project, at 54; see also, Haile, et
al. (1999) *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*,
Epidemiology 10(4): 355-63, at 357.

¹⁸ Given, S., et al. (2006) *Regional Public Health Cost Estimates of Contaminated Coastal Waters:*
A Case Study of Gastroenteritis at Southern California Beaches, *Environmental Science &*
Technology 40(16): 4851-4858, at 4856.

1 Ocean Economy in the United States, ranking number one overall for both employment and gross
2 state product. . . .”¹⁹ One study estimated that local beachgoers in California spend as much as
3 \$9.5 billion annually and the non-market values associated with beach-going in Southern
4 California alone may be as high as \$2 billion annually.²⁰

5 Unfortunately, stormwater runoff in Los Angeles County’s coastal waters causes or
6 contributes to an enormous number of beach closures or advisories each year.²¹ Beach closures
7 and advisories result in direct and indirect negative effects on the coastal economy, such as lost
8 revenue.²² One study estimated that a hypothetical beach closure of Huntington Beach for one day
9 would result in a loss of 1200 beach visits and associated economic losses of \$100,000.²³
10 Conversely, the National Oceanic and Atmospheric Association found that improving water
11 quality in Long Beach from a C grade to the healthier standards of Huntington City Beach (a B
12 grade) would create \$8.8 million in economic benefits over a 10-year period.²⁴

13 Moreover, the economic and social benefits of stormwater regulation, such as those
14 achievable through this Permit, far outweigh the costs of implementation. For example, the staff

15
16 ¹⁹ Kildow, J. and Colgan, C.S. (2005) National Ocean Economics Program, California’s Ocean
Economy: A Report to the Resources Agency, State of California, at 1.

17 ²⁰ Pendleton, L. (July 2004) *Harvesting Ocean Observing Technologies to Improve Beach*
18 *Management: Estimating the Regional Economic Benefits of Improvements in the California*
19 *Coastal Ocean Observing System* Arlington, VA: Ocean. Unnumbered Report. July; see also,
20 Chapman, D. and Hanemann, M. (2001) *Environmental Damages in Court: the American Trader*
Case, in *The Law and Economics of the Environment*, (Heyes, edit.), pp. 319-367 (estimating a
“consumer surplus” of \$8.16 to \$60.79 per visit for each beachgoer).

21 ²¹ NRDC (2012) *Testing the Waters: A Guide to Water Quality at Vacation Beaches*, at California
Chapter Summary. Los Angeles County reported 2,430 total closing or advisory days in 2011
22 from all sources. Reported closing or advisory days are for events lasting six consecutive weeks or
less. Available at <http://www.nrdc.org/water/oceans/ttw/ttw2012.pdf>.

23 ²² See, Leeworthy, V.R. and Wiley, P.C. (2000) *Southern California Beach Valuation Project:*
24 *Economic Value and Impact of Water Quality Change for Long Beach in Southern California*,
National Oceanic and Atmospheric Administration, at 4.

25 ²³ Hanemann, M., et al. (November 2005) *Welfare Estimates for Five Scenarios of Water Quality*
26 *Change in Southern California: A Report from the Southern California Beach Valuation Project*, at
7-8.

27 ²⁴ Leeworthy, V.R. and Wiley, P.C. (2000) *Southern California Beach Valuation Project:*
28 *Economic Value and Impact of Water Quality Change for Long Beach in Southern California*,
National Oceanic and Atmospheric Administration, at 9, 15.

1 report for the Metals TMDL for the Los Angeles River and its tributaries found that removing
2 metals from the waterways would have benefits of as much as \$18 billion (if structural systems
3 were used), in comparison to cleanup costs of between \$5.7 and \$7.4 billion.²⁵ This would be in
4 addition to “[u]nquantifiable health benefits” associated with implementation.²⁶ The Regional
5 Board also notes that benefits of implementing controls to meet permit requirements to reduce
6 pollution in runoff typically outweigh the costs of compliance.²⁷

7 **B. Legal Background**

8 In order to “restore and maintain the chemical, physical, and biological integrity of the
9 Nation’s waters,” (33 U.S.C. § 1251(a)), the federal Clean Water Act (“CWA”) prohibits the
10 discharge of any pollutant from a point source into a water of the United States except as in
11 compliance with the Act. (33 U.S.C. §§ 1311(a), 1342.) Point sources, such as MS4s, can comply
12 with the CWA by obtaining a discharge permit under the National Pollutant Discharge Elimination
13 System (“NPDES”) program. (33 U.S.C. § 1342(b), (p).) Regulations under 40 C.F.R. section
14 122.4(d) prohibit the issuance of a NPDES Permit “[w]hen the imposition of conditions cannot
15 ensure compliance with the applicable water quality requirements of all affected States.” Further,
16 renewal permits—like the 2012 Permit at issue—may not contain weaker standards than those
17 contained in the previous permit, except under limited circumstances. (33 U.S.C. § 1342(o); 40
18 C.F.R. § 122.44(l).) Federal and state law additionally require implementation of an
19 antidegradation policy, that mandates that existing water quality in navigable waters be maintained
20 unless degradation is justified by specific findings. (See, 40 C.F.R. § 131.12(a)(1).)

21 The CWA requires each state to adopt water quality standards for all waters within its
22 boundaries and submit them to the EPA for approval. (33 U.S.C. §§ 1311(b)(1)(C), 1313.) Water
23 quality standards include maximum permissible pollutant levels that must be sufficiently stringent
24 to protect public health and enhance water quality, consistent with the uses for which the water
25

26 ²⁵ Regional Board and EPA Region 9 (June 2, 2005) Final Staff Report: Total Maximum Daily
27 Loads for Metals, Los Angeles River and Tributaries, at 76-77.

28 ²⁶ *Id.*; See 2012 Permit, Attachment F (“2012 Permit Fact Sheet”), at F-149.

²⁷ *Id.*, at 148-149.

1 bodies have been designated. (33 U.S.C. § 1313(c)(2)(A).) They provide the reference point “to
2 prevent water quality from falling below acceptable levels.” (*PUD No. 1 of Jefferson County v.*
3 *Washington Dep’t of Ecology* (1994) 511 U.S. 700, 704 [quotation omitted].) States also must
4 identify as impaired any water bodies that fail to meet water quality standards. (33 U.S.C. §
5 1313(d).)

6 For impaired waters, states must establish TMDLs, which set a daily limit on the discharge
7 of each pollutant necessary to achieve water quality standards. (*Id.* § 1313(d)(1).) The TMDL
8 “assigns a *waste load allocation (WLA)* to each point source, which is that portion of the TMDL’s
9 total pollutant load, which is allocated to a point source for which a NPDES permit is required.”
10 (*Communities for a Better Env’t v. State Water Res. Control Bd.* (2005) 132 Cal.App.4th 1313,
11 1321 (emphasis in original).) Critically, federal law requires that “[o]nce a TMDL is developed,
12 effluent limitations in NPDES permits must be consistent with the WLA’s in the TMDL.” (*Id.*, at
13 1322 (citing 40 C.F.R. § 122.44(d)(1)(vii)(B).) According to EPA, “[w]here the TMDL includes
14 WLAs for stormwater sources that provide numeric pollutant load . . . the WLA should, where
15 feasible, be translated into numeric [water quality-based effluent limitations] in the applicable
16 stormwater permits.”²⁸

17 The State Board has emphasized that “infeasibility” in this context means “the ability or
18 propriety of establishing” numeric limits; it does not refer to the feasibility of compliance.²⁹ EPA
19 echoed this construction during the October 2012 Permit adoption hearing, stating that the
20 feasibility of numeric effluent limitations refers to the ability to calculate the numeric effluent
21 limitations not to the feasibility of compliance with such limitations.³⁰

24 ²⁸ Memorandum from James A. Hanlon and Denise Keehner, EPA, to Water Management Division
25 Directors, Regions 1 – 10, re: Revisions to the November 22, 2002 Memorandum “Establishing
26 Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources
27 and NPDES Permit Requirements Based on Those WLAs,” November 12, 2010, (“EPA Hanlon
Memo”) at 3.

28 ²⁹ State Board, Order No. 2006-12, *In the Matter of the Petition of Boeing Company*, at 15.

³⁰ Mr. John Kemmerer, EPA, October 5 Hearing, at 224:17 to 225:12.

1 **1. Clean Water Act Section 402(p)**

2 Like all NPDES permits, MS4 permits must ensure that discharges from storm sewers do
3 not cause or contribute to a violation of water quality standards. (33 U.S.C. § 1311(a); 1313;
4 1341(a); 1342(p).)³¹ In addition, for MS4s covered under the NPDES program, permits:

5 shall require controls to reduce the discharge of pollutants to the maximum extent
6 practicable, including management practices, control techniques and system, design
7 and engineering methods, and such other provisions as the Administrator or the
8 State determines appropriate for the control of such pollutants.

9 (33 U.S.C. § 1342(p)(3)(B)(iii).)³² The Clean Water Act’s “maximum extent practicable”
10 (“MEP”) standard does not grant unbridled leeway to Permittees in developing controls to reduce
11 the discharge of pollution. (See, e.g., *Defenders of Wildlife v. Babbitt* (D.D.C. 2001) 130 F. Supp.
12 2d 121, 131; *Environmental Defense Center, Inc. v. U.S. E.P.A* (9th Cir. 2003) 344 F.3d 832, 853.)
13 The MEP standard “imposes a clear duty on the agency to fulfill the statutory command to the
14 extent that it is feasible or possible.” (*Defenders of Wildlife v. Babbitt*, 130 F. Supp. 2d at 131;
15 *Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 (8th Cir. 1995) (“feasible”
means “physically possible”). As one state hearing board held:

16 [MEP] means to the fullest degree technologically feasible for the protection of
17 water quality, except where costs are wholly disproportionate to the potential
18 benefits.... This standard requires more of Permittees than mere compliance with
19 water quality standards or numeric effluent limitations designed to meet such
20 standards.... The term “maximum extent practicable” in the stormwater context
21 implies that the mitigation measures in a stormwater permit must be more than
22 simply adopting standard practices. This definition applies particularly in areas
23 where standard practices are already failing to protect water quality....
24

25 ³¹ See, e.g., State Board Order No. WQ 99-05, *Own Motion to Review the Petition of*
26 *Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03.*

27 ³² As discussed below, the MEP standard represents a statutory floor, rather than a ceiling, for
28 compliance. (See, *Building Industry Ass’n of San Diego County v. State Water Resources Control*
Bd. (2004) 124 Cal.App.4th 866, 883; *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d
1159, at 1165–1167.)

1 (*North Carolina Wildlife Fed. Central Piedmont Group of the NC Sierra Club v. N.C. Division of*
2 *Water Quality* (N.C.O.A.H. October 13, 2006) 2006 WL 3890348, Conclusions of Law 21-22
3 (internal citations omitted).)

4 Nor is MEP a static requirement—the standard anticipates and in fact requires new and
5 additional controls to be included with each successive permit. As EPA has explained, NPDES
6 permits, including the MEP standard, will “evolve and mature over time” and must be flexible “to
7 reflect changing conditions.” (55 Fed. Reg. 47990, 48052.) “EPA envisions application of the
8 MEP standard as an iterative process. MEP should continually adapt to current conditions and
9 BMP effectiveness and should strive to attain water quality standards. Successive iterations of the
10 mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of
11 water quality standards.” (64 Fed. Reg. 68722, 68754.) In other words, successive iterations of
12 permits for a given jurisdiction will necessarily evolve, and contain new, and more stringent
13 requirements for controlling the discharge of pollutants in runoff.

14 **a. 33 U.S.C. § 1342(p)’s Requirement to Incorporate “Such Other**
15 **Provisions” as the Permitting Authority Determines Appropriate**

16 MS4 permits also require “such other provisions as the Administrator or the State
17 determines appropriate for the control of such pollutants.” This language in section 1342(p) has
18 been held by California courts to grant “the EPA (and/or a state approved to issue the NPDES
19 permit) . . . the discretion to impose ‘appropriate’ water pollution controls in addition to those that
20 come within the definition of ‘maximum extent practicable.’” (*Building Industry Ass’n of San*
21 *Diego County*, 124 Cal.App.4th at 883 (citing *Defenders of Wildlife v. Browner*, 191 F.3d at 1165–
22 1167).)

23 As a result, while the MEP standard represents one element of permit requirements, the
24 Regional Board and EPA maintain the authority to impose additional restrictions over and above
25 MEP as they determine appropriate. California courts have “reject[ed] . . . assertion[s] that the
26 MEP standard is the sole standard that applies to municipal storm water discharges and the[]
27 related contention that MEP is a substantive upper limit on requirements that can be imposed to
28 meet water quality standards.” (*In re L.A. County Mun. Storm Water Permit Litigation*, No. BS

1 080548, Statement of Decision From Phase I Trial on Petitions for Writ of Mandate, at 5 (L.A.
2 Super. Ct. Mar. 24, 2005) (“*L.A. County Mun. Stormwater*”).)

3 **2. The 2001 Los Angeles County MS4 Permit and State Board Order 99-05**

4 In 2001, the Regional Board adopted an NPDES permit for MS4s in Los Angeles County,³³
5 which was intended to address the harm caused by pollutants conveyed via storm drains to surface
6 waters in the Los Angeles area. The permit regulated Los Angeles County, the Los Angeles
7 County Flood Control District, and 84 incorporated cities within the County.

8 Importantly, the 2001 Permit contained Receiving Water Limitations (“RWLs”), which
9 required that “discharges from the MS4 that cause or contribute to the violation of Water Quality
10 Standards or water quality objectives are prohibited.” (2001 Permit, at Part 2.1.)³⁴ The Permittees
11 were directed to begin remedial measures immediately if discharges violate water quality
12 standards. (*Id.*, at Part 2.3.) If exceedances of water quality standards persisted, notwithstanding
13 control measures, the Dischargers were required to “assure compliance” by preparing a
14 compliance report that identifies the violations and by adopting more stringent pollution control
15 measures to correct them. (*Id.*)

16 Complying with this “iterative process” assisted Dischargers in meeting water quality
17 goals, but did not excuse violations of water quality standards. A long history of MS4 permitting
18 in California confirms this. An earlier MS4 permit for Orange County, approved by the State
19 Board, had included language stating “the permittees will not be in violation of [receiving water
20 limitations] so long as they are in compliance with [the iterative process set forth in the permit].”³⁵
21 EPA objected to that provision, (which MS4 permits for Vallejo and Riverside County had
22 additionally adopted), as a “safe harbor,” meaning the provision deemed the permittees in
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24 ³³ This was the third such permit issued by the Regional Board to Los Angeles County and local
25 municipalities. Prior permits were adopted in 1990 and 1996. (2001 Permit, p. 1, Finding A.)

26 ³⁴ “Water Quality Standards and Water Quality Objectives” are defined in the 2001 Permit to mean
27 “water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics
28 Rule, the California Toxics Rule, and other state or federally approved surface water quality
plans.” (2001 Permit, at Part 5.)

³⁵ See, State Board Order No. WQ 98-01, *Own Motion to Review the Petition of Environmental
Health Coalition to Review Waste Discharge Requirements Order No. 96-03*, at 6-7.

1 compliance with the permit regardless of whether water quality standards were then met. In
2 response, the State Board adopted Order No. 99-05, which directed the Regional Boards to include
3 receiving water limitations language devised by EPA, without a safe harbor provision, into all
4 future MS4 permits.³⁶

5 As the Regional Board has rightly pointed out, under this framework, “The Regional Board
6 did not include a safe harbor in the [2001] Permit and, under California law, could not have done
7 so.”³⁷ Indeed, when the County and 43 cities challenged the permit in state court, the court ruled
8 that the Regional Board “included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor’” (*L.A.*
9 *County Mun. Stormwater*, at 4-7.)³⁸ The court pointed out that requiring compliance with water
10 quality standards was appropriate “whether or not compliance therewith requires efforts that
11 exceed the ‘MEP’ standard,” and regardless, found that “the terms of the Permit taken, as a whole,
12 constitute the Regional Board’s definition of MEP, including, but not limited to, the challenged
13 [RWL] Permit Provisions.” (*Id.* at 7-8.) In a separate case, the Ninth Circuit Court of Appeal
14 confirmed the state court’s interpretation of the 2001 Permit’s Receiving Water Limitations,
15 holding that “no such ‘safe harbor’ is present in this Permit. . . . [there is] no textual support for the
16 proposition that compliance with certain provisions shall forgive non-compliance with the
17 discharge prohibitions.”³⁹

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20 ³⁶ See, State Board WQ Order 99-05.

21 ³⁷ Brief of Amicus Curiae California Regional Water Quality Control Board, Los Angeles Region,
22 in *Santa Monica Baykeeper v. City of Malibu* No. CV 08-1465-AHM (PLAx) (C.D. Cal.) (filed
23 Feb. 5, 2010), at 8.

24 ³⁸ The Regional Board supports this interpretation: “the plain meaning of these provisions is clear:
25 they prohibit discharges that cause or contribute to a ‘violation of Water Quality Standards’ [or
26 water quality objectives] or to a condition of nuisance.” Put simply, “[t]he Regional Board’s
27 position . . . is that the Permit cannot be read so as to excuse exceedances of water quality
28 standards.” (Brief of Amicus Curiae California Regional Water Quality Control Board, Los
29 Angeles Region, in *Santa Monica Baykeeper*, No. CV 08-1465-AHM (PLAx), at 9; *see also, id.* at
30 4.)

31 ³⁹ *Natural Resources Defense Council v. County of Los Angeles* (2011) 673 F.3d 880, 897
(reversed and remanded on other grounds); *see also, Natural Resources Defense Council v. County*
32 *of Los Angeles*, No. 10-56017, 2013 Westlaw 4017155, (9th Cir., Aug. 8, 2013).

1 **3. The 2012 Permit’s illegal safe harbor provisions**

2 On November 8, 2012, the Regional Board adopted a new MS4 permit for Los Angeles
3 County. Like the prior 2001 Permit, the 2012 Permit states that, “Discharges from the MS4 that
4 cause or contribute to the violation of receiving water limitations are prohibited.” (2012 Permit, at
5 Part V.A.1.)⁴⁰ However, the Permit contains further provisions that excuse compliance with both
6 narrative and numeric water quality standards. These safe harbors, in certain circumstances,
7 render the RWLs inoperative.

8 Under the 2012 Permit, Permittees have several different compliance options, two of which
9 trigger application of a safe harbor. In particular, dischargers may elect to develop or participate in
10 a Watershed Management Program (“WMP”) or an Enhanced Watershed Management Program
11 (“EWMP”). (2012 Permit, at Part VI.C.)⁴¹ These programs in many aspects allow a permittee to
12 draft their own permit requirements, conditions, and schedules for compliance. Under a WMP, a
13 permittee is required to identify water quality priorities, (*id.* at VI.C.5.a), select watershed control
14 measures to be implemented, (*id.* at VI.C.5.b), and establish compliance schedules for addressing
15 water quality priorities. (*Id.* at VI.C.5.c.) For an EWMP, a permittee must, where feasible within
16 a given watershed, retain all storm water runoff from the 85th percentile, 24-hour storm event for
17 the drainage areas tributary to identified regional projects. (*Id.* at VI.C.1.g.) Under both options,
18 Permittees must conduct a “reasonable assurance” analysis to assess whether the programs will
19 result in discharges that achieve water quality based effluent limitations and RWLs in the 2012
20 Permit. (*Id.* at VI.C.1.g; VI.C.5.b.iv(5).)

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22 ⁴⁰ The Permit defines “Receiving Water Limitation” as: “Any applicable numeric or narrative
23 water quality objective or criterion, or limitation to implement the applicable water quality
24 objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality
25 Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies
26 adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR §
27 131.38.” (Permit, at Attachment A, A-17.)

28 ⁴¹ Environmental Groups will provide a full briefing of the issues related to TMDL incorporation
and implementation in the 2012 Permit to the State Board under separate cover on September 20,
2013. However, given the effect of the safe harbor provisions on required compliance with both
the Permit’s RWLs and with TMDL WLAs in the Permit, we include additional discussion of the
relevant TMDL provisions here.

1 Although it is a goal of these programs to ensure that stormwater discharges do not cause
2 or contribute to exceedances of RWLs, (see, e.g., *id.* at VI.C.5.b.ii), and that TMDL WLAs are
3 achieved, it is not a requirement that the programs achieve these results in fact. Permittees are
4 instead given a safe harbor from the prohibition on violations of RWLs, or, in some cases of
5 TMDL limits, if they participate in a WMP or an EWMP.⁴² First, during the period of plan
6 development and review (up to 28 months from the 2012 Permit adoption date for a WMP or 40
7 months from the 2012 Permit adoption date for an EWMP before it may be approved (*Id.* at
8 VI.C.4.a.)), the permittee is excused for violations of the Permit’s RWLs:

9 Upon notification of a Permittee’s intent to develop a WMP or EWMP and prior to
10 approval of its WMP or EWMP, a Permittee’s full compliance with all of the
11 following requirements *shall constitute a Permittee’s compliance* with the receiving
12 water limitations provisions in Part V.A. not otherwise addressed by a TMDL
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14 (2012 Permit, at Part VI.C.2.d. (emphasis added).)⁴⁴ Second, after approval of a
15 Permittee’s WMP or EWMP by the Regional Board or the Board’s Executive Officer, a
16 safe harbor removes liability for a violation of all RWLs if the WMP or EWMP addresses
17 that pollutant/waterbody combination, regardless of whether or not compliance with the
18 RWL is actually achieved:

19 A Permittee’s full compliance with all requirements and dates for their achievement
20 in an approved Watershed Management Program or EWMP *shall constitute a*
21 *Permittee’s compliance* with the receiving water limitations provisions in Part V.A.
22 of this Order for the specific water body-pollutant combinations addressed by an
23 approved Watershed Management Program or EWMP.

24 ⁴² In some circumstances the 2012 Permit provides a safe harbor for compliance with either
25 interim or final TMDL limits, or both.

26 ⁴³ We note that the Regional Board lacks authority to exempt state law requirements prohibiting
27 the causation of a condition of nuisance. (See, Part V.A.2.)

28 ⁴⁴ The Permittee is required to: “i. Provide[] timely notice of its intent to develop a WMP or
EWMP, ii. Meet[] all interim and final deadlines for development of a WMP or EWMP, iii. For
the area to be covered by the WMP or EWMP, target[] implementation of watershed control
measures in its existing storm water management program . . . and iv. Receive[] final approval of
its WMP or EWMP within 28 or 40 months, respectively.” (Permit, at Part VI.C.3.b.i-iv.) The
safe harbor does not apply to interim Trash TMDL limits.

1 (*Id.* at VI.C.2.b. (emphasis added).) Third, the 2012 Permit provides a safe harbor from
2 certain TMDL requirements. Specifically, the 2012 Permit provides a safe harbor for
3 interim TMDL WLAs for permittees indicating their intent to develop a WMP or an
4 EWMP:

5 Upon notification of a Permittee’s intent to develop a WMP or EWMP and prior to
6 approval of its WMP or EWMP, a Permittee’s full compliance with all of the
7 following requirements⁴⁵ *shall constitute a Permittee’s compliance* with provisions
8 pertaining to interim WQBELs with compliance deadlines occurring prior to
approval of a WMP or EWMP.

9 (*Id.* at VI.E.2.d.i(4)(d) (emphasis added).) And, for permittees implementing an EWMP, the 2012
10 Permit provides a safe harbor for all TMDL final limits other than for Trash TMDLs:

11 *A Permittee shall be deemed in compliance* with an applicable final water quality-
12 based effluent limitation and final receiving water limitation for the pollutant(s)
13 associated with a specific TMDL if. . . . (4) In drainage areas where Permittees are
14 implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up
to and including the volume equivalent to the 85th percentile, 24-hour event is
retained for the drainage area tributary to the applicable receiving water.

15 (*Id.* at VI.E.2.e.i. (emphasis added).) By allowing these safe harbors, the 2012 Permit excuses
16 compliance with TMDL WLAs, and with its RWLs. By contrast, in each of these circumstances
17 the 2001 Permit mandated compliance.

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25 ⁴⁵ The Permittee is required to to: “i. Provide[] timely notice of its intent to develop a WMP or
26 EWMP, ii. Meet[] all interim and final deadlines for development of a WMP or EWMP, iii. For
27 the area to be covered by the WMP or EWMP, target[] implementation of watershed control
28 measures in its existing storm water management program . . . and iv. Receive[] final approval of
its WMP or EWMP within 28 or 40 months, respectively.” (2012 Permit, at Parts
VI.E.2.d.i(4)(d)(1)-(4).)

1 **II. THE WMP/EWMP ALTERNATIVE CONTAINED IN THE 2012 PERMIT**
2 **UNLAWFULLY EXEMPTS REQUIREMENTS TO COMPLY WITH RECEIVING**
3 **WATER LIMITATIONS AND TMDL LIMITS**

4 Environmental Groups presented a full brief of the legal arguments demonstrating the
5 unlawful nature of the Permit's WMP and EWMP schemes in Environmental Groups' Petition to
6 the State Board on December 10, 2012.⁴⁶ For the State Board's convenience, a summary of these
7 arguments is presented below.

8 **A. The Approach Taken in the 2012 Permit Creates Illegal Safe Harbors that Violate**
9 **Federal Anti-Backsliding and Antidegradation Requirements**

10 **1. The 2012 Permit Creates Safe Harbors that Exempt Compliance with**
11 **Receiving Water Limitations in Some Circumstances**

12 Rather than maintaining the 2001 Permit's clear prohibition against discharges that cause
13 or contribute to an exceedance of water quality standards, the 2012 Permit exempts compliance
14 with the Receiving Water Limitations for Permittees that elect to participate in a WMP or an
15 EWMP. These safe harbor provisions violate multiple provisions of the CWA and other federal
16 and state regulations, and render the 2012 Permit unlawful. This approach further represents a
17 wholesale departure from the Regional Board's stated position over the past decade; the Regional
18 Board has previously held that "the Permit cannot be read to excuse exceedances of water quality
19 standards."⁴⁷ Moreover, as the Regional Board rightly points out, "[t]he Regional Board did not
20 include a safe harbor in the [2001] Permit and, under California law, could not have done so."⁴⁸
21 The Regional Board's misguided decision to now insert safe harbors into the 2012 Permit is
22 entirely at odds with this contention.

23 These exemptions from requirements to meet the RWLs are also imprudent; water quality
24 standards are established at levels necessary to protect the environment and public health. Failing

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26 ⁴⁶ As stated above, we incorporate this brief and its arguments by reference here.

27 ⁴⁷ Brief of Amicus Curiae California Regional Water Quality Control Board, Los Angeles Region,
28 in *Santa Monica Baykeeper v. City of Malibu* No. CV 08-1465-AHM (PLAx) (C.D. Cal.) (filed
Feb. 5, 2010), at 9; *see also, id.* at 4.

⁴⁸ *Id.*, at 8.

1 to ensure compliance with water quality standards does *not* protect the environment, and does *not*
2 protect public health.

3 The 2012 Permit creates safe harbors by deeming a Permittee to be in compliance with the
4 Permit’s RWLs (which the 2001 Permit required compliance with), both once a WMP or an
5 EWMP has been approved by the Regional Board and during plan development. The Ninth
6 Circuit defined a “safe harbor” as “the proposition that compliance with certain provisions shall
7 forgive non-compliance with the discharge prohibitions.” (*Natural Resources Defense Council,*
8 *Inc. v. County of Los Angeles*, 673 F.3d at 897 (rev’d and remanded on other grounds).)
9 Unfortunately, the new Permit establishes just such a program. If a Permittee meets the program
10 requirements for a WMP or an EWMP, it is deemed to *legally* comply with the 2012 Permit’s
11 RWLs, regardless of whether the RWLs are *actually* achieved.

12 During the November 2012 Permit adoption hearing,⁴⁹ the Regional Board’s Executive
13 Officer admitted that these provisions provide a safe harbor from liability for RWL violations.
14 While attempting to define each provision as only a “compliance mechanism,” Mr. Sam Unger
15 stated, “at best, it’s a conditional safe harbor.”⁵⁰ Similarly, Mr. Unger stated: “Permittees have to
16 be in compliance with the milestones and the activities set out in developing the plan for the
17 watershed management program. And if they’re not, then the operative part of the permit that
18 would take place is these receiving water limitation[s].”⁵¹ Precisely—the effect of this scheme is
19 that if a Permittee is in compliance with the requirements of a WMP or an EWMP, the Receiving
20 Water Limitations are *not* operative. There is simply no defensible argument that these provisions
21 constitute anything other than safe harbors, which violate federal and state law.
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26 ⁴⁹ Regional Board, In the Matter of the Regional Board Public Meeting/Hearing, Thursday,
27 November 8, 2012. (“November 8 Hearing.”)

28 ⁵⁰ Mr. Sam Unger, Executive Officer, Regional Board, November 8 Hearing, at 346:25.

⁵¹ Mr. Sam Unger, Executive Officer, Regional Board, November 8 Hearing, at 324:8-12.

1 **2. The 2012 Permit’s Safe Harbor Provisions Violate Federal Anti-**
2 **Backsliding Requirements**

3 The Clean Water Act and federal regulations prohibit backsliding, or weakening of permit
4 terms, from the previous permit. (See, 33 U.S.C. § 1342(o)(1); 40 C.F.R. § 122.44(l)(1).) By
5 providing a safe harbor waiving requirements to meet Water Quality Standards, the 2012 Permit
6 flatly violates these federal requirements.

7 The recent determination by the Ninth Circuit Court of Appeal on August 8, 2013 leaves
8 absolutely no doubt that the prior 2001 Permit required strict compliance with water quality
9 standards. “Succinctly put, the [2001] Permit incorporates the pollution standards promulgated in
10 other agency documents such as the Basin Plan, and prohibits stormwater discharges that 'cause or
11 contribute to the violation' of those incorporated standards.” (*Natural Resources Defense Council*
12 *v. Los Angeles County*, 2013 Westlaw 401755 at *3.) In contrast, the 2012 Permit deems a
13 Permittee participating in a WMP or an EWMP to be in compliance with RWLs, even if a
14 Permittee’s discharges actually cause or contribute to an exceedance of the Receiving Water
15 Limitations, including violations of water quality standards. Thus, the 2012 Permit excuses
16 discharges of pollution and violations of water quality standards that the previous permit
17 prohibited.

18 Section 402(o) of the Clean Water Act (33 U.S.C. § 1342(o)), generally prohibits
19 relaxation of, among other things, an effluent limitation⁵² “necessary to meet water quality
20 standards . . . schedules of compliance, established pursuant to any State law or regulations . . . or
21 any other Federal law or regulation, or required to implement any applicable water quality
22 standard established pursuant to” the CWA. (See, 33 U.S.C. § 1342(o)(1) (referencing 33 U.S.C. §
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26 ⁵² As discussed in Environmental Groups’ Petition, the RWLs constitute effluent limitations under
27 the CWA. (See 33 U.S.C. § 1362(11).) But even if this were not the case, the safe harbors would
28 still be unlawful, as EPA’s anti-backsliding regulations under 40 C.F.R. § 122.44(l)(1) require that
“effluent limitations, *standards or conditions* must be at least as stringent as the final effluent
limitations, standards, or conditions in the previous permit. . . .” (Emphasis added.)

1 1311(b)(1)(C).⁵³ The safe harbors, which violate this prohibition against backsliding, fail to
2 satisfy any enumerated exception to the provision. (See, 33 U.S.C. § 1313(d)(4); section
3 402(o)(2).)⁵⁴ Neither are they lawful under section 402(o)(3), which serves as a “*safety clause* that
4 provides an absolute limitation on backsliding,”⁵⁵ and states that in no event shall a permit “be
5 renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation
6 of such limitation would result in a violation of a water quality standard” under 33 U.S.C. § 1313.
7 (33 U.S.C. § 1342(o)(3).) The 2012 Permit, by explicitly excusing violations of RWLs which
8 prohibit discharges that cause or contribute to a violation of water quality standards, fails to meet
9 this federally mandated minimum level of protection.

10 **3. The 2012 Permit’s Safe Harbor Provisions Violate State and Federal** 11 **Antidegradation Requirements**

12 The overall goal of the Clean Water Act is the complete elimination of the discharge of
13 pollutants into waters of the United States. (33 U.S.C. § 1251(a)(1).) To help meet this goal,
14 states must implement an antidegradation policy. However, the permit does not comply with
15 applicable antidegradation requirements.

16 The federal antidegradation policy contains a three “Tier” test for determining when
17 increases in pollutant loadings or adverse changes to water quality may be allowed.⁵⁶ (40 C.F.R.
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20 ⁵³ EPA has recognized that even providing additional time for compliance for a provision required
21 by the previous permit violates anti-backsliding requirements. (Letter from Jon M. Capacasa,
22 Director Water Protection Division, EPA Region III to Jay Sakai, Maryland Department of the
23 Environment, re: Specific Objection to Prince George’s County Phase I Municipal Separate Storm
24 Sewer System (MS4) Permit MD0068284, at 3. The additional time allotted by the new Permit to
achieve compliance with RWLs, required in the 2001 Permit, for Permittees developing a WMP or
an EWMP therefore constitutes a less stringent limitation.

25 ⁵⁴ See also, EPA (September 2010) NPDES Permit Writers’ Manual (“NPDES Manual), at 7-1 to
7-3.

26 ⁵⁵ See EPA, NPDES Manual at 7-4.

27 ⁵⁶ California has established a state antidegradation policy, which incorporates the federal
antidegradation policy and establishes additional requirements. (See, State Board Resolution 68-
16; *see also In the Matter of the Petition of Rimmon C. Fay*, State Board Order No. WQ 86-17 at
28 16-19.)

1 § 131.12.) Tier I antidegradation analysis applies to *all* waters of the United States,⁵⁷ applying “a
2 minimum level of protection to all waters . . . even seriously degraded water bodies . . . prohibiting
3 any additional pollution that would affect existing uses.”⁵⁸

4 NPDES permit renewals or modifications such as the 2012 Permit are subject to both state
5 and federal antidegradation requirements, which mandate that existing water quality in navigable
6 waters be maintained, unless degradation is justified based on specific findings.⁵⁹ In no case may
7 water quality be lowered to a level that would interfere with existing or designated uses. The
8 Regional Board has not provided any data, analysis, or findings, which must be accomplished on a
9 pollutant-by-pollutant and beneficial-use-by-beneficial use basis, to support degradation. (*See,*
10 *Asociacion de Gente Unida for El Agua v. Central Valley Regional Board* (2012) 210
11 Cal.App.4th 1255, 1268-69, 1271-72 (citing St. Water Res. Control Bd., Guidance Memorandum
12 (Feb. 16, 1995); 40 CFR 131.12(a)(1).)⁶⁰ In past instances when the Regional Board has failed to
13 provide adequate findings to verify that water quality will be maintained, the State Board has
14 remanded the orders to the Regional Board for further proceedings. The same should be done
15 here.⁶¹

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19 ⁵⁷ 64 Fed. Reg. 46058, 46063, *Revisions to the National Pollutant Discharge Elimination System*
20 *Program and Federal Antidegradation Policy in Support of Revisions to the Water Quality*
21 *Planning and Management Regulation.*

22 ⁵⁸ Brawer, J.M., “Antidegradation Policy and Outstanding Natural Resource Waters in the
23 Northern Rocky Mountain States,” 20 Pub. Land & Resources L. Rev. 13, 18 (1999).

24 ⁵⁹ *See*, SWRCB Order No. WQ 86-17; EPA, Region IX, *Guidance on Implementing the*
25 *Antidegradation Provisions of 40 C.F.R. § 131.12*, at 2-4 (June 3, 1987) (“EPA Antidegradation
26 Guidance”).

27 ⁶⁰ The 2012 Permit’s reference to antidegradation is limited to a cursory summary of the legal
28 requirements, and a conclusion that “[t]he permitted discharge is consistent with the anti-
degradation provision of [40 CFR] section 131.12 and State Water Board Resolution No. 68-16.”
(2012 Permit, at p. 25, Finding M.) Simply claiming that no degradation will occur does not
satisfy the requirements of the Clean Water Act. (*Asociacion de Gente Unida*, 210 Cal.App.4th at
1260-61; see also, *American Funeral Concepts-American Cremation Soc’y v. Board of Funeral*
Directors and Embalmers (1982) 136 Cal.App.3d 303, 309.)

⁶¹ *See*, e.g., SWRCB Order No. WQ 86-17, at 28.

1 **B. The Permit’s Safe Harbors Unlawfully Exempt Dischargers From Compliance With**
2 **Waste-Load Allocations For Applicable TMDLs**

3 The Clean Water Act relies on TMDLs to restore water bodies that fail to meet water
4 quality standards. TMDLs establish a clear and scientifically-driven pathway towards protecting
5 beneficial uses for public health and aquatic life. The CWA and its implementing regulations
6 require that NPDES permits must be consistent with the assumptions and requirements of TMDL
7 WLAs. (40 C.F.R. § 122.44(d)(1)(vii)(B).)⁶² Consistent with EPA regulations, the MS4-related
8 WLAs for TMDLs adopted in the Los Angeles region must be properly reflected in the MS4
9 Permit. During this renewal, 33 TMDLs were newly incorporated into the 2012 Permit. In
10 violation of the federal requirements, the 2012 Permit fails to ensure compliance with all interim
11 and final WLAs for these TMDLs and incorporates illegal compliance schedules as permit terms.

12 Although all permit terms must be consistent with the assumptions and requirements of
13 WLAs established in TMDLs, (40 C.F.R. § 122.44(d)(1)(vii)(B)), the 2012 Permit inexplicably
14 excuses compliance with interim WLAs⁶³ and eliminates final WLAs in at least two instances.⁶⁴
15 For example, the 2012 Permit specifies that where a Permittee is implementing an EWMP and
16 runoff is retained up to the 85th percentile storm, the Permittee is deemed in compliance with final
17 TMDL WLAs. (2012 Permit, at Part VI.E.2.e.i(4).) Further, for EPA-approved TMDLs, the 2012
18 Permit removes compliance obligations, again excusing Permittees from complying with final
19 numeric WLAs. (2012 Permit, at Part VI.E.3.) Both of these provisions violate federal
20 requirements and should be removed from the Permit.

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23 ⁶² See, EPA Hanlon Memo.

24 ⁶³ Where a Permittee engages in either type of watershed management program, the Permit
25 unlawfully eliminates the need to comply with interim WQBELs and RWLs. Indeed, the Permit
26 includes a safe harbor for violations of interim limits that occur during and after WMP or EWMP
27 development rather than actually achieving the interim limits defined in the TMDL. (2012 Permit,
28 at Parts VI.C.3.a, VI.E.2.d.i(4), (4)(d).)

29 ⁶⁴ As discussed in Environmental Groups’ Petition, the 2012 Permit also incorporates illegal
30 compliance schedules under Parts IV.A.2.a; VI.C.3.c., VI.E.1., VI.E.ii., and VI.E.2.d.i., in
31 violation of 40 C.F.R § 122.47. (See also, State Board Resolution No. 2000-15, at 19.)

1 **C. The Decision to Adopt the 2012 Permit and its Approach to RWL Compliance,**
2 **Including its Incorporation of Safe Harbor Provisions, is not Supported by the**
3 **Findings or the Evidence in the Administrative Record**

4 The Regional Board’s approval of the 2012 Permit, including its approach to RWL
5 compliance, violates long-established requirements for agency decision-making. The Regional
6 Board’s findings fail to show the Board’s mode of analysis to “bridge the analytic gap between the
7 raw evidence and [the] ultimate decision or order.” (See, *Topanga Ass’n for a Scenic Cmty v.*
8 *County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Moreover, in critical aspects the Regional
9 Board’s final decision lacks evidentiary support in the record, including for the Regional Board’s
10 claims that (1) the 2012 Permit satisfies anti-backsliding and antidegradation requirements; (2) that
11 compliance with EWMP provisions will result in compliance with water quality standards; and (3)
12 that compliance with EWMP provisions will result in compliance with TMDL WLAs. The
13 absence of adequate findings or evidence to support these and other aspects of the final Permit
14 renders the Regional Board’s decision unlawful. (See, Cal. Civ. Proc. Code § 1094.5(b); see also,
15 *Zuniga v. Los Angeles County Civil Service Commission* (2006) 137 Cal.App.4th 1255, 1258.)

16 First, Environmental Groups raised significant legal and factual arguments before the
17 Regional Board to demonstrate that the safe harbors incorporated in the 2012 Permit violate
18 federal anti-backsliding requirements.⁶⁵ In response, the 2012 Permit merely repeats
19 (incompletely) the legal requirements for anti-backsliding, then leaps to the conclusory statement
20 that, “All effluent limitations in this Order are at least as stringent as the effluent limitations in the
21 previous permit.” (2012 Permit, at p. 25, Finding N.) However, bare conclusions do not satisfy
22 the Regional Board’s obligations. (See, *American Funeral Concepts-American Cremation Soc’y*,
23 136 Cal.App.3d at 309 (“administrative findings set forth solely in the language of the applicable
24 legislation are insufficient”))

25 ⁶⁵ See Letter from NRDC, Los Angeles Waterkeeper, and Heal the Bay to Regional Board re:
26 Comments on Tentative Order R4-2012-XXXX, Los Angeles County MS4 Permit, June 6, 2012
27 Draft, July 23, 2012. NRDC, Los Angeles Waterkeeper and Heal the Bay also presented on this
28 issue at the October 4-5 and November 8, 2012 Regional Board Hearings on the 2012 Permit. As
discussed above, the 2012 Permit’s discussion of antidegradation requirements is another stark
example of the lack of sufficient findings and evidentiary support.

1 Similarly, there is insufficient evidence to support the Regional Board’s decision to adopt
2 the safe harbor provisions allowed for Permittees under an EWMP. Participation in an EWMP
3 requires retention of runoff from the 85th percentile, 24-hour storm in exchange for exemption
4 from compliance requirements through safe harbors. (Permit, at Part VI.E.2.e.i.(4).) Yet there is
5 no evidence in the record for the 2012 Permit’s adoption to demonstrate that retention of the 85th
6 percentile storm event will, in fact, achieve compliance with either water quality standards
7 required under the Receiving Water Limitations, or with the numerous TMDL WLAs required to
8 be met in the 2012 Permit. At the November 8, 2012 Hearing, EPA specifically questioned the
9 adequacy of the record on this point:

10 [T]he EPA guidance on incorporating TMDLs into . . . MS4 permits that has been
11 around since 2002 talks about when you come up with a BMP-based approach for
12 incorporating a TMDL into a permit—so basically this is a BMP-based approach.
13 You would be retaining the 85th percentile storm—you have to have in the record
14 for the permit the justification for how that gets to those specific wasteload
15 allocations. . . .⁶⁶

16 We’ve been very involved with the county’s modeling and . . . we don’t have that
17 rigorous analysis that’s been—that’s required by the EPA guidance for saying and
18 showing that that specific retention is going to achieve the numeric wasteload
19 allocation. . . . I haven’t seen the support in the administrative record, the fact sheet
20 or otherwise.⁶⁷

21 Following EPA’s observation, the Regional Board Chair asked staff directly if the evidence
22 requested by EPA was in the record.⁶⁸ The Board’s Executive Officer, Mr. Unger replied:

23 Yes. Yes. It was discussed when the county first presented at the last hearing, the
24 enhanced management approach, they discussed their—the watershed modeling
25 system that they would be using to demonstrate a reasonable assurance.⁶⁹

26 ⁶⁶ Mr. John Kemmerer, EPA, November 8, 2012 Hearing, at 365:24 to 366:7.

27 ⁶⁷ Mr. John Kemmerer, EPA, November 8, 2012 Hearing, at 366:10-18; 367:6-8.

28 ⁶⁸ See, Ms. Maria Mehranian, Regional Board Chair, November 8 Hearing, at 368:13-14 (stating
“So—I’m sorry . . . it is in the record?”).

⁶⁹ Mr. Sam Unger, at 368:15-19.

1 However, the record, including watershed modeling discussed by Los Angeles County, does not
2 anywhere demonstrate that retention of the 85th percentile storm will protect water quality
3 standards or achieve TMDL WLAs as required by the Clean Water Act or EPA guidance.⁷⁰

4 In fact, the County’s presentations demonstrate only that, in the County’s view, the 85th
5 percentile storm represents a cost-effective cut-off point or “appropriate design storm [size] for use
6 in BMP planning and design” for treatment of stormwater runoff.⁷¹ Above the 85th percentile
7 storm, in the County’s view, diminishing returns on pollution reduction counsel against additional
8 investment.⁷² This is not, as Regional Board staff appear to indicate, evidence that retention of the
9 85th percentile storm will achieve required WLAs for all TMDLs in all watersheds covered by the
10 permit. At both the October 4-5 Hearing and November 8 Hearing, the County discussed the
11 decision to select the 85th percentile storm and acknowledged it was based on cost considerations:

12 This concept involves the identification of a storm of specific size, the intensity,
13 and/or duration for use in design stormwater controls to achieve water quality
standards that balances cost with pollutant removal efficiency.⁷³

14 The [projected] graph plots the total cost of BMPs needed throughout LA County to
15 comply with all the TMDLs expected in the new permit against various size storm
16 events. As can be seen, the most optimum storm size is the 85th percentile storm
event.⁷⁴

17 This explanation does not demonstrate a discernible relationship between the 85th percentile
18 retention approach, chosen for the claimed balance between cost and pollutant removal efficiency,
19 and full achievement of TMDL WLAs. Nor do the County or the Regional Board provide data,

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21 ⁷⁰ See 40 C.F.R. § 122.44(d); EPA Hanlon Memo

⁷¹ Mr. Gary Hildebrand, November 8, 2012 Hearing, at 220:18-19.

22 ⁷² The same concern rises for compliance with the Permit’s Receiving Water Limitations—
23 retention of the 85th percentile storm represents only, in the County’s view, a cost effective upper
24 limit for a design storm. This does not stand for the proposition that retention will then achieve
water quality standards for all receiving waters in all conditions.

25 ⁷³ Mr. Gary Hildebrand, November 8 Hearing, at 220:20-24. Regional Board Staff also
26 indicated their understanding that selection of the 85th percentile storm was a cost
27 consideration, not an independent assessment of the storm size required to be retained to
meet applicable TMDL WLAs. See, Mr. Sam Unger, November 8 Hearing, at 360:14-17
28 (“when you look at that curve, sort of a dollars versus precipitation event occurred, right
about that 85th percentile—right at the 85th percentile, the curve trends up very markedly.”).

⁷⁴ Mr. Gary Hildebrand, October 4 Hearing, at 308:7-12.

1 analysis, or in the Regional Board’s case, findings to support that this BMP-based approach will
2 achieve applicable WLAs⁷⁵ or demonstrate the validity of the County’s model.⁷⁶ Accordingly, the
3 Regional Board’s decision to include the EWMP safe harbors in the 2012 Permit was arbitrary and
4 capricious and not otherwise supported by the record.

5 **III. RESPONSE TO DISCHARGERS’ PETITIONS REGARDING RECEIVING**
6 **WATER LIMITATIONS LANGUAGE**

7 **A. Introduction**

8 The petitions for review filed by Dischargers regulated under the Permit⁷⁷ are based on
9 demonstrably inaccurate statements of fact and recycled legal arguments about compliance with
10 RWLs that have been repeatedly litigated in California and resolved against the Dischargers.
11 Dischargers challenge the adopted Permit’s RWL provisions on several fronts. While the 36
12 different petitions, filed by 37 individual Dischargers, raise somewhat differing issues, the
13 Dischargers’ challenges to the Permit’s RWLs can be broken down generally into three different
14 principal arguments: (1) requiring compliance with water quality standards in MS4 permits
15 violates federal law; (2) requiring compliance with water quality standards conflicts with prior
16 state precedent, including requirements to implement the “iterative process”; and (3) requiring
17 compliance with water quality standards forces the Dischargers to perform the “impossible” or
18 exceeds the mandates of federal law such that the Regional Board improperly failed to consider
19 economic and other factors in its decision.⁷⁸ At their core, Dischargers’ arguments arise from

20 _____
21 ⁷⁵ 40 C.F.R. § 122.44(d)(1)(vii)(B); see also, EPA Hanlon Memo.

22 ⁷⁶ We note that to the extent the Regional Board may have relied on additional information
23 submitted by the County related to selection of the 85th percentile storm submitted after July 23,
24 this evidence is not part of the record. In the agenda for the October 4-5 and the November 8
25 Hearings, the Regional Board stated unequivocally that “No new written materials may be
26 submitted on the Tentative Order . . . Written comments were due by noon on July 23, 2012.”
(October 4-5 Agenda, at, 2; see also, Notice of Opportunity for Comment, October 18, at 2.)

27 ⁷⁷ We recognize that a small number of the Dischargers, including, for example, the City of Signal
28 Hill, do not directly challenge the RWLs in their petitions. However, for ease of reference, we
refer to Dischargers’ petition arguments against the Permit’s RWLs collectively here.

⁷⁸ These arguments all are a species of the claim that the Regional Board may not require
compliance with numeric water quality standards of the Dischargers. This claim has been
repeatedly rejected by California and federal courts. Environmental Groups will provide

1 fundamental, repeated mischaracterizations of the mandates of federal and state law, and a failure
2 to acknowledge prior court decisions that are binding against them.

3 In fact, these *specific* claims objecting to the Regional Board’s decision to include the
4 RWL requirements have been resoundingly rejected by California State courts in litigation on the
5 2001 Permit. Dischargers, however, having failed to remove the requirements to meet water
6 quality standards through this prior litigation or through litigation attacking the adoption of the
7 water quality standards themselves,⁷⁹ (and similar litigation against the RWLs in the 2001 San
8 Diego County MS4 permit having failed),⁸⁰ once again seek to weaken public health and
9 environmental safety requirements designed to protect tens of millions of residents and visitors
10 who use Los Angeles County waters. Dischargers argue that the 2012 Permit presents an entirely
11 new set of circumstances, as “[i]n prior permits, the RWL standard . . . was understood to be an
12 iterative process where compliance would not be measured according to numeric water quality
13 exceedances,”⁸¹ and that the current mandate is “squarely at odds with what had been understood,”
14 representing a “fundamental shift in how permits have been traditionally implemented. . . .”⁸²
15 These claims, however, are patently false. RWLs requiring compliance with numeric water quality
16 standards were present in the 2001 Permit, were explicitly understood by the Dischargers to
17 require such compliance, and were upheld by the courts against exactly these same challenges.

18 This is ultimately the fourth bite at the apple for the Dischargers in their efforts to
19 undermine the RWLs adopted by the Regional Board. Dischargers unsuccessfully challenged the
20 2001 Permit and its RWL requirements in state court in after the adoption of the 2001 Permit.
21 They unsuccessfully challenged the adoption and review of the underlying water quality standards
22 in state court in 2005. Both of those efforts having failed, the principal permittees challenged the
23

24 additional discussion of the relationship between federal requirements and relevant provisions of
the California Water Code in our brief to the State Board on September 20, 2013.

25 ⁷⁹ See, *City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156.

26 ⁸⁰ *Building Industry Ass’n of San Diego County*, 124 Cal.App.4th 866.

27 ⁸¹ *City of Arcadia*, Petition for Review of Order No. R4-2012-0175, SWRCB/OCC File No. A-
2236(j) (“City of Arcadia Petition”), December 10, 2012, at 5.

28 ⁸² *City of Sierra Madre*, Petition for Review, SWRCB/OCC File No. A-2236(cc) (“City of Sierra
Madre Petition”), December 10, 2012, at 5.

1 RWLs in federal district and circuit courts when an enforcement action was brought against them,
2 and Dischargers submitted an amicus brief to the U.S. Supreme Court challenging the RWLs.⁸³
3 They here use the adoption of the 2012 Permit to again challenge the RWLs, raising the same
4 arguments rejected by courts at multiple levels previously. But, as the record in this matter
5 demonstrates, the Regional Board’s adoption of the RWLs, while flawed due to the inclusion of
6 unlawful safe harbors in the Permit as discussed in sections above, is otherwise well supported by
7 the evidence and the law, consistent with state and federal regulations and precedent, and was
8 endorsed specifically by the EPA at the Permit’s adoption hearing on November 8, 2012. For
9 those reasons and the reasons set forth below, all of Dischargers claims must fail again.

10 **B. The Dischargers’ Challenges to RWLs in the 2012 Permit are Barred by Collateral**
11 **Estoppel**

12 Dischargers launch wholesale challenges to the Regional Board’s inclusion of RWLs.
13 These arguments have been previously raised, and rejected, by California state courts, including in
14 *L.A. County Mun. Stormwater*.⁸⁴ Yet Dischargers brazenly fail to cite or even acknowledge that
15 court’s decision, despite that litigation’s focus on this specific permit, on this specific issue, and
16 that it was brought by many of these same Dischargers,⁸⁵ meaning the judgment is binding against
17 them. Pursuant to the doctrine of collateral estoppel, this issue cannot be retried here.

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19
20 ⁸³ Brief of the League of California Cities and the California State Association of Counties as
21 *Amici Curiae* in Support of Petitioner Los Angeles County Flood Control District in *Los Angeles*
22 *County Flood Control District v. Natural Resources Defense Council* (2012) 133 S.Ct. 710 (filed
23 Nov. 14, 2011), at 10-15 (attached as “Exhibit F”).

24 ⁸⁴ For example, petitioner Sierra Madre, states that “[t]he RWL language in the Permit is virtually
25 identical to the language from the 2001 Permit. Litigation regarding that language resulted in a
26 court decision that held a city would be liable for Permit violations if its discharges caused or
27 contributed to an exceedance of a given water quality standard.” (City of Sierra Madre Petition, at
28 5.) Yet rather than cite to *L.A. County Mun. Stormwater*, in which Sierra Madre was actually a
party, for this precedent, the city cites instead to the Ninth Circuit decision in *NRDC v. Los*
Angeles County (673.F.3d 880)—despite the fact that the Ninth Circuit case cites to *L.A. County*
Mun. Stormwater for this precedent.

⁸⁵ More than one half of the 37 municipal petitioners in this matter were parties to the litigation on
the 2001 Permit, including the cities of: Arcadia, Artesia, Beverly Hills, Carson, Claremont
Commerce, Covina, Downey, Gardena, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk,

1 **1. A California Superior Court already held that requiring Dischargers to**
2 **meet numeric water quality standards through the Permit’s Receiving**
3 **Water Limitations does not violate state or federal law, or exceed federal**
4 **requirements**

4 In *L.A. County Mun. Stormwater*,⁸⁶ the court found that the Regional Board “acted within
5 its authority” to include RWLs that require compliance with numeric water quality standards,
6 “whether or not compliance therewith requires efforts that exceed the ‘MEP’ standard.” (At 7.)
7 Under California law, a party is collaterally estopped from relitigating an issue if: “(1) the issue
8 decided in a prior adjudication is identical with that presented in the action in question; *and* (2)
9 there was a final judgment on the merits; *and* (3) the party against whom the plea is asserted was a
10 party or in privity with a party to the prior adjudication. [Citation.]” (*Burdette v. Carrier Corp.*
11 (2008) 158 Cal.App.4th 1668, 1688.) All of these conditions are met in this case.

12 **a. The 2012 Permit’s Receiving Water Limitations are virtually**
13 **identical to those in the 2001 Permit**

14 On December 13, 2001, the Regional Board adopted the 2001 Permit, which provided that
15 “discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or
16 water quality objectives are prohibited.” (2001 Permit, at Part 2.1.) The 2001 Permit defined
17 “Water Quality Standards and Water Quality Objectives” to mean “water quality criteria contained
18 in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule,
19 and other state or federally approved surface water quality plans.” (2001 Permit, at Part 5.) The
20 2012 Permit similarly states that “Discharges from the MS4 that cause or contribute to the
21 violation of receiving water limitations are prohibited,” (Permit, at Part V.A.1.), defining
22 “Receiving Water Limitations” to mean:

23 Any applicable numeric or narrative water quality objective or criterion, or
24 limitation to implement the applicable water quality objective or criterion, for the
25 receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for
26 the Los Angeles Region (Basin Plan), water quality control plans or policies

27 Pico Rivera, Pomona, Rancho Palos Verdes, Sierra Madre, Signal Hill, Torrance, Vernon, West
28 Covina and Westlake Village.

⁸⁶ Affirmed on appeal, *County of Los Angeles*, 143 Cal.App.4th 985.

1 adopted by the State Water Board, or federal regulations, including but not limited
2 to, 40 CFR § 131.38.

3 (Permit, at Attachment A, A-16.)

4 Some Dischargers, including the Cities of Carson, Lawndale, and West Covina, have
5 claimed that the new Permit’s Receiving Water Limitations are “significantly dissimilar” to those
6 in the 2001 Permit.⁸⁷ These Dischargers assert that the 2012 Permit’s RWLs differ (and are
7 allegedly defective), as they “require[] compliance only with water quality objectives, which
8 pertain to waters of the State [and not to] Water Quality Standards, which is a federal term applied
9 to waters of the United States.”⁸⁸ However, this assertion entirely misconstrues the nature of
10 “water quality standards.” Under federal law, water quality standards consist of two separate
11 benchmarks—a designated beneficial use of a water body (such as swimming or fishing), and a
12 water quality criteria or criterion designed to protect those uses. (33 U.S.C. § 1313(c)(2)(A).) The
13 term water quality “objective” under state law, however, is equivalent to the term water quality
14 “criteria” under federal law. (60 Fed.Reg. 4664, 4665 (“In California . . . criteria are equivalent to
15 state law ‘water quality objectives.’”)) Water quality objectives are not separate and apart from
16 water quality standards, they are rather a component of them. Thus, this aspect of the 2012
17 Permit’s definition of RWLs does not substantively alter the language from the 2001 Permit (and
18 its accompanying definitions), it simply clarifies that the RWLs apply to objectives and criteria,
19 recognizing the related terminology used by EPA and by the State of California.⁸⁹

20 Other Dischargers meanwhile acknowledge that the 2001 and 2012 Permits’ language is
21 equivalent. For example, the City of Sierra Madre notes that the “RWL language in the Permit is
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23

24 ⁸⁷ City of Carson, Petition for Review, SWRCB/OCC File No. A-2236(y) (“City of Carson
25 Petition”), December 10, 2012, at 13; see also, City of Lawndale, Petition for Review,
26 SWRCB/OCC File No. A-2236(z). December 10, 2012, at 12; City of West Covina, Petition for
27 Review, SWRCB/OCC File No. A-2236(kk), December 10, 2012, at 13.

⁸⁸ *Id.*, at 14.

⁸⁹ See also, Regional Board, Response to Comments on the Tentative Order, Receiving Water
28 Limitations Matrix, October 23, 2012, at B-28 to B-29.

1 virtually identical to the language from the 2001 Permit.”⁹⁰ Moreover, even in the event that there
2 were technical differences between the 2001 Permit and 2012 Permit’s RWL provisions, the
3 majority of Dischargers’ claims are nonetheless legally identical. The Dischargers argue now—
4 just as they did in challenging the 2001 Permit—that compliance with numeric water quality
5 standards in MS4 permits violates federal law or conflicts with state precedent mandating
6 implementation of the iterative process. In either case, the State Board should find Dischargers
7 estopped from raising these claims again.

8 **2. The central issues litigated in *L.A. County Mun. Stormwater* were resolved**
9 **against the Dischargers and are identical to the core issues presented by**
10 **the Dischargers here**

11 **a. The *L.A. County Mun. Stormwater* Court ruled that use of numeric**
12 **limitations is consistent with federal regulations under the Clean**
13 **Water Act**

14 In *L.A. County Mun. Stormwater*, the court explicitly rejected the contention that
15 requirements to meet numeric water quality standards were inappropriate or unlawful, stating
16 “EPA [or State] has the authority to determine that ensuring strict compliance with state water-
17 quality standards is necessary to control pollutants.” (*L.A. County Mun. Stormwater*, at 5 (citing
18 *Defenders of Wildlife v. Browner*, 191 F.3d at 1166).) Dischargers, including Dischargers who
19 were parties to *L.A. County Mun. Stormwater*, erroneously continue to cite to *Defenders of Wildlife*
20 and to *Building Industry Association of San Diego County* for the proposition that because “federal
21 law does not compel the use of numeric effluent limits in municipal NPDES permits” in every
22 case,⁹¹ requiring compliance with numeric limits in any case is “[c]ontrary to controlling State and
23 Federal standards.”⁹² Confusing the term “non-compulsory” with the term “prohibited,” the
24 Discharges continue to ignore, as they did in the litigation on the 2001 permit, that the court in

25 ⁹⁰ City of Sierra Madre Petition, at 5. See also, City of Arcadia Petition, at 5 (“In prior permits, the
26 RWL standard, despite having similar (but not identical) language, was understood to be an
27 iterative process...”).

28 ⁹¹ Cities of Duarte and Huntington Park, Petition for Review of the Cities of Duarte and
Huntington Park, SWRCB/OCC File No. A-2236(k), (Cities of Duarte and Huntington Park
Petition”), December 7, 2012, at 16; see also, City of Arcadia Petition, at 5.

⁹² City of Arcadia Petition, at 5.

1 *Defenders* clearly stated that “the EPA [or state] has authority to determine that ensuring strict
2 compliance with state water quality standards is necessary to control pollutants.” (*Defenders of*
3 *Wildlife v. Browner*, 191 F.3d at 1166.) In doing so, the *Defenders* court also upheld against
4 discharger attacks EPA’s decision to require compliance with narrative water quality standards.
5 (*Id.*)

6 Moreover Dischargers raised—and lost—this same unsound claim before the court in *L.A.*
7 *County Mun. Stormwater*.⁹³ The *L.A. County Mun. Stormwater* court found that the 2001 permit
8 lawfully did not include a safe harbor from such water quality requirements: “In sum, the
9 Regional Board acted within its authority when it included Parts 2.1 and 2.2 in the Permit [which
10 require compliance with water quality standards] without a ‘safe harbor’ whether or not
11 compliance therewith requires efforts that exceed the ‘MEP’ standard.” (*L.A. County Mun.*
12 *Stormwater*, at 7.) The Receiving Water Limitations present in the new Permit require the same
13 result from Dischargers as did the RWLs of the 2001 Permit—Dischargers must meet water
14 quality standards—a requirement litigated and upheld in a California court.

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20 ⁹³ See, Petitioners’ Coordinated Opening Trial Brief on Certain Phase I Writ of Mandate Issues in
21 *L.A. Mun. Stormwater*, (filed March 22, 2004) (Petitioners coordinated Phase I Brief), at 10.
22 (Attached as “Exhibit G”). (MS4 permits are not required to “include limitations necessary to
23 meet water quality standards.”); see also, City of Arcadia, et al., Petitioners’ Phase I Trial Brief
24 and Points and Authorities in Support of Motion for Writ of Mandate on Phase I Trial Issues in
25 *L.A. County Mun. Stormwater*, (filed March 22, 2004) (“Arcadia Phase I Brief”), at 5 (Attached as
26 “Exhibit H”); Cities of Arcadia et al.’s Opening Brief in *County of Los Angeles*, 143 Cal.App.4th
27 985, (filed February 14, 2005) (“Arcadia Appeal Brief”), at 102 (Attached as “Exhibit I”). (“[I]t is
28 not reasonable to interpret federal law as permitting the State and/or EPA to impose permit terms
on municipalities that are not limited by the upper MEP standard, e.g., terms that require strict
compliance with State Water Quality Standards.”) This claim was also squarely rejected by the
court in *County of Los Angeles*. (143 Cal.App.4th 985, at Unpublished Part G.2 (“[R]egardless of
whether the permit imposed requirements beyond what plaintiffs contend is the maximum extent
feasible, the Regional Board has the authority to impose additional restrictions.”).)

1 **b. The *L.A. County Mun. Stormwater* Court found that requiring**
2 **compliance with water quality standards is consistent with the**
3 **iterative process and prior State Board precedent**

4 Dischargers incorrectly claim that the 2001 Permit was understood to include a safe harbor
5 such that if a Discharger was in compliance with the iterative process specified in Sections 2.3 and
6 2.4 of the Permit, it would be in compliance with the 2001 Permit’s RWLs, regardless of whether
7 water quality standards are met.⁹⁴ This is wholly inconsistent with the Dischargers’ statements to
8 the Court of Appeals in *L.A. County Mun. Stormwater*, in which several parties complained that
9 they would be in immediate non-compliance with the permit if the Superior Court’s decision were
10 to stand. (See, Arcadia Appeal Brief, at 103 (“it is impossible for Permittees to strictly comply
11 with Part 2 of the Permit, they would be in violation of Parts 2.1 and 2.2 of the Permit from its
12 effective date. . . .”)) Similar statements were also made on the record by various Dischargers
13 during the 2001 Permit adoption process. (See, e.g., Testimony of Mr. Ray Tahir on behalf of the
14 Cities of Bellflower, Monterey Park, et al., Regional Board. Hearing on the 2001 Permit,
15 December 13, 2001, at 129:7-8) (“the proposed RWL language is unacceptable because it would
16 place cities into instant noncompliance.”)

17 Alternately, Dischargers claim that the RWL provisions in the permit are in conflict with
18 State Board Order 99-05 and various other Final Water Quality Orders of the Board for failing to
19 provide Dischargers with a safe harbor through implementation of the iterative process.⁹⁵ Yet,
20 Dischargers fail to acknowledge that (as discussed above) the entire basis for Order No. 99-05
21 was, in response to objections by EPA over permit language incorporating a safe harbor into the
22 iterative process, to include RWL language without a safe harbor into future MS4 permits. And
23

24 ⁹⁴ See, *City of Sierra Madre Petition*, at 5; *Cities of Duarte and Huntington Park Petition* at 15, 23;
25 *City of Downey, Petition for Review re: LARWQCB Order No. R4-2012-0175, SWRCB File No.*
A-2236(dd), December 10, 2012, at 5.

26 ⁹⁵ See, *City of El Monte, Petition for Review, SWRCB/OCC File No. A-2236(u)* (“*City of El*
27 *Monte Petition*”), at 16; *Cities of Duarte and Huntington Park Petition*, at 14-15, 23-25; *City of*
28 *Carson Petition*, at 14; *City of Arcadia Petition*, at 6 (“*Order No. 99-05 unequivocally requires*
compliance with storm water management plans as a means of complying with receiving water
limitations and, therewith, water quality standards.”).

1 critically, Dischargers fail to acknowledge that this same argument was already raised, and
2 rejected by the court in *L.A. County Mun. Stormwater*.

3 In fact, Dischargers use nearly identical language to revive this claim before the State
4 Board here as they did in their previous challenges, (compare City of Sierra Madre Petition, at 5
5 (“As it is currently written, Petitioner conceivably could be held in non-compliance on day one of
6 the Permit. . . .”) with Arcadia Appeal Brief (in 2005) (“it is impossible for Permittees to strictly
7 comply with Part 2 of the Permit, they would be in violation of Parts 2.1 and 2.2 of the Permit
8 from its effective date. . . .”)) Dischargers further submit the same documents, for the same
9 propositions, as they did a decade ago. For example, the Cities of Duarte and Huntington Park cite
10 to a memorandum “issued by the then chair of the Regional Board, Francine Diamond,” which
11 they describe as “commenting for the need for the Regional Board to follow the ‘iterative process,’
12 and not to ‘depart from its provisions in any significant way.’”⁹⁶ The Cities then state that the
13 2012 Permit’s RWLs would “‘modify the iterative process,’ contrary to the process set forth under
14 State Board Order No. 99-05, and contrary to the Diamond Memo, particularly with the inclusion
15 of language . . . that would hold Permittees in violation of the Permit, regardless of their ‘good
16 faith efforts’ to comply and implement” the iterative approach.⁹⁷ In *L.A. County Mun. Stormwater*,
17 Dischargers cited to this same memo from Francine Diamond to attack the 2001 Permit’s RWLs
18 and the lack of a clear safe harbor in the iterative process, stating, “As the existing language of Part
19 2 does not contain a reference to a ‘good faith’ safe harbor, or a statement that no violation will be
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22 ⁹⁶ Cities of Duarte and Huntington Park Petition, at 15.

23 ⁹⁷ Cities of Duarte and Huntington Park Petition, at 15-16; see also, City of Arcadia Petition, at 5-
24 6. Dischargers further quote State Board Order No. 2001-15 for the proposition that the State
25 Board “‘will generally not require ‘strict adherence’ with water quality standards through numeric
26 effluent limitations and we continue to follow an iterative approach.’” (City of Arcadia Petition, at
27 6, (quoting State Board Order No. 2001-15, at 8.) Order No. 2001-15 itself points out that
28 “Exceptions to this general rule are appropriate” where conditions, such as determined by the
Regional Board for Los Angeles, warrant, (State Board Order No. 2001-15, at 8 n. 16), but
regardless, as we discuss below, this claim was also addressed by the court in *L.A. County Mun.*
Stormwater.

1 found ‘so long as the Permittees are engaged in a good faith effort’ [the Regional Board] has . . .
2 included Permit language that is hopelessly ambiguous.’⁹⁸

3 These claims, and the relationship between the RWLs requirement to comply with water
4 quality standards and Order 99-05, Order 2001-15, and the “Diamond Memo” were dealt with
5 directly by the court in *L.A. County Mun. Stormwater*. Referring to the 2001 Permit, the court
6 ruled explicitly that the Regional Board acted within its authority to include parts 2.1 and 2.2
7 “without a ‘safe harbor,’” and that, despite Dischargers claims, that such an approach is
8 “consistent with State Board orders WQ 2001-15 and WQ 99-05 and the Francine Diamond
9 Letter.” (*L.A. County Mun. Stormwater*, at 6.) The court stated, “It seems clear that the Regional
10 Board followed the[] principles [established in *Defenders of Wildlife* and *BIA v. SWRCB*] when it
11 established subparts 2.1 and 2.2,” the prohibitions against violations of water quality standards, “as
12 the basic receiving water requirements for Los Angeles area waters and subparts 2.3 and 2.4,” the
13 iterative process, “as the procedure the Board intends to implement to resolve any violations of
14 those requirements.” (*Id.*, at 6.)⁹⁹ This issue has been litigated, by the Dischargers or parties in
15 privity with Dischargers, and a final decision, on the merits, was rendered against them. They may
16 not revive this issue here.

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18 ⁹⁸ Arcadia Phase I Brief, at 7-8; see also, Petitioners Coordinated Phase I Brief, at 15.

19 ⁹⁹ Petitioner Cities of Carson, Irwindale, Pico Rivera, and others attempt to frame the argument as
20 new, incorrectly asserting that in the Recent decision by the Ninth Circuit Court of Appeals stated
21 that “there is no ‘textual support’ for the iterative process in the 2001 [Permit].” (City of Carson
22 Petition, at 15; City of Irwindale, Petition for Reviw, SWRCB/OCC File No. A-2236(gg),
23 December 10, 2012, at 15; City of Pico Rivera, Petition for Review, SWRCB/OCC File No. A-
24 2236(x), December 10, 2012, at 14.) This claim entirely misrepresents the Ninth Circuit’s holding.
25 The Court stated that there was no “textual support” for the proposition that compliance with the
26 iterative process “shall forgive non-compliance with the discharge prohibitions.” (*Natural*
27 *Resources Defense Council, Inc. v. County of Los Angeles*, 673 F.3d at 897.) The court explained,
28 “As opposed to absolving noncompliance . . . the iterative process ensures that if water quality
exceedances ‘persist,’ despite prior abatement efforts, a process will commence whereby a
responsible Permittee amends its SQMP.” (*Id.*) The Court explicitly recognized that the iterative
process is contained within and required by the 2001 Permit, but, citing to the state court’s
decision in *L.A. County Mun. Stormwater*, notes that Dischargers’ claim that the iterative process
provides a safe harbor has already been decided by the state courts. The Ninth Circuit decision
creates no new issue for review by the State Board here.

1 c. **The L.A. County Mun. Stormwater Court found that the Permit’s**
2 **RWL requirements neither exceed federal requirements nor require**
3 **the impossible**

4 Dischargers, again rehashing claims raised in *L.A. County Mun. Stormwater*, claim that
5 requirements to meet numeric water quality standards are technically infeasible,¹⁰⁰ or are improper
6 because these limitations, in place since 2001, are “impossible” for permittees to meet. They claim
7 that as a result, the RWLs by definition exceed the CWA’s MEP standard.¹⁰¹ As stated above
8 however, the RWL provisions are virtually identical to those in the previous permit, which have
9 been upheld in multiple venues.

10 Dischargers, as they did in the 2001 litigation, cite to *Hughey v. JMS Dev. Corp.* to
11 claim that “the law does not compel the doing of impossibilities.”¹⁰² Dischargers also raise
12 the same specious arguments as they did in 2001 to claim that the 2012 Permit’s RWLs are
13 impossible and exceed MEP. For example, Dischargers Cities of Duarte and Huntington
14 Park claim that:

15 Municipalities do not generate the urban runoff, and cannot close a valve to prevent
16 the rain from falling or runoff from entering the expansive storm drain system. As
17 such, to, in effect, conclude that municipalities must somehow develop BMPs that
18 go beyond the maximum extent practicable standard to meet numeric limits, is to
19 require municipalities to develop and implement impracticable BMPs, *i.e.*, BMPs
20 that are not technically and/or economically feasible.¹⁰³

21 ¹⁰⁰ Many Dischargers claim infeasibility with regards to WQBELs as well as RWLs. See, City of
22 Carson Petition, at 9.

23 ¹⁰¹ See, Cities of Duarte and Huntington Park Petition, at 24; City of Arcadia Petition, at 5
24 (“Holding permittees in violation of standards, which they cannot meet is unfair, and contrary to”
25 the MEP standard.”).

26 ¹⁰² *Hughey v. JMS Dev. Corp.* (11th Cir. 1996) 78 F.3d 1523, 1529-1530. As discussed below, the
27 court in *L.A. Mun. Stormwater* rejected Dischargers claims, but it is notable that *Hughey* is
28 distinguished from the case at hand. The *Hughey* court held that the Clean Water Act did not
require a development corporation to obtain a permit where the only agency authorized to issue
such permits had failed to do so and had made it impossible for the defendant to comply with the
law. *Id.* The impossibility in *Hughey* was caused by the regulator’s failure to issue Clean Water
Act permits. Unlike the defendants in *Hughey*, however, Dischargers have obtained a Clean Water
Act permit and have the authority and ability to comply.

¹⁰³ Cities of Duarte and Huntington Park Petition, at 24.

1 In challenging the 2001 Permit, Discharger parties to *L.A. County Mun. Stormwater*
2 similarly claimed:

3 To require the Permittees to continue to engage in a process of complying with
4 water quality standards, where there is no realistic means to comply with such a
5 requirement, is ‘action’ requiring the Permittees to achieve the ‘impossible.’ The
6 Permittees cannot turn off their discharge or realistically ‘stop the rain from falling’
any more than they can . . . prevent the discharge of pollutants ‘*in*’ or ‘*to*’ storm
water.¹⁰⁴

7 The court in *L.A. County Mun. Stormwater* squarely rejected these assertions. In
8 evaluating the RWL language, the Los Angeles County Superior Court concluded that the
9 “[Los Angeles] Regional Board conducted considerable research and review to ensure that
10 the best management practices (‘BMPs’) were available and reasonable” and that
11 compliance was possible because there were “BMPs available to meet the terms of the
12 Permit” (including the RWLs). (*L.A. County Mun. Stormwater*, at 8, 9.) The court
13 explicitly stated that “there was no issue of impossibility” on these nearly identical claims,
14 (*id.* at 9) and that “the terms of the permit taken, as a whole, constitute the Regional
15 Board’s definition of MEP, including, but not limited to, the challenged [RWL]
16 provisions.” (*Id.*, at 7-8.) This issue has been litigated, and resolved against Dischargers.

17 **3. The prior litigation resulted in a final judgment on the merits.**

18 Litigation of the above issues resulted in a final judgment on the merits. This decision was
19 upheld by the California Court of Appeal in *County of Los Angeles*, 143 Cal.App.4th 985, and the
20 California Supreme Court denied certiorari on February 14, 2007.

21 **4. The Parties in this action are the same or are in privity with those in *L.A.***
22 ***County Mun. Stormwater*.**

23 Finally, the last element of collateral estoppel is met here as well; the parties to the prior
24 litigation on the 2001 Permit are the same in this petition or are in privity with them. Privity
25 “refers ‘to a relationship between the party to be estopped and the unsuccessful party in the prior
26 litigation which is ‘sufficiently close’ so as to justify application of the doctrine of collateral
27

28 ¹⁰⁴ Arcadia Phase I Brief, at 8.

1 estoppel.’ [citation].” (*California Physicians Service v. Aoki Diabetes Research Institute* (2008)
2 163 Cal.App.4th 1506, 1521.) Twenty-three of the 37 cities that filed petitions in this matter
3 litigated the *L.A. County Mun. Stormwater* case. (See, *L.A. County, Mun. Stormwater; City of*
4 *Arcadia v. State Water Resources Control Bd.*, 191 Cal.App.4th 156.) As discussed below, the
5 fourteen cities that did not litigate the previous case¹⁰⁵ are also “sufficiently close” with the
6 remaining Dischargers so as to justify the application of collateral estoppel.

7 First, the privity element is satisfied here because these 14 remaining cities were named as
8 “real parties in interest” by the litigants in *L.A. County Mun. Stormwater*.¹⁰⁶ A real party is one
9 whose interests have been injured or damaged and is therefore entitled to maintain a cause of
10 action and recover from it. (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605 (real party in
11 interest is generally defined as “the person possessing the right sued upon by reason of the
12 substantive law”).) Indeed, in *Windham at Carmel Mountain Ranch Ass’n v. Superior Court*
13 (2003) 109 Cal.App.4th 1162, the court found that where a homeowners’ association was a “real
14 party in interest,” it necessarily meant the association had the requisite privity of contract to
15 maintain an action. (*Id.* at 1173.) Similarly, as real parties in interest in *County of Los Angeles*,
16 the remaining Dischargers possessed the right to sue over the 2001 Permit, and stood to take part
17 in any relief from that lawsuit, and therefore had the requisite privity with the Dischargers. Put
18 another way, privity is satisfied because having named them as real parties in interest, the parties
19 in *L.A. County Mun. Stormwater* served as *actual* representatives for the remaining 14
20 Dischargers. (See *Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 719 (privity satisfied where
21 one party represented other party’s interest in earlier action such that former party was a “virtual
22 representative” of the latter).)

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25 ¹⁰⁵ These cities include the Cities of: Agoura Hills, Bradbury, Culver City, Duarte, El Monte,
26 Glendora, Hidden Hills, Huntington Park, Inglewood, Lynwood, Manhattan Beach, Redondo
Beach, San Marino, and South El Monte.

27 ¹⁰⁶ Cities of Arcadia et al., Petition for Writ of Mandate and Complaint for Declaratory and
28 Injunctive Relief, in *L.A. County Mun. Stormwater*, No. BS 080548 (L.A. Super. Ct. Mar. 24,
2005) (filed Jan. 17, 2003) (“Arcadia Complaint”) (attached as “Exhibit J”).

1 Second, and even if they had not been explicitly named as real parties in interest in *County*
2 *of Los Angeles*, there is a sufficient unity of interests between the 23 Discharger parties to *County*
3 *of Los Angeles* and the 14 remaining Discharger petitioners such that privity exists. (See *Cal.*
4 *Physicians*’, 163 Cal.App.4th at 1522 (“identity or community of interest with . . . the losing party
5 in the first action” is a factor in finding privity).) These cities are all regulated under the same
6 municipal stormwater permit, sharing a common interest, financial and otherwise, in litigation
7 concerning the stormwater permit and the questions of law and fact resolved there—all of which
8 were notably generic and not particularized to any specific plaintiff. (See, *L.A. County Mun.*
9 *Stormwater*; Finally, a finding of privity serves “the underlying fundamental principles of the
10 collateral estoppel doctrine,” including putting an end to repetitive claims, as have been raised
11 once again here. (See *Mooney* 138 Cal.App.4th at 721.)

12 **IV. ENVIRONMENTAL GROUPS’ PROPOSED ALTERNATIVE COMPLIANCE**
13 **MECHANISM**

14 Municipal dischargers, as evidenced by their comment letters, testimony, and petitions filed
15 on the 2012 Permit and other MS4 permits throughout the state, consistently complain about
16 alleged uncertainty relating to compliance with water quality based Receiving Water Limitations
17 in NPDES permits.¹⁰⁷ On that basis municipal dischargers have argued for unenforceably vague
18 permit limits and/or safe harbors, which, as described above, are inconsistent with the
19 requirements of the CWA and are therefore illegal.

20 Environmental Groups maintain, as we advocated at the November 8, 2012 adoption
21 hearing for the 2012 Permit and in our December 10, 2012 Petition to the State Board, that the
22 proper course of action for the State Board is to strike those portions of the 2012 Permit that
23 incorporate safe harbors which render the RWLs inoperative under certain circumstances. The
24 offending language contained in the 2012 Permit at Parts VI.C.2.d. and VI.C.2.b. should be struck
25 from the 2012 Permit. Moreover, related language providing a safe harbor for compliance with
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28 ¹⁰⁷ See, e.g., City of Sierra Madre Petition; City of Carson Petition; City of Arcadia Petition.

1 interim and final TMDL limitations in sections VI.E.2.d.i(4)(d) and VI.E.2.e.i(4) should likewise
2 be struck from the 2012 Permit.

3 Environmental Groups further reiterate our opposition, raised in our November 13, 2012
4 letter to the State Board,¹⁰⁸ to the alternatives that would create safe harbors for RWL or TMDL
5 compliance put forth for consideration by the State Board in its October 12, 2012 issue paper for
6 the Board’s November 20, 2012 Municipal Storm Water Permit Receiving Water Limitations
7 Board Workshop.¹⁰⁹ Environmental Groups restate as well our opposition to the “CASQA
8 Proposal,” which “provides for a full safe harbor.”¹¹⁰ These alternative proposals would allow for
9 unprecedented and unlawful waivers from core stormwater permit provisions and TMDL
10 requirements through suggested permit terms that, as discussed above, violate federal anti-
11 backsliding provisions, state and federal antidegradation policy, and federal requirements that
12 NPDES permits ensure compliance with water quality standards; not to mention that these
13 proposals would fail to protect beneficial uses related to public health and the ecological integrity
14 of our waterways.

15 However, potential alternative Receiving Water Limitations compliance determination
16 mechanisms are available that would both comply with the Act, and provide more certainty for
17 dischargers across California, including those that petitioned the 2012 Permit. In concept the
18 EWMPs provided for in the 2012 Permit could be a viable path toward such an alternative; in
19 practice, however, the 2012 Permit’s EWMP implementation process unlawfully deems
20 Dischargers in compliance with RWLs and TMDL limits while watershed management plans are
21 being developed (and while an open-ended approval process proceeds), and also adopts a
22 performance standard with no analysis or evidence in the record to demonstrate that meeting the
23 stated standard will actually achieve compliance with water quality standards.

25
26 ¹⁰⁸ Letter from NRDC, Los Angeles Waterkeeper, Heal the Bay, California Coastkeeper
27 Association, and American Rivers to State Board, November 13, 2012, re: Comment Letter –
28 Receiving Water Limitations Workshop (attached as “Exhibit K”).

¹⁰⁹ Specifically, Alternatives 3, 4, and 5 in the State Board’s October 10, 2012 Issue Paper.

¹¹⁰ See, State Board October 10, 2012 Issue Paper, at 5; Attachment 2.

1 A workable and *legal* RWL that would also provide more engineering certainty for
2 municipal dischargers is available, however. This program would consist of pollution control
3 programs (or enhanced watershed management plans; the name is immaterial) designed to achieve
4 compliance with all applicable water quality-based requirements within the 5-year life of the
5 Permit, and would be assessed using pre-approved, peer reviewed computer modeling. Instead of
6 providing the illegal “safe harbors” currently incorporated in the Permit, Time Schedule Orders
7 (“TSOs”) would provide time for implementation of the programs, and compliance with the TSOs
8 would be determined based on compliance with the engineering standards in the program, and on
9 meeting the interim and final deadlines for implementation within the permit term. Ultimate
10 compliance with WQBELs and RWLs would be determined via water quality monitoring pursuant
11 to deadlines within the TSOs. Dischargers would thereby gain certainty during the life of the
12 Permit, pollutant loads would be significantly reduced, and the core requirement of the Act—that
13 ultimate compliance be determined *in the water*—would be met.

14 A program that would facilitate engineered solutions while complying with State and
15 Federal law would replace current Permit language, and consist of the following elements.

16 **A. Where TMDLs Have Been Adopted**

17 The 2012 Permit provides illicit safe harbors under Parts VI.E.2.d.i(4)(d) (“Upon
18 notification of a Permittee’s intent to develop a WMP or EWMP and prior to approval of
19 its WMP or EWMP, a Permittee’s full compliance with all of the following requirements
20 shall constitute a Permittee’s compliance with provisions pertaining to interim WQBELs
21 with compliance deadlines occurring prior to approval of a WMP or EWMP”) and
22 VI.E.2.e.i(4) (“A Permittee shall be deemed in compliance with an applicable final water
23 quality-based effluent limitation and final receiving water limitation for the pollutant(s)
24 associated with a TMDL if” an approved EWMP is implemented.) Part VI.E.2.d.i(4)(d),
25 granting a safe harbor prior to implementation of a WMP or EWMP should be struck from
26 the Permit, and requirements under the Permit’s EWMP provisions pertaining to Part
27 VI.E.2.e.i(4) must be revised to incorporate the following components:

- 28
- 1) A demonstration that the proposed engineered Pollution Control Program (infiltration, treatment, diversion, LID, and combinations thereof) will achieve compliance with applicable Waste Load Allocations (WLA) where TMDLs have been adopted, including any applicable interim limits, during the five year life of the Permit. For example, a Program implementing capture and/or infiltration of all stormwater in a sub-watershed up to the 85th percentile rain event (such as the LA

1 County MS4 Permit) would be in compliance with Permit requirements where
2 calibrated modeling demonstrates that this level of capture and infiltration will
3 achieve compliance for each and every applicable WLA.

- 4 a) The demonstration that the program will achieve compliance with
5 applicable WLAs would be made using a Board approved, peer reviewed
6 model, applied on a sub-watershed basis.
7 b) The proposed programs would be subject to public review and comment,
8 and, if requested, a public hearing before the Regional Board.
9 c) The program will include an enforceable schedule for implementation,
10 including interim deadlines and interim load reductions.
11 d) The Permit would *not* deem dischargers to be in compliance during the
12 Program development process or the design and construction phase.
13 Dischargers would only be deemed in compliance with the Pollution
14 Control Program upon full deployment of the pollution control measures
15 contained therein.

16 2) Where dischargers are not currently in compliance with interim or final WLAs
17 with passed compliance deadlines, time for implementation of the Pollution
18 Control Program sufficient to achieve compliance, not to exceed the five year life
19 of the permit, could be provided via Time Schedule Orders, Cease and Desist
20 Orders, and/or Clean Up and Abatement Orders.

21 3) Compliance with the TSO, CDO or CAO would be based on implementation of the
22 Program, including meeting interim deadlines and interim load allocations as set
23 forth in such orders, rather than on receiving water sampling.

24 4) End-of-pipe and receiving water monitoring would continue for the life of the
25 permit, and would be used to continue to calibrate modeling and to modify/adjust
26 program elements where anticipated performance (i.e., compliance with interim or
27 final WLAs) is not being achieved.

28 5) Ultimate compliance would be determined through end of pipe and receiving water
monitoring.

29 **B. Where TMDLs Have Not Been Adopted**

30 For either 303(d) listed waters or waters identified as impaired but not included on the
31 state's 303(d) list, the 2012 Permit provides illicit safe harbors under Parts VI.C.2.d.
32 ("Upon notification of a Permittee's intent to develop a WMP or EWMP and prior to
33 approval of its WMP or EWMP, a Permittee's full compliance with all of the following
34 requirements shall constitute a Permittee's compliance with the receiving water limitations
35 provisions in Part V.A. not otherwise addressed by a TMDL") and VI.C.2.b. ("A
36 Permittee's full compliance with all requirements and dates for their achievement in an

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approved Watershed Management Program or EWMP shall constitute a Permittee’s compliance with the receiving water limitations provisions in Part V.A.”). Part VI.C.2.d., granting a safe harbor prior to implementation of a WMP or EWMP should be struck from the Permit, and requirements under the Permit’s WMP and EWMP provisions pertaining to Part VI.C.2.b. must be revised to incorporate the following components:

For 303(d) listed Receiving Water parameters, without TMDLs

- 1) A demonstration that the proposed engineered Pollution Control Program (infiltration, treatment, diversion, LID, and combinations thereof) will achieve compliance with applicable Water Quality Standard (“WQS”). For example, a Program implementing capture and/or infiltration of all stormwater in a sub-watershed up to the 85th percentile rain event (such as the LA County MS4 Permit) would be in compliance with Permit requirements where calibrated modeling demonstrates that this level of capture and infiltration will achieve compliance for each and every applicable WQS.
 - a) The demonstration that the program will achieve compliance with the WQSs would be made using a Board approved, peer reviewed model, applied on a sub-watershed basis.
 - b) The proposed programs would be subject to public review and comment, and, if requested, a public hearing before the Regional Board.
 - c) The program will include an enforceable schedule for implementation, including interim deadlines and interim requirements
 - d) The Permit would *not* deem dischargers to be in compliance during the Program development process, or the design and construction phase. Dischargers would only be deemed in compliance with the Pollution Control Program upon full deployment of the pollution control measures contain therein.
- 2) Where dischargers are not currently in compliance with existing WQS, time for implementation of the Pollution Control Program sufficient to achieve compliance, not to exceed the five year life of the permit, would be provided via Time Schedule Orders, Cease and Desist Orders, and/or Clean Up and Abatement Orders.
- 3) Compliance with the TSO, CDO or CAO would be based on implementation of the Program, including meeting interim deadlines as set forth in such orders, rather than on receiving water sampling.
- 4) End-of-pipe and receiving water monitoring would continue for the life of the permit, and would be used to establish compliance (discharge from MS4 not causing or contributing to WQS violations, including concentration based WQS) to calibrate modeling, and to modify/adjust program elements where anticipated performance is not being achieved.

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5) Ultimate compliance would be determined through end of pipe and receiving water monitoring.

For Parameters Not 303(d) listed (Anti-Degradation)

- 1) A demonstration that the proposed engineered Pollution Control Program (infiltration, treatment, diversion, LID, and combinations thereof) will for “high quality” waters protect water quality better than that minimum necessary for “fishable/swimmable” uses. For example, a Program implementing capture and/or infiltration of all stormwater in a sub-watershed up to the 85th percentile rain event (such as the LA County MS4 Permit) would be in compliance with Permit requirements where calibrated modeling demonstrates that this level of capture and infiltration will achieve compliance with WQS, and will maintain existing water quality for higher quality waters.
 - a) The demonstration that the program will achieve compliance with anti-degradation requirements would be made using a Board approved, peer reviewed model, applied on a sub-watershed basis.
 - b) The proposed programs would be subject to public review and comment, and, if requested, a public hearing before the Regional Board.
 - c) The program will include an enforceable schedule for implementation, including interim deadlines and interim requirements.
 - d) The Permit would *not* deem dischargers to be in compliance during the Program development process, or the design and construction phase. Dischargers would only be deemed in compliance with the Pollution Control Program upon full deployment of the pollution control measures contained therein.
 - e) Ultimate compliance would be determined through end of pipe and receiving water monitoring.

1 **V. CONCLUSION**

2 For all the foregoing reasons, the instant Petitions for Review should be DENIED, and the
3 State Board should strike the illegal provisions of the 2012 Permit, including language in Parts
4 VI.C.2.d., VI.C.2.b., VI.E.2.d.i(4)(d), and VI.E.2.e.i.

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8 Respectfully submitted,

9
10 Dated: August 15, 2013

NATURAL RESOURCES DEFENSE COUNCIL, INC.

11
12 

13 _____
14 Noah Garrison
15 Steve Fleischli
16 Attorneys for NATURAL RESOURCES
17 DEFENSE COUNCIL, INC. & HEAL THE BAY

18
19 Dated: August 15, 2013

LOS ANGELES WATERKEEPER

20 

21 _____
22 Elizabeth Crosson
23 Tatiana Gaur
24 Attorneys for LOS ANGELES WATERKEEPER
25 & HEAL THE BAY
26
27
28

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is: 1314 Second Street, Santa Monica,
4 California 90401.

5 On August 15, 2013 I served the within document described as: **RESPONSE TO STATE**
6 **WATER RESOURCES CONTROL BOARD REQUEST FOR COMMENT ON**
7 **RECEIVING WATER LIMITATIONS AND OPPOSITION TO PETITIONS FOR**
8 **REVIEW ON LIMITED RECEIVING WATER LIMITATION ISSUES** on the interested
9 parties in said action as described in the attached mailing lists (Exhibits 1, 2, and 3).

10 For parties with an email address provided, the document was emailed. The email
11 transmission(s) were completed on the aforesaid date.

12 For parties without an email address, a true copy thereof was placed in the United States
13 mail enclosed in a sealed envelope with postage prepaid. I am "readily familiar" with the firm's
14 practice of collection and processing correspondence for mailing. It is deposited with U.S. postal
15 service on that same day in the ordinary course of business. I am aware that on motion of party
16 served, service is presumed invalid if postal cancellation date or postage meter date is more than
17 one day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on August 15, 2013, at Santa Monica, California.

21
22
23 
24 **Anna Kheyfets**

Exhibit 1

Board Staff Members – Contact List

[via U.S. mail and email]

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Exhibit 1

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 2

SWRCB/OCC FILE NOS. A-2236(a) through (kk) Petitioners And Their Counsel Of Record Contact List

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Exhibit 3

MS4 Dischargers – Contact List

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Exhibit 3

MS4 Dischargers – Contact List

[via email only]

City of Cerritos
c/o Mike O'Grady, Environmental Services
P.O. Box 3130
Cerritos, CA 90703-3130
mogradyc@cerritos.us

[via email only]

City of Claremont
c/o Brian Desatnik
Director of Community Development
207 Harvard Avenue
Claremont, CA 91711-4719
bdesatnik@ci.claremont.ca.us

[via email only]

City of Commerce
c/o Gina Nila
2535 Commerce Way
Commerce, CA 90040-1487
gnila@ci.commerce.ca.us
ginan@ci.commerce.ca.us

[via U.S. mail only]

City of Compton
c/o Hien Nguyen, Assistant City Engineer
25 South Willowbrook Avenue
Compton, CA 90220-3190

[via email only]

City of Covina
c/o Vivian Castro
Environmental Services Manager
125 East College Street
Covina, CA 91723-2199
vastro@covinaca.gov
vcastro@covinaca.gov

[via email only]

City of Cudahy
c/o Hector Rodriguez, City Manager
P.O. Box 1007
Cudahy, CA 90201-6097
hrodriguez@cityofcudahy.ca.us
hrodriguez@cityofcudahyca.gov

[via U.S. mail only]

City of Culver City
c/o Damian Skinner, Manager
9770 Culver Boulevard
Culver City, CA 90232-0507

[via email only]

City of Diamond Bar
c/o David Liu, Director of Public Works
21825 East Copley Drive
Diamond Bar, CA 91765-4177
dliu@diamondbarca.gov

[via email only]

City of Downey
c/o Jason Wen, Ph.D., P.E.
Utilities Superintendent
9252 Stewart and Gray Road
Downey, CA 90241
jwen@downeyca.org

[via U.S. mail only]

City of Duarte
c/o Steve Esbenshades
Engineering Division Manager
1600 Huntington Drive
Duarte, CA 91010-2592

[via U.S. mail only]

City of El Monte
c/o James A. Enriquez
Director of Public Works
P.O. Box 6008
El Monte, CA 91731

[via email only]

City of El Segundo
c/o Stephanie Katsouleas
Public Works Director
350 Main Street
El Segundo, CA 90245-3895
skatsouleas@elsegundo.org

[via email only]

City of Gardena
c/o Ron Jackson
Building Maintenance Supervisor
P.O. Box 47003
Gardena, CA 90247-3778
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[via email only]

City of Glendale
c/o Maurice Oillataguerre
Senior Environmental Program Scientist
Eng. Section, 633 East Broadway, Rm. 209
Glendale, CA 91206-4308
moillataguerre@ci.glendale.ca.us

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MS4 Dischargers – Contact List

[via email only]

City of Glendora
c/o Dave Davies
Deputy Director of Public Works
116 East Foothill Boulevard
Glendora, CA 91741
ddavies@ci.glendora.ca.us

[via email only]

City of Hawaiian Gardens
c/o Joseph Colombo
Director of Community Development
21815 Pioneer Boulevard
Hawaiian Gardens, CA 90716
jcolombo@ghcity.org
jcolombo@hgcity.org

[via email only]

City of Hawthorne
c/o Arnold Shadbeh
Chief General Service and Public Works
4455 West 126th Street
Hawthorne, CA 90250-4482
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[via email only]

City of Hermosa Beach
c/o Homayoun Behboodi
Associate Engineer
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Hermosa Beach, CA 90254-3884
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[via U.S. mail only]

City of Hidden Hills
c/o Kimberly Colberts
Environmental Coordinator
6165 Spring Valley Road
Hidden Hills, CA 91302

[via U.S. mail only]

City of Huntington Park
c/o Craig Melich
City Engineer and City Official
6550 Miles Avenue
Huntington Park, CA 90255

[via U.S. mail only]

City of Industry
c/o Mike Nagaoka Director of
Public Safety
P.O. Box 3366
Industry, CA 91744-3995

[via email only]

City of Inglewood
c/o Lauren Amimoto
Senior Administrative Analyst
1 W. Manchester Boulevard, 3rd Floor
Inglewood, CA 90301-1750
lamimoto@cityofinglewood.org

[via email only]

City of Irwindale
c/o Kwok Tam
Director of Public Works
5050 North Irwindale Avenue
Irwindale, CA 91706
ktam@ci.irwindale.ca.us

[via email only]

City of La Canada Flintridge
c/o Edward G. Hitti
Director of Public Works
1327 Foothill Boulevard
La Canada Flintridge, CA 91011-2137
ehitti@lcf.ca.gov

[via email only]

City of La Habra Heights
c/o Shauna Clark, City Manager
1245 North Hacienda Boulevard
La Habra Heights, CA 90631-2570
shaunac@lhcity.org

[via email only]

City of La Mirada
c/o Gary Sanui
Public Works Manager
c/o Steve Forster
Public Works Director
13700 La Mirada Boulevard
La Mirada, CA 90638-0828
gsanui@cityoflamirada.org
sforster@cityoflamirada.org

[via email only]

City of La Puente
c/o John DiMario
Director of Development Services
15900 East Marin Street
La Puente, CA 91744-4788
jdimario@lapuente.org

Exhibit 3

MS4 Dischargers – Contact List

[via email only]

City of La Verne
c/o Daniel Keeseey
Director of Public Works
3660 "D" Street
La Verne, CA 91750-3599
dkeeseey@ci.la-verne.ca.us

[via email only]

City of Lakewood
c/o Konya Vivanti P.O.
Box 158
Lakewood, CA 90714-0158
kvivanti@lakewoodcity.org

[via U.S. mail only]

City of Lawndale
c/o Marlene Miyoshi
Senior Administrative Analyst
14717 Burin Avenue
Lawndale, CA 90260

[via email only]

City of Lomita
c/o Tom A. Odom, City Administrator
P.O. Box 339
Lomita, CA 90717-0098
d.tomita@lomitacity.com

[via U.S. mail only]

City of Los Angeles
c/o Shahram Kharanghani
Program Manager
1149 S. Broadway, 10th Floor
Los Angeles, CA 90015

[via U.S. mail only]

City of Lynwood
c/o Josef Kekula
11330 Bullis Road
Lynwood, CA 90262-3693

[via email only]

City of Malibu
c/o Jennifer Brown
Environmental Program Analyst
23825 Stuart Ranch Road
Malibu, CA 90265-4861
jbrown@malibucity.org

[via U.S. mail only]

City of Manhattan Beach
c/o Brian Wright, Water Supervisor
1400 Highland Avenue
Manhattan Beach, CA 90266-4795
bwright@citymb.info

[via U.S. mail only]

City of Maywood
c/o Andre Dupret, Project Manager
4319 East Slauson Avenue
Maywood, CA 90270-2897

[via email only]

City of Monrovia
c/o Heather Maloney
415 South Ivy Avenue
Monrovia, CA 91016-2888
hmaloney@ci.monrovia.ca.gov
hmaloney@ci.monrovia.ca.us

[via email only]

City of Montebello
c/o Cory Roberts
1600 West Beverly Boulevard
Montebello, CA 90640-3970
croberts@aaeinc.com

[via email only]

City of Monterey Park
c/o Amy Ho or John Hunter, Consultant
320 West Newmark Avenue
Monterey Park, CA 91754-2896
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jhunter@jlha.net

[via email only]

City of Norwalk
c/o Daniel R. Garcia, City Engineer
P.O. Box 1030
Norwalk, CA 90651-1030
dgarcia@norwalkca.gov

[via email only]

City of Palos Verdes Estates
c/o Allan Rigg, Director of Public Works
340 Palos Verdes Drive
West Palos Verdes Estates, CA 90274
arigg@pvestates.org

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MS4 Dischargers – Contact List

[via email only]

City of Paramount
c/o Christopher S. Cash
Director of Public Works
16400 Colorado Avenue
Paramount, CA 90723-5091
ccash@paramountcity.com

[via email only]

City of Pasadena
c/o Stephen Walker
P.O. Box 7115
Pasadena, CA 91109-7215
swalker@cityofpasadena.net

[via email only]

City of Pico Rivera
c/o Art Cervantes
Director of Public Works P.O.
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[via email only]

City of Pomona
c/o Julie Carver
Environmental Programs Coordinator
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Pomona, CA 91769-0660
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[via email only]

City of Rancho Palos Verdes
c/o Ray Holland
Interim Public Works Director
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275
clehr@rpv.com

[via email only]

City of Redondo Beach
c/o Mike Witzansky, Public Works
Director
c/o Mike Shay, Principal Civil Engineer
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Redondo Beach, CA 90277
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mshay@redondo.org

[via email only]

City of Rolling Hills
c/o Greg Grammer
Assistant City Manager
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Rolling Hills, CA 90274-5199
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GregG@ci.Rolling-Hills-Estates.ca.us

[via email only]

City of Rolling Hills Estates
c/o Greg Grammer
Assistant City Manager
4045 Palos Verdes Drive North
Rolling Hills Estates, CA 90274
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GregG@ci.Rolling-Hills-Estates.ca.us

[via U.S. mail only]

City of Rosemead
c/o Chris Marcarello
Director of Public Works
8838 East Valley Boulevard
Rosemead, CA 91770-1787

[via email only]

City of San Dimas
c/o Latoya Cyrus
Environmental Services Coordinator
245 East Bonita Avenue
San Dimas, CA 91773-3002
lcyrus@ci.san-dimas.ca.us

[via email only]

City of San Fernando
c/o Ron Ruiz
Director of Public Works
117 Macneil Street
San Fernando, CA 91340
rruiz@sfcity.org

[via U.S. mail only]

City of San Gabriel
c/o Daren T. Grilley, City Engineer
425 South Mission Drive
San Gabriel, CA 91775

[via email only]

City of San Marino
c/o Chuck Richey
Director of Parks and Public Works
2200 Huntington Drive
San Marino, CA 91108-2691
criche@cityofsanmarino.org
pubwks@cityofsanmarino.org

Exhibit 3

MS4 Dischargers – Contact List

[via U.S. mail only]

City of Santa Clarita
c/o Travis Lange
Environmental Services Manager
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Santa Clarita, CA 91355

[via email only]

City of Santa Fe Springs
c/o Sarina Morales-Choate
Civil Engineer Assistant
P.O. Box 2120
Santa Fe Springs, CA 90670-2120
smorales-choate@santafesprings.org

[via email only]

City of Santa Monica
c/o Neal Shapiro
Urban Runoff Coordinator
1685 Main Street
Santa Monica, CA 90401-3295
Nshapiro@smgov.net
neal.shapiro@smgov.net

[via U.S. mail only]

City of Sierra Madre
c/o James Carlson, Management Analyst
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Sierra Madre, CA 91024-2312

[via email only]

City of Signal Hill
c/o John Hunter
2175 Cherry Avenue
Signal Hill, CA 90755
jhunter@jlha.net

[via U.S. mail only]

City of South El Monte
c/o Anthony Ybarra, City Manager
1415 North Santa Anita Avenue
South El Monte, CA 91733-3389

[via email only]

City of South Gate
c/o John Hunter
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South Gate, CA 90280
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[via email only]

City of South Pasadena
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1414 Mission Street
South Pasadena, CA 91030-3298
jhunter@jlha.net

[via email only]

City of Temple City
c/o Joe Lambert or John Hunter
9701 Las Tunas Drive
Temple City, CA 91780-2249
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[via U.S. mail only]

City of Torrance
c/o Leslie Cortez
Senior Administrative Assistant
3031 Torrance Boulevard
Torrance, CA 90503-5059

[via U.S. mail only]

City of Vernon
c/o Claudia Arellano
4305 Santa Fe Avenue
Vernon, CA 90058-1786

[via U.S. mail only]

City of Walnut
c/o Jack Yoshino
Senior Management Assistant
P.O. Box 682
Walnut, CA 91788

[via email only]

City of West Covina
c/o Samuel Gutierrez
Engineering Technician
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[via email only]

City of West Hollywood
c/o Sharon Perlstein, City Engineer
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Exhibit 3
MS4 Dischargers – Contact List

[via email only]

City of Westlake Village
c/o Joe Bellomo
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[via email only]

City of Whittier
c/o David Mochizuki
Director of Public Works
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[via email only]

County of Los Angeles
c/o Gary Hildebrand, Assistant Deputy
Director, Division Engineer
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Alhambra, CA 91803
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[via email only]

Los Angeles County Flood Control District
c/o Gary Hildebrand, Assistant Deputy
Director, Division Engineer
900 South Fremont Avenue
Alhambra, CA 91803
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