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January 15, 2016

VIA ELECTRONIC MAIL

Mr. Ryan Mallory-Jones
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95814
Ryan.Mallory-Jones@waterboards.ca.gov

Re: SWRCB/OCC File A-2386 – City of Covina’s Response to Petition and Addendum of Natural Resources Defense Council, Heal the Bay, and Los Angeles Waterkeeper to Review Regional Board Approval of Watershed Management Programs

Dear Mr. Mallory-Jones:

This firm represents the City of Covina (“City”). The City welcomes the opportunity to respond to the Petition and Addendum filed by the Natural Resources Defense Council, Heal the Bay, and Los Angeles Waterkeeper (collectively, “Petitioners”) challenging the Los Angeles Regional Water Quality Control Board’s (“Regional Board”) and its Executive Officer’s approval of nine watershed management programs (“WMPs”).

The City provides comments in its capacity as a permittee to the Los Angeles County Municipal Separate Storm Sewer System Permit (“MS4 Permit”) and as a participant in an enhanced watershed management program (“EWMP”). The City has joined with Los Angeles County, the Los Angeles County Flood Control District, and the cities of Baldwin Park, Glendora, Industry, La Puente, and West Covina in the development of the Upper San Gabriel River (“USGR”) EWMP. Developing and implementing the USGR EWMP has been and will be a substantial and robust undertaking by these local agencies, with the ultimate goal of improving water quality outcomes and promoting the multipurpose benefits of stormwater capture and reuse.

At this time, the Regional Board has reviewed and provided detailed comments on the USGR group’s draft EWMP. The USGR EWMP group is committed to working with the Regional Board to resolve these comments, and intends to submit a revised EWMP to the Regional Board that fully satisfies the requirements of the MS4 Permit.

Mr. Ryan Mallory-Jones
January 15, 2016
Page 2

Assuming the Executive Officer gives final approval to the EWMP, the City stands ready to move forward with the implementation stage of the EWMP.

Although the Petition and Addendum do not directly challenge the USGR EWMP, the outcome of the State Board's review of the Petition and Addendum will have further implications on the implementation of the MS4 Permit. Indeed, the outcome will likely establish precedent for the standard of review applicable to the Regional Board's consideration of the EWMPs, including the USGR EWMP. If the State Board accepts the Petitioners' claims, then such a decision would likely raise the standard for approving a WMP/EWMP by requiring permittees to procure additional data and expend further resources that may simply not be available to the permittees. As a result, the standard requested by the Petitioners would render it difficult for any WMP/EWMP to be approved. This, of course, may jeopardize the MS4 Permit's watershed management approach, increase permittee consultant and attorney costs, and would not result in a meaningful improvement to water quality. For the reasons provided below, the City respectfully requests that the State Board reject the Petitioners' claims and uphold the Regional Board's decision to approve the WMPs.

First, the Petitioners' preferred remedy—invalidate the Regional Board's ratification of its Executive Officer's final approval of the WMPs—would unnecessarily burden public agency resources. The Regional Board's staff, and the Board itself, have independently reviewed, commented on, and ultimately approved the WMPs. Following a full and public hearing that involved Petitioner testimony, the Regional Board concluded by a 6-0-1 vote that each of the nine WMPs meet or exceed the stringent requirements of the MS4 Permit and its staff's own conditions of approval. In effect, a full appellate review has already been conducted in this matter.

The Petitioners, however, seek to undo the Regional Board's substantial work and subject the WMP groups to, among other things, further modeling and data collection that the Regional Board itself found unnecessary. In its comment letter of December 18, 2014, the California Stormwater Quality Association (otherwise known as "CASQA") has carefully explained the adequacy of the Reasonable Assurance Analysis modeling and why further modeling may be infeasible. The City also believes that the Reasonable Assurance Analysis conducted for its own USGR EWMP fully complies with the MS4 Permit and worries that establishing a higher standard would unduly and unnecessarily impose added costs to our group. The City therefore encourages the Board to reject the Petitioners' substantive challenge to the WMPs. A contrary result could increase costs on the public agencies that sponsor the

Mr. Ryan Mallory-Jones
January 15, 2016
Page 3

WMPs, shift limited funding resources away from implementing the WMPs, and would not likely improve water quality outcomes.

Second, given that the Regional Board has determined the WMPs meet the MS4 Permit's requirements, it would be premature to reject the WMPs without an opportunity to review their performance. As the Board knows, WMP approval is merely the initial step under the watershed management path outlined in the MS4 Permit. By accepting the Petitioners' claims and rejecting the WMPs at this early stage, however, the Board would prematurely judge the adequacy of the WMPs before they have had an opportunity to demonstrate meaningful results during the implementation stage. A more appropriate time to conduct this evaluation is when monitoring data is collected. At that time, the WMPs can be measured for actual permit compliance with the benefit of a full adaptive management cycle. A workshop to evaluate the progress of each WMP would be more appropriate when hard data is available.

Third, and finally, as a procedural matter the Addendum should be rejected as untimely. Water Code Section 13320(a) provides that a petition challenging an action of a regional board must be filed within 30 days. In this case, it is clear that the Regional Board acted upon the WMPs on September 10, 2015 when it ratified its Executive Officer's final approval by a 6-0-1 following a public hearing. Petitioners, however, filed the Addendum on October 30, 2015, 50 days after the Regional Board acted on the WMPs. Thus, the Addendum failed to comply with limitations period provided in Water Code Section 13320 and should be rejected.

To be sure, the Addendum should not be construed as an "addendum" to the original Petition. The Addendum is a separate petition requesting invalidation of the Regional Board's decision to ratify the Executive Officer's final approval of the WMPs. The original Petition, however, challenged only the Executive Officer's conditional approval of the WMPs, and review of this action is now moot given the Executive Officer's final approval. The Addendum is therefore a separate petition challenging a different action of the Regional Board and filed past the statutory deadline.

In closing, the City has, to date, expended nearly \$90,000 for its share of costs to prepare the USGR EWMP, in addition to approximately \$85,000 related to implementing the Coordinated Integrated Monitoring Program. This is a considerable sum for Covina and the City expects to spend substantially more going forward as it implements the EWMP's programs. Our EWMP includes a robust Reasonable

Mr. Ryan Mallory-Jones
January 15, 2016
Page 4

Assurance Analysis that garnered a good-to-very good model performance from Regional Board staff and a comprehensive Adaptive Management Program that will ensure the EWMP becomes increasingly more effective over time. The City looks forward to working with the Regional Board to obtain final approval for the USGR EWMP. However, the City is concerned that, notwithstanding this immense undertaking, Petitioners will continue to impose administrative hurdles to the eventual implementation of the EWMP. Each administrative challenge results in further consultant and legal costs to the EWMP group and its individual permittees, siphoning money away from the BMPs that actually improve water quality. The City encourages the State Board to defer to the Regional Board and allow the WMPs and EWMPs to begin demonstrating results before unwinding them.

The City respectfully requests that the State Board uphold the Regional Board's thoughtful and well-reasoned determination to approve the WMPs. Please do not hesitate to contact me if you have any questions about the contents of this letter.

Very truly yours,



Nicholas R. Ghirelli

cc: Andrea Miller, City Manager
Siobhan Foster, Public Works Director
Candice K. Lee, City Attorney
Petitioners, the Los Angeles Water Board, and Permittees listed in Attachment A of November 10, 2015 State Water Board Notice