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City of Culver City

8 STATE OF CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD

10
11 In The Matter of the Petition of
12 CITY OF CULVER CITY
13
14 Petitioner,

Petition Number:

PETITION FOR REVIEW OF THE
LARWQCB ORDER DATED MARCH 4,
2008 AND NOTICE OF VIOLATION DATED
MARCH 4, 2008

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16
17 **INTRODUCTION AND SUMMARY**

18 Petitioner the City of Culver City (the "City") respectfully petitions the California State
19 Water Resources Control Board (the "State Board") to review the California Regional Water
20 Quality Control Board, Los Angeles Region's (the "Regional Board") "Order Pursuant to
21 California Water Code Section 13383 (Regarding Violations of Order No. 01-182 As Amended
22 by Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001,
23 WDID 4B190165001)" and the corresponding "Notice of Violation (Order No. 01-182 As
24 Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No.
25 CAS004001, WDID 4B190165001)" both dated March 4, 2008 pursuant to California Water
26 Code section 13320 and California Code of Regulations, title 23, section 2050. The City also
27 requests that the Petition be held in abeyance pursuant to California Code of Regulations, title 23,
28 section 2050.5(d).

1 Although the City does not request at this time a stay of the Order and NOV, the City
2 seeks to preserve its right to protect the City from any action (or inaction) which violates the
3 City's rights or applicable law.

4 **PETITION FOR REVIEW**

5 Pursuant to section 2050 of title 23 of the Code of Regulations, the City provides the
6 following information in support of the Petition:

7 **1. CONTACT INFORMATION OF PETITIONER**

8 City of Culver City
9 9770 Culver Blvd.
10 Culver City, CA 90232-0507
11 Attention: Carol Schwab, City Attorney and Heather Baker, Assistant City Attorney
12 Telephone: (310) 253-5660
13 E-mail: carol.schwab@culvercity.org and heather.baker@culvercity.org

14 David E. Cranston and Sedina L. Banks
15 Greenberg Glusker Fields Claman & Machtinger LLP
16 1900 Avenue of the Stars, Suite 2100
17 Los Angeles, California 90067
18 Telephone: (310) 553-3610
19 E-mail: dcranston@ggfirm.com and sbanks@ggfirm.com

20 **2. ACTIONS FOR WHICH PETITIONER SEEKS REVIEW**

21 The City seeks review of the following Regional Board actions:

22 (a) The Order Pursuant to California Water Code Section 13383 (Regarding Violations of
23 Order No. 01-182 As Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042,
24 NPDES Permit No. CAS004001, WDID 4B190165001) dated March 4, 2008 (the "Order") (A
25 true and correct copy of the Order is included as Exhibit A in the City's Appendix in Support of
26 Petition (the "Appendix") submitted herewith); and

27 (b) The Notice of Violation (Order No. 01-182 As Amended by Order No. R4-2006-0074
28 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190165001) dated
March 4, 2008 upon which the Order was based (the "NOV"). (A true and correct copy of the
NOV is included as Exhibit B in the Appendix). Review of the NOV is appropriate because

1 NOVs are “actions” of the Executive Officer, the alleged violations in the NOV form the
2 predicate for the Order, and thus, is intertwined with the Order, and the Order purports to provide
3 the basis upon which the NOV may be challenged. (Exhibit A, Order pp. 2-4).

4 **3. DATE ON WHICH THE REGIONAL BOARD ACTED**

5 The Regional Board sent the Order and NOV to the City by certified mail on March 4,
6 2008.

7 **4. STATEMENT OF REASONS WHY THE ACTION WAS**
8 **INAPPROPRIATE OR IMPROPER**

9 As discussed more fully in the City’s Points and Authorities (below), the Regional
10 Board’s issuance of the Order and NOV was inappropriate and/or improper for the following
11 reasons: (1) the Regional Board’s issuance of the Order and NOV was not based on substantial
12 evidence because the evidence in the administrative record demonstrates that the City could not
13 have committed the alleged violations; (2) the Regional Board abused its discretion in issuing the
14 Order and NOV because it does not have the legal authority to assert the City violated Water
15 Code § 13376; (3) the Regional Board abused its discretion in issuing the Order and NOV
16 because it did not follow the procedure set forth in the MS4 permit and its statutory authority; (4)
17 the Regional Board abused its discretion in issuing the Order because it lacks the legal authority
18 under Water Code section 13383 to require the information requested in the Order; and (5) the
19 monitoring data and Geometric Mean RWL calculations are not based on substantial evidence
20 and were incorrectly calculated.¹

21 **5. THE MANNER IN WHICH THE CITY IS AGGRIEVED**

22 The City is aggrieved because the Order and NOV misstate the evidence in the
23 administrative record. The Regional Board issued the Order and NOV without first determining
24 whether the City could have violated its MS4 Permit. The Regional Board has contended that the
25

26 _____
27 ¹ Despite the City’s repeated requests, as of the filing of this Petition, the Regional Board has not provided the City
28 with the underlying monitoring data to support the alleged violations. Therefore, the City expressly preserves this
objection should it determine that the underlying monitoring data and/or the Geometric Mean calculations were not
based on substantial evidence.

1 City violated its MS4 Permit, even though there is no evidence, substantial or otherwise, that the
2 City committed any violation.

3 The City is also aggrieved because the Regional Board has improperly attempted to hold
4 the City “jointly” liable for the actions or inactions of other permittees. The Regional Board does
5 not have the legal authority to allege the City violated the MS4 Permit based on the actions or
6 inactions of other permittees.

7 The City is also aggrieved because the Regional Board has shifted the burden to the City
8 to prove that it did not violate the MS4 Permit when there is no evidence that the City committed
9 any violation. The Regional Board must at least have evidence to establish a prima facie
10 violation by the City to lawfully issue the NOV and Order. This unlawful burden shifting also
11 imposes an excessive and unnecessary financial and administrative burden on the City to prove
12 compliance. The funds expended demonstrating the City’s compliance would be better spent
13 toward the environmental programs that the City has been and continues to implement.

14 **6. SPECIFIC ACTION THE CITY REQUESTS OF THE STATE BOARD**

15 The City respectfully requests that the State Board: (1) accept this Petition; (2) determine
16 that the Order and NOV were inappropriate and improper; and (3) direct the Regional Board to
17 rescind the Order and NOV or in the alternative to take such action itself. However, the City
18 requests at this time that the Petition be held in abeyance pursuant to California Code of
19 Regulations, title 23, section 2050(d) and reserves the right to supplement the Petition.

20 Although the City has not requested at this time a stay of the Order, the City requests that
21 findings contained in the Order and NOV and the grounds for issuance be accurate. The City also
22 seeks to preserve its right to protect the City from any action (or inaction) which violates the
23 City’s rights or applicable law.

24 **7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF THE**
25 **PETITION**

26 A Statement of Points and Authorities in support of legal issues raised in this Petition
27 follows the Petition and is incorporated herein.

1 The City requests that the Petition be held in abeyance pursuant to California Code of
2 Regulations, title 23, section 2050.5(d). The City reserves the right to supplement this statement
3 of points and authorities in the event the Executive Officer or Regional Board take further action
4 (or inaction) which necessitate the City requesting the State Board to convert this petition to
5 active status.

6 8. **STATEMENT THAT THE PETITION WAS SENT TO THE REGIONAL**
7 **BOARD**

8 A true and correct copy of this Petition was sent to the Regional Board via electronic mail
9 and First Class Mail on April 3, 2008, to the attention of Tracy J. Egoscue, Executive Officer. (A
10 true and correct copy of the correspondence reflecting the transmission is included in the
11 Appendix as Exhibit C).

12 9. **STATEMENT THAT ISSUES WERE RAISED BEFORE THE REGIONAL**
13 **BOARD, OR AN EXPLANATION WHY PETITIONER WAS UNABLE TO**
14 **RAISE SUBSTANTIVE ISSUES BEFORE THE REGIONAL BOARD**

15 The City through the applicable watershed groups has been updating the Regional Board
16 and staff regarding its NPDES and TMDL compliance activities. Upon receipt of the Order and
17 NOV, City personnel contacted Regional Board staff several times to discuss the Order and the
18 NOV. The Regional Board did not provide the City with any notice of its intent to issue the
19 Order or NOV, nor did it provide the City with the opportunity to comment or otherwise be heard
20 before issuing the Order and NOV.

21 10. **COPY OF REQUEST FOR RECORD TO THE REGIONAL BOARD**

22 The City requests that the Petition be held in abeyance pursuant to California Code of
23 Regulations, title 23, section 2050.5(d) and reserves the right to request that the Regional Board
24 prepare the record.

25 11. **REQUEST FOR HEARING**

26 The City requests that the Petition be held in abeyance pursuant to California Code of
27 Regulations, title 23, section 2050.5(d) and reserves the right to request a hearing.
28

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12. **REQUEST TO HOLD THE PETITION IN ABEYANCE**

The City requests that the Petition be held in abeyance pursuant to California Code of Regulations, title 23, section 2050.5(d).

DATED: April 3, 2008

Respectfully Submitted,

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

By: 

SEDINA L. BANKS
Attorneys for Petitioner City of Culver City

1 **STATEMENT OF POINTS AND AUTHORITIES**

2 Pursuant to California Water Code section 13320 and California Code of Regulations, title
3 23, section 2050(a)(7), the City of Culver City (the "City") submits this Statement of Points and
4 Authorities in support of its Petition for Review. The Petition requests the California State Water
5 Resources Control Board (the "State Board") to (1) accept this Petition; (2) determine that the
6 California Regional Water Quality Control Board, Los Angeles Region's (the "Regional Board")
7 "Order Pursuant to California Water Code Section 13383 (Regarding Violations of Order No. 01-
8 182 As Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No.
9 CAS004001, WDID 4B190165001)" (the "Order") and the corresponding "Notice of Violation
10 (Order No. 01-182 As Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042,
11 NPDES Permit No. CAS004001, WDID 4B190165001)" (the "NOV") both dated March 4, 2008
12 were inappropriate; and improper and (3) direct the Regional Board to rescind the Order and
13 NOV or in the alternative to take such action itself. However, the City requests at this time that
14 the Petition be held in abeyance pursuant to California Code of Regulations, title 23, section
15 2050(d) and reserves the right to supplement the Petition.

16 **I. INTRODUCTION**

17 The City is committed to protecting the environment and ensuring the storm water that
18 drains from its storm water system will not negatively impact the public health or the
19 environment. To enhance its efforts, last year the City formed an Environmental Programs and
20 Operations ("EPO") Division within the City's Public Works Department. The EPO's main focus
21 is on the City's efforts in the area of environmental programs and operations related to
22 stormwater, sewer system management, refuse and recycling. The City has been diligently
23 working with other permittees in the Ballona Creek and Marina del Rey watersheds to ensure
24 compliance with all waste discharge requirements, including those at issue in the Order and NOV.

25 The Regional Board contends that the City violated the waste discharge requirements set
26 forth in the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit
27 No. CAS004001 (the "MS4 Permit") and "therefore has violated CWC § 13376, and is subject to
28

1 liability pursuant to CWC § 13385.” (Exhibit A, Order p. 2).² These violations allegedly
2 “occurred at nine shoreline and harbor monitoring sites located along Santa Monica Bay beaches
3 and within Marina del Rey Harbor to which the City of Culver City discharges via the MS4, on
4 279 days, which included 482 instances where the bacteria water quality objectives set to protect
5 water contact recreation were exceeded.” (Exhibit A, Order p. 2). The Regional Board contends
6 that the City “is jointly responsible for violations at these monitoring sites along with the other
7 Permittees with land area within watersheds draining to these sites.” (Exhibit A, Order p. 2).
8 However, there is no evidence, substantial or otherwise, that the City violated its MS4 Permit.
9 Indeed, the administrative record demonstrates that the City could not have committed these
10 alleged violations.

11 With respect to the alleged discharges to Santa Monica Bay, the Santa Monica Bay TMDL
12 does not apply to the City because the City does not discharge directly into Santa Monica Bay.
13 The City discharges into Ballona Creek and no City drain flows directly into Santa Monica Bay.
14 As the Regional Board acknowledged in the Order, there is “a separate bacteria TMDL to address
15 bacteria impairments in Ballona Creek and its tributaries.” (Exhibit A, Order p. 3). The Ballona
16 Creek TMDL, which the City is subject to, does not require compliance with the dry weather
17 receiving water limitations until April 13, 2013. With respect to the alleged discharges into
18 Marina del Rey Harbor, the record establishes that none of the City’s dry weather flows reach
19 Marina del Rey Harbor. A low flow diversion structure installed near the intersection of
20 Washington Boulevard and Thatcher Avenue diverts all of the City’s dry weather flow to the
21 sanitary system for treatment at Hyperion Treatment Plant. This diversion structure has been
22 fully operational since prior to when the alleged violations occurred.

23 Finally, there are some legal deficiencies with the procedure the Regional Board followed
24 in issuing the Order and NOV. The Regional Board does not have the legal authority under
25 Water Code section 13383 to require the City to provide the requested information. Moreover,
26 the Regional Board did not follow the procedures set forth in the MS4 Permit and statutory
27 authority for issuing an NOV and Order. As set forth below, the City respectfully requests the

28 ² References are to the page number of the Order.

1 State Board to direct the Regional Board to rescind the Order and NOV, or take such action itself.

2
3 **II. THE ORDER AND NOV SHOULD BE RESCINDED**

4 **A. Standard of Review**

5 Any aggrieved person may petition the State Board to review an action or failure to act by
6 a regional board within 30 days of such action or failure. CAL. WATER CODE § 13320(a). Upon
7 finding that the action of the Regional Board, or the failure of the Regional Board to act, was
8 inappropriate or improper, the State Board may take the appropriate action, direct the Regional
9 Board to take the appropriate action, refer the issue to another state agency with jurisdiction, or
10 any combination of those options. CAL. WATER CODE § 13320(c). The State Board is vested
11 with all the powers of the regional board for purposes of taking such actions. CAL. WATER CODE
12 § 13320(c).

13 In determining whether the Regional Board's action was inappropriate or improper, the
14 State Board may consider the record before the Regional Board and any other relevant evidence
15 which should be considered to effectuate and implement the Water Code's policies. CAL. WATER
16 CODE § 13320(b). Thus, the scope of review is "closer to that of independent review." *In re*
17 *Petition of Exxon Co., U.S.A.*, State Board Order No. WQ 85-7, 1985 WL 20026 (Cal. St. Wat.
18 *Res. Bd.*), at *6. However, while the State Board can independently review the Regional Board's
19 record, to uphold the Regional Board's challenged action, the State Board must conclude that the
20 action was "based on substantial evidence." *Id.* Here, the Regional Board's issuance of the Order
21 and NOV was not based on substantial evidence and exceeded the Regional Board's legal
22 authority.

23 **B. The Regional Board Abused its Discretion Because the NOV and Order Are**
24 **Not Supported by Substantial Evidence**

25 The Regional Board's contention that the City violated the Receiving Water Limitations
26 ("RWL") related to the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily
27 Load ("TMDL") (the "SMBBB TMDL") and the Marina del Rey Harbor Mothers' Beach and
28 Back Basins Bacteria TMDL (the "MDR TMDL") is not supported by substantial evidence.

1 1. SMBBB TMDL

2 The City cannot be in violation of the SMBBB TMDL because the City is not subject to
3 the SMBBB TMDL for several reasons.

4 First, the SMBBB TMDL does not apply to the City because the City does not
5 discharge directly into Santa Monica Bay. The City's dry weather discharge enters
6 Ballona Creek. Therefore, the City is only subject to the Ballona Creek, Ballona Estuary,
7 and Sepulveda Channel Bacteria TMDL (the "Ballona TMDL"). The Ballona TMDL
8 does not require compliance with the dry weather RWL until April of 2013. (A true and
9 correct copy of portions of the Ballona TMDL is included as Exhibit D to the Appendix,
10 p. 13).³ Therefore, the City has until 2013 to comply with the dry weather RWL.

11 Second, even if the Ballona TMDL did not exist, the City would not have to
12 comply with the SMBBB TMDL until after the Regional Board reissues the MS4 Permit
13 to the City. The MS4 Permit incorporates by reference the findings contained in the Fact
14 Sheets that the Regional Board prepared with respect to the SMBBB TMDL and MDR
15 TMDL. (A true and correct copy of portions of the MS4 Permit is attached hereto as
16 Exhibit E to the Appendix, p. 15).⁴ The MS4 Permit provides, in pertinent part:

17 "[p]ursuant to federal regulations at 40 CFR 124.8, and 125.56, Fact Sheets were
18 prepared to provide the basis for incorporating the Dry Weather Bacteria TMDL
19 and the MDR Bacteria TMDL into this Order.⁵ These Fact Sheets are hereby
incorporated by reference into these findings."

20 (Exhibit E, MSR Permit, p. 15)(emphasis added).

21 The Fact Sheet for the SMBBB TMDL (the "SMBBB Fact Sheet") defines the
22 City as "tributary to Santa Monica Bay beaches" because it does not directly discharge
23 into Santa Monica Bay. (A true and correct copy of the SMBBB Fact Sheet is included as
24 Exhibit F to the Appendix). The SMBBB Fact Sheet provides that "[f]or cities in Los
25 Angeles County that are tributary to Santa Monica Bay but do not directly discharge, the

26 _____
27 ³ References are to the page number of the Ballona TMDL.

28 ⁴ References are to the page number of the MS4 Permit.

⁵ The MS4 Permit defines that SMBBB TMDL as the "Dry Weather Bacteria TMDL" and the MDR TMDL as the
"MDR Bacteria TMDL."

1 summer dry weather discharge prohibition for bacteria, will be included as the bacteria
2 WLA, when the LA County MS4 Permit is reissued after expiration.” (Exhibit F,
3 SMBBB Fact Sheet, p. 2)(emphasis added).

4 The MS4 Permit expired on December 12, 2006. (Exhibit E, MS4 Permit, p. 77).
5 Although the terms and conditions of the MS4 Permit automatically continue pending
6 issuance of a new permit (*see* CAL. CODE REGS. TIT. 23, § 2235.4), the Regional Board has
7 not yet reissued a new permit to the City. Therefore, the SMBBB TMDL cannot even
8 apply to the City.

9 2. MDR TMDL

10 The MDR TMDL was incorporated into the MS4 Permit on August 9, 2007. In the Order
11 and NOV, the Regional Board alleges that the City violated the MDR TMDL commencing on
12 August 15, 2007. (Exhibit B, NOV, Attachment 1, p. 1). This allegation is not based on
13 substantial evidence.

14 On January 8, 2007, the Marina del Rey Watershed responsible agencies (the “MDR
15 Agencies”), which includes the City, submitted the Marina del Rey Harbor Mothers’ Beach and
16 Back Basins Bacteria TMDL Implementation Plan (the “MDR Implementation Plan”) to the
17 Regional Board. (A true and correct copy of portions of the MDR Implementation Plan is
18 included as Exhibit G in the Appendix). The MDR Implementation Plan discusses the dry
19 weather discharge controls the MDR Agencies have implemented and propose to implement.
20 One of the plans already implemented was the installation of a “low-flow diversion” structure at
21 the intersection of Washington Boulevard and Thatcher Avenue (the “Diversion Structure”) in
22 December 2006. (Exhibit G, MDR Implementation Plan, p. 4-10).⁶

23 The Diversion Structure, which has been fully operational since March 2007, diverts all
24 dry weather flow from the City to the sanitary sewer system and then to the Hyperion Treatment
25 Plant for treatment. (Exhibit G, MDR Implementation Plan, p. 4-13). As all of the City’s dry
26 weather flow is diverted before it reaches Marina del Rey, the City cannot be in violation of the
27 MDR TMDL or the MS4 Permit. (Exhibit E, MS4 Permit, p. 16)(referencing the installation of

28 ⁶ References are to the page numbers of the MDR Implementation Plan.

1 the Diversion Structure). Therefore, as of March 4, 2008 (when the Order and NOV were
2 issued), there was ample evidence in the record, as well as knowledge of Regional Board staff, to
3 demonstrate that the City could not have violated the MDR TMDL.

4 Moreover, even if the Diversion Structure did not exist, the City's dry-weather flow would
5 only enter Basin E, which includes monitoring sites MDRH-5, MDRH-6 and MDRH-7.
6 Accordingly, the City could not have violated the RWLs for MDRH-1, MDRH-2, MDRH-3,
7 MDRH-4 and MDRH-9.

8 For the foregoing reasons, the Regional Board's decision to issue the Order and NOV was
9 not based on substantial evidence.

10 **C. The Regional Board Abused its Discretion In Issuing the NOV and Order**
11 **Because It Does Not have the Legal Authority to Assert the City Violated**
12 **Water Code § 13376**

13 In the Order, the Regional Board contends that the City is "jointly responsible for
14 violations at these monitoring sites along with the other Permittees with land area within
15 watersheds draining to these sites." (Exhibit A, Order, p. 2). Based upon these alleged "joint"
16 violations, the Regional Board contends the City violated Water Code section 13376. However,
17 the City cannot be found to have violated Water Code section 13376 based on the actions of other
18 permittees. Neither section 13376 nor the MS4 Permit impose liability for the actions of other
19 permittees.

20 Indeed, with respect to complying with the SBBB TMDL and the MDR TMDL, the MS4
21 Permit expressly provides that permittees that do not contribute to RWL exceedances "would not
22 be responsible for violations of these provisions even if the Receiving Water Limitations are
23 exceeded at an associated compliance monitoring site." (Exhibit E, MS4 Permit, p. 17) (emphasis
24 added). Despite this mandate, the Regional Board has improperly alleged that the City has
25 violated the waste discharge requirements of the MS4 Permit when there is no evidence,
26 substantial or otherwise, that the City contributed to the RWL exceedances.⁷

27
28 ⁷ The City does not admit that there were any actual exceedances of the RWL.

1 **D. The Regional Board Abused its Discretion in Issuing the Order and NOV**
2 **Because it Did Not Follow the Procedure Set Forth in the MS4 Permit and**
3 **Statutory Authority**

4 The Regional Board failed to follow the enforcement procedures set forth in the MS4
5 Permit in issuing the NOV and Order to the City. The MS4 Permit provides, in pertinent part,
6 that:

7 “[i]f the Receiving Water Limitations are exceeded at a compliance monitoring
8 site, the Regional Board will generally issue an appropriate investigative order
9 pursuant to Cal. Water Code § 13267 or § 13225 to the Permittees and other
10 responsible agencies or jurisdictions within the relevant subwatershed to determine
11 the source of the exceedance.”

12 (Exhibit E, MS4 Permit, p. 17). Based on the findings of the investigative order, the Regional
13 Board is required to determine whether the permittee is responsible for any exceedances, before
14 asserting that such permittee is in violation of the permit: “[i]f the Regional Board determines
15 that the exceedance did not result from discharges from the MS4, then the MS4 Permittees would
16 not be responsible for violations of [the MS4 Permit].” (*Id.*) Here, the Regional Board made a
17 determination that the City violated the MS4 Permit without first considering whether any alleged
18 exceedances resulted from the City’s MS4. As set forth above, there is no evidence that the City
19 could have contributed to the alleged exceedances.

20 Additionally, the Regional Board did not issue the Order pursuant to Water Code sections
21 13267 or 13225 as required by the MS4 Permit. Under both of these provisions, the submittal of
22 information must “bear a reasonable relationship to the need for the report and the benefits to be
23 obtained from the reports.” CAL. WATER CODE §§ 13225(c) and 13267(b)(1). Section
24 13267(b)(1) further requires the Regional Board to “identify the evidence that supports requiring
25 that person to provide the reports.” The statute defines “evidence” as “any relevant evidence on
26 which reasonable persons are accustomed to rely in conduct of serious affairs.” CAL. WATER
27 CODE § 13267(e). By proceeding under Water Code section 13383, the Regional Board has
28 attempted to circumvent these procedural safeguards requiring the City to submit information.

1 **E. The Regional Board Lacks the Legal Authority under Water Code Section**
2 **13383 to Require the Information it Requested in the Order**

3 As discussed above, the Regional Board issued the Order pursuant to Water Code section
4 13383. In the Order, the Regional Board requests the City provide information evaluating and
5 documenting:

6 “(i) the causes of the violations, (ii) remedial actions taken prior to incorporation
7 of the TMDL summer dry weather requirements into the LA MS4 Permit and
8 those taken since, and (iii) the City’s plans for additional corrective and
9 preventative actions to bring MS4 discharges into compliance with the bacteria
 RWLs applicable to Santa Monica Bay and Marina del Rey Harbor for upcoming
 summer dry weather period, beginning on April 1, 2008.”

10 (Exhibit A, Order, p, 2). The Order also requires the City to prove its compliance with the MS4
11 Permit by requiring the City to submit information to prove why “it is not responsible for one or
12 more of the violations.” (Exhibit A, Order, p. 3).

13 Water Code section 13383 does not authorize the Regional Board to require the City to
14 submit this type of information. Section 13383 is primarily a mechanism to obtain monitoring
15 information. Section 13383 authorizes the Regional Board to “require any person subject to this
16 section to establish and maintain monitoring equipment or methods, including, where appropriate,
17 biological monitoring methods, sample effluent as prescribed, and provide other information as
18 may be reasonably required.” CAL. WATER CODE § 13383(b). Although section 13383(b)
19 authorizes the Regional Board to require parties to “provide other information as may be
20 reasonably required,” that provision must be interpreted in reference to the section as a whole,
21 which only authorizes the Regional Board to “require any person subject to this section to
22 establish and maintain monitoring equipment or methods.” *Id.*

23 In any event, requiring the City to submit information regarding alleged violations when
24 there is no evidence the City committed the violations is not “reasonable.” The Order requires the
25 City to submit information regarding alleged violations that are not associated with the City’s
26 MS4 discharges. The requested information is not within the City’s possession or control because
27 the City was not the “source” of the alleged violations. (Exhibit A, Order p. 3)(requesting the
28 City to provide information regarding the “source” of the alleged violations). Nor is it proper to

1 require the City to submit information regarding the “remedial actions” that it has taken, or the
2 “additional corrective and preventative actions that will be taken” and a “time schedule designed
3 to achieve full compliance.” (Exhibit A, Order p. 3). Such information cannot be required
4 pursuant to Water Code section 13383, nor is it “reasonable.” The MS4 Permit contains a
5 detailed monitoring program. By requiring the City to submit details regarding the sources of the
6 alleged violations for which the City is not responsible, the Regional Board has attempted to
7 modify and amend the monitoring program and the waste discharge requirements without
8 providing the City with notice or an opportunity to be heard. *See* CAL. WATER CODE § 13378.

9 Finally, as discussed above, the Regional Board should have proceeded under Water Code
10 section 13267, provided it established: (1) the request for information had “a reasonable
11 relationship to the need for the report and the benefits to be obtained from the reports” and (2)
12 identified the “evidence” that supports requiring the City to provide the information.

13 **F. The Monitoring Data and Geometric Mean RWL Calculations are Not Based**
14 **on Substantial Evidence and Were Incorrectly Calculated**

15 Despite the City’s repeated requests, as of the filing of this Petition, the Regional Board
16 has not provided the City with the underlying monitoring data to support the alleged violations.
17 Without this information, the City cannot determine whether the monitoring data and alleged
18 Geometric Mean calculations are supported by substantial evidence. Nor can the City determine
19 whether the Regional Board correctly calculated the Geometric Mean. Therefore, the City
20 expressly preserves this objection should it determine that the underlying monitoring data and/or
21 the Geometric Mean calculations were not based on substantial evidence or law.

22 **III. CONCLUSION**

23 For the reasons set forth above, in the supporting documents submitted herewith and in the
24 administrative record, the City respectfully requests that the State Board: (1) accept this Petition;
25 (2) determine that the Order and NOV were inappropriate and improper; and (3) direct the
26 Regional Board to rescind the Order and NOV or in the alternative to take such action itself.

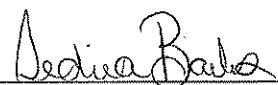
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However, the City requests that the Petition be held in abeyance pursuant to California Code of Regulations, title 23, section 2050.5(d). The City reserves the right to supplement this statement of points and authorities in the event the Executive Officer or Regional Board take further action which necessitate the City requesting the State Board to convert this petition to active status.

DATED: April 3, 2008

Respectfully Submitted,

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

By: 
SEDINA L. BANKS
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8 STATE OF CALIFORNIA
9 STATE WATER RESOURCES CONTROL BOARD

11 In The Matter of the Petition of
12 CITY OF CULVER CITY,
13 Petitioner,

Petition Number: _____
APPENDIX IN SUPPORT OF THE PETITION
FOR REVIEW OF THE LARWQCB ORDER
DATED MARCH 4, 2008 AND
CORRESPONDING NOTICE OF
VIOLATION DATED MARCH 4, 2008

16 CITY OF CULVER CITY

18 APPENDIX IN SUPPORT OF PETITION FOR REVIEW

<u>EXHIBIT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
A	March 4, 2008	California Regional Water Quality Control Board, Los Angeles Region (the "Regional Board") Order Pursuant to California Water Code Section 13383 (Regarding Violations of Order No. 01-182 As Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WIDID 4B190165001) issued to the City of Culver City (the "City").

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B	March 4, 2008	Regional Board Notice of Violation (Order No. 01-182 As Amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190165001) issued to the City.
C	April 3, 2008	Letter from Greenberg Glusker to the Regional Board reflecting transmission of the Petition for Review.
D	June 8, 2006	Portions of the Ballona Creek, Ballona Estuary, and Sepulveda Channel Bacteria TMDL
E	December 13, 2001 (As amended on September 14, 2006 by Order R4-2006-074 and on August 9, 2007 by Order R4-2007-0042)	Portions of the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001
F	September 14, 2006	Regional Board Fact Sheet Supporting Amendments to the Los Angeles County Municipal Separate Storm Sewer System Permit (ORDER NO. 01-182; NPDES PERMIT NO. CAS004001) to Incorporate Summer Dry Weather Waste Load Allocations for Bacteria Pursuant to the Santa Monica Bay Beaches Bacteria TMDL
G	January 8, 2007	Portions of the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL Implementation Plan

DATED: April 3, 2008

Respectfully Submitted

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

By: 
SEDINA L. BANKS
Attorneys for City of Culver City

EXHIBIT A



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Jerry B. Fulwood
Chief Administrative Officer
City of Culver City
9770 Culver Blvd
Culver City, CA 90232-0507

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID
4B190165001)**

Dear Mr. Fulwood:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Culver City is a Permittee.

BACKGROUND

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the municipal separate storm sewer system (MS4) that cause or contribute to exceedances of the bacteria RWLs.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay and Marina del Rey Harbor, navigable waters of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline and harbor water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay and within Marina del Rey Harbor. These

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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

As documented in the enclosed Notice of Violation, technical staff of the Regional Board has concluded that Culver City is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline and harbor monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Parts 2.5 and 2.6 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at nine shoreline and harbor monitoring sites located along Santa Monica Bay beaches and within Marina del Rey Harbor to which the City of Culver City discharges via the MS4, on 279 days, which included 482 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are detailed in the enclosed Notice of Violation. The City of Culver City is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

REQUIREMENT TO PROVIDE INFORMATION

California Water Code § 13383 provides the Regional Board the authority to require a Permittee to monitor and report and provide other information, under penalty of perjury, that the Regional Board requires. **Pursuant to CWC § 13383, the City of Culver City is hereby ordered to submit the information required in this Order by April 21, 2008.** Furthermore, pursuant to CWC § 13385, failure to comply with any requirements established pursuant to CWC § 13383 may result in the imposition of administrative civil liability penalties by the Regional Board of up to \$10,000 for each day in which the violation occurs after the April 21, 2008 due date. (CWC § 13385(a)(3).)

Pursuant to CWC § 13383, the Regional Board directs the City of Culver City to provide information evaluating and documenting (i) the causes of the violations, (ii) remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit and those taken since, and (iii) the City's plans for additional corrective and preventative actions to bring MS4 discharges into compliance with the bacteria RWLs applicable to the Santa Monica Bay and Marina del Rey Harbor for the upcoming summer dry weather period, beginning on April 1, 2008.

Specifically, the City of Culver City is required to submit reports providing the following information for each of the shoreline and harbor monitoring sites, for which it is jointly responsible, where violations have been documented. The reports shall be signed by an authorized signatory for the City of Culver City, under penalty of perjury. The reports shall provide:

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1. The source(s) of the violations for each shoreline and harbor compliance location, including an evaluation of dry weather discharges from the MS4 at each noncompliant shoreline and harbor location on the date(s) of the violations. The evaluation shall include, where available:
 - a. Details regarding dry weather discharge from the MS4 to each noncompliant shoreline and harbor location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
 - b. Details regarding existing treatment of summer dry weather discharge from the MS4 at each noncompliant shoreline and harbor location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
 - c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.
2. A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit (i.e., before September 14, 2006 for shoreline sites along Santa Monica Bay, and before August 9, 2007 for harbor sites within Marina del Rey Harbor) and those remedial actions taken since, and the results thereof.
3. A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.
4. For site SMB BC-01, which is impacted by discharges from Ballona Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Ballona Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Ballona Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations are originating from sources in proximity to the shoreline monitoring location, then the City of Culver City shall provide the information required in 1 through 3 above.

In addition, should the City of Culver City contend that it is not responsible for one or more of the violations, Culver City shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline or harbor monitoring site is not the result of discharge from the MS4 but from some other sources or discharges;
2. Evidence that Culver City does not discharge dry weather flow into the Santa Monica Bay or Marina del Rey Harbor at the shoreline or harbor monitoring site, respectively; and

California Environmental Protection Agency

