



# City of Malibu

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February 17, 2017

Sent via email to [emel.wadhvani@waterboards.ca.gov](mailto:emel.wadhvani@waterboards.ca.gov)

Emel Wadhvani  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

RE: LA County MS4 Permit – Response to Petition for Review of NSMB EWMP Approval  
(Order No. R4-2012-0175; NPDES Permit No. CAS004001; SWRCB/OCC Files  
A-2477 and A-2508)

Dear Ms. Wadhvani:

The City of Malibu (City), as an interested party to the above referenced petition and notification letter dated January 5, 2017, wishes to submit the following response for the State Water Resources Control Board (State Water Board) to consider with respect to claims made by Los Angeles Waterkeeper and Natural Resources Defense Council (collectively, Petitioners). The Petitioner's claims lack merit and, for reasons explained in this letter, the City respectfully requests the State Water Board uphold the Regional Board Executive Officer's final EWMP approval.

Following adoption of the 2012 Los Angeles Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit (Permit), the City of Malibu, County of Los Angeles, and Los Angeles County Flood Control District (collectively, Permittees) agreed to collaborate on the development of an Enhanced Watershed Management Program (EWMP) for the North Santa Monica Bay Coastal Watersheds (NSMBCW). The Permittees are also known as the NSMBCW EWMP Group. The NSMBCW EWMP is intended to facilitate effective, watershed-specific Permit implementation strategies in accordance with Permit Part VI.C. The EWMP describes the NSMBCW-specific water quality priorities identified jointly by the Permittees and sets forth the program plan, including specific control measures and best management practices (BMPs), necessary to achieve water quality targets (Water Quality-Based Effluent Limitations [WQBELs] and Receiving Water Limitations [RWLs]). The EWMP also includes technical analysis performed to support target achievement and Permit compliance.

Essentially, the Petitioners are arguing that the approval of the NSMBCW EWMP by the Los Angeles Regional Water Quality Control Board (Regional Board) Executive Officer was improper because the NSMBCW EWMP failed to consider available Area of Special Biological Significance (ASBS) water quality data, and because the NSMBCW EWMP failed to apply the ASBS water quality standards. This is not correct and the Regional Board Executive Officer's decision to approve the



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EWMP was consistent with the Permit. The Regional Board was satisfied that the Executive Officer's approval was warranted, as it declined to hear this same Petition on September 7, 2016.

Pursuant to requirements of the Permit, the NSMBCW EWMP Group, in good faith, hired a reputable, experienced consulting firm, GeoSyntec, which is familiar with the Permit requirements, to develop this EWMP for the NSMBCW. Regional Board staff reviewed three drafts of the EWMP and on April 19, 2016, the Executive Officer approved the Permittees' fourth EWMP submittal dated March 2016. The Permittees also submitted for Regional Board staff consideration an EWMP Work Plan dated June 2014 and a Compliance Plan for ASBS No. 24 (dated September 20, 2015). The ASBS Compliance Plan was prepared on behalf of the Permittees by Weston Solutions, another reputable and capable consulting firm, for the purpose of complying with the ASBS Exception and Special Protections issued by the State Water Board.<sup>1</sup>

The Petitioners claim that the approved EWMP, which incorporates the 160-page ASBS Compliance Plan as Appendix E, provides inadequate consideration of existing data pertaining to ASBS outfalls and ocean water quality. The following are specific reasons why the Petitioners' claims lack merit:

- By way of incorporating the ASBS Compliance Plan as an appendix, the EWMP provides a rational analysis as to how the applicable ASBS water quality standards will be met during implementation of the EWMP. Your State Water Board has reviewed and provided substantive comments on the Compliance Plan and has never found that it applies incorrect standards, as Petitioners suggest.
- Analysis presented in the Compliance Plan, which is part of the EWMP, provides consideration of the monitoring data for ASBS 24 outfalls and receiving water with respect to documenting the requirements for compliance with ASBS water quality standards.
- To understand why the ASBS water quality data and standards were not explicitly discussed in the body of the EWMP (as opposed to providing this in an appendix), one must consider the EWMP development timeline. Simply, the ASBS outfall monitoring data in question was obtained well after the EWMP baseline water quality analysis had already been completed (January 2014). Petitioners are arguing that the EWMP and Reasonable Assurance Analysis (RAA) should have included data that was collected by another entity (Southern California Coastal Water Research Project [SCCWRP]) simultaneously with preparation of the EWMP and RAA. While some raw data may have been collected prior to submittal of the EWMP Work Plan, the data was not synthesized and considered to have met Quality Assurance/Quality Control criteria until it was released for publication (between February

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<sup>1</sup> In 2004, the City of Malibu, County of Los Angeles, and the Los Angeles County Flood Control District requested exceptions for stormwater discharges to ASBS 24 from the State Board. The State Board received requests from numerous other applicants for an exception to the Ocean Plan. In 2012, the State Board adopted a General Exception. The General Exception includes Special Protections, which specify prohibited discharges and other requirements that dischargers covered under the General Exception must comply with. The Permittees (separately) were included in the list of responsible entities required to prepare a Draft and Final ASBS Compliance Plan for point source discharges of stormwater in ASBS 24. This Compliance Plan was prepared by the Permittees in accordance with the General Exception.



2014 and February 2015).<sup>2</sup> For context, the draft EWMP Workplan was prepared and in its final review stage by May 2014 and due to Regional Board staff in June of 2014.

- All ASBS data collected during the period in question was included in the September 2015 ASBS Compliance Plan, which is part of the EWMP.
- Incorporating the Compliance Plan into the EWMP was an appropriate way for the Permittees to provide due consideration of the ASBS water quality data and standards while keeping development of the EWMP on schedule to be finished by the strict deadlines in the Permit.
- Regional Board staff reviewed the approved EWMP Work Plan, as well as drafts of the EWMP and Compliance Plan, and requested the NSMBCW EWMP Group add the ASBS Compliance Plan to the EWMP. Regional Board staff requested this for the specific purpose of ensuring the EWMP document how the Permittees will meet their obligations under the MS4 Permit for compliance with ASBS water quality standards.
- The State Water Board's final approval of the ASBS Compliance Plan itself was not necessary for the Permittees' EWMP to have provided due consideration of the ASBS water quality data and ASBS standards. Nor was plan's final approval necessary for the EWMP to have established an acceptable plan for MS4 Permit compliance. The Permittees have responded to all State Water Board comments on the Compliance Plan and the City is implementing the Plan in advance of the ASBS Exception compliance deadline of spring 2018, even though the State Water Board has not yet issued a formal letter acknowledging final approval. Nevertheless and as noted by Ms. Renee Purdy at the Regional Water Board meeting, the LA County MS4 permit lays out a process for adaptive management. The EWMP is a dynamic document, intended to be continuously revised and improved. Should the State Water Board require any additional changes in the final ASBS Compliance Plan, those changes can also be addressed through the adaptive management process for the EWMP.
- The City submitted its ASBS Special Protections monitoring report for 2015-16 to the State Water Board in December 2016.<sup>3</sup> The City completed Core discharge and receiving water monitoring for 4 storm events between February 2014 and March 2016, and the results were compared with reference site monitoring data from 5 sampling events completed during 2008-09 and 2013-14 storm seasons. By way of this report, the City documented that it has satisfied the Special Protections' minimum monitoring requirements while continuing to implement best management practices (BMPs) in accordance with the ASBS 24 Compliance Plan and Pollution Prevention Plan. The evaluation of ASBS water quality testing results presented in the monitoring report shows how the City is complying with the ASBS Exception's stormwater standards as set forth in the Special Protections.

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<sup>2</sup> [http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/816\\_ASBSBioaccumulation.pdf](http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/816_ASBSBioaccumulation.pdf)  
[http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/817\\_ASBSPlumes.pdf](http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/817_ASBSPlumes.pdf)  
[http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/818\\_ASBSRockyIntertidal.pdf](http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/818_ASBSRockyIntertidal.pdf)  
[http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/852\\_SouthCoastASBS\\_FinalRep.pdf](http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/852_SouthCoastASBS_FinalRep.pdf)

<sup>3</sup> City of Malibu. 2016. Area of Special Biological Significance Special Protections Monitoring. Monitoring Report 2015-2016 Season. December 2016.



- Explicit discussion of the ASBS data analysis within the RAA section of the EWMP was and is unnecessary because the totality of the EWMP was considered by Regional Board staff in its review. Including that discussion in the body of the EWMP text may have been a more direct way to present the analysis, but it would have produced no meaningful difference in the EWMP's identified water quality priorities and BMPs. Regional Board staff has conferred with Dr. C.P. Lai, who confirmed that the ASBS data that Petitioner alleges was not included in the RAA "were not sufficient to modify the inputs to the RAA model at this point." See testimony of Ms. Renee Purdy, September 7, 2016 RWQCB meeting.

The criteria for EWMP approval cannot be a moving target. It took a tremendous amount of time, effort and collaboration by the Permittees and their consultants to meet the EWMP submittal deadline in June 2015. To the extent any ASBS data became available after the EWMP Work Plan was prepared and while the RAA and EWMP were well underway, the Permittees addressed that issue by attaching the ASBS Compliance Plan as an Appendix to the EWMP (as required by Regional Board staff). The EWMP and RAA, by their very nature, are part of an adaptive management framework. The Permittees have committed to performing a re-evaluation every two years of the water quality priorities identified in the EWMP based on the most recent water quality data for discharges from the MS4 and the receiving water(s), as well as an ongoing reassessment of sources of pollutants in MS4 discharges. Also, the RAA is an adaptive tool that will be updated periodically to account for all existing and new data.

Assuming Petitioners' ultimate goal is protection of the ASBS, it is worth noting that in its February 2015 publication of the ASBS data in question, SCCWRP concluded that water quality observed in Southern California ASBS is generally comparable to natural water quality following storm events.<sup>4</sup> Additionally, as explained above, the City demonstrated by way of its December 2016 ASBS monitoring report that it is complying with the ASBS Exception's stormwater standards as set forth in the Special Protections.

The Regional Board Staff and the Executive Officer worked closely with the County and City to make sure that the EWMP was consistent with Permit requirements. Regional Board staff provided an in-depth response to all of the Petitioner's allegations at the September 7, 2016, Regional Board meeting. Not only does the City of Malibu agree with all of the points made in that presentation, but the Regional Board staff's and Executive Officer's determinations that the EWMP meets the Permit requirements should be given great deference, as these are the individuals that wrote the Permit and are charged with its administration. This is especially true when the individuals have special familiarity with legal and regulatory issues implicated by its own laws, as is the case here. Simply, the Regional Board Staff and Executive Officer have the specific expertise to apply the EWMP provisions in the Permit, as they created the EWMP and are in the best position to determine how to interpret and apply those Permit terms. The State Water Board has the specific expertise to apply the applicable ASBS Exception and the State Water Board's comments on the ASBS Compliance Plan indicate that the Plan meets all requirements so long as the City and its partners respond to the

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<sup>4</sup> Schiff, K.C., and J. Brown. 2015. South Coast Areas of Special Biological Significance Regional Monitoring Program Year 2 Results. Southern California Coastal Water Research Project. Costa Mesa, CA. Technical Report 852. February 2015.



comments (which they have). The Regional Board Staff and Executive Officer have found a way to make the ASBS and EMWP programs align despite their varying schedules and there is no legal error in this approach.

The EWMP provides reasonable assurance that the BMPs and control measures set forth in the Plan will achieve water quality standards. Initial approval of the EWMP was warranted and the document can and will be continuously revised and improved based on new data over the life of the Plan. For the State Water Board to invalidate the Regional Board Executive Officer's April 19, 2016 final approval of the EWMP would serve no purpose other than to delay the Permittees' implementation of the EWMP and to increase the Permittees' already significant compliance burden. Considering this, and the reasons listed above as to why the Petitioner's claims lack merit, the City respectfully requests the State Water Board uphold the Regional Board Executive Officer's final EWMP approval.

Thank you for your consideration of these comments. If there are any questions, please feel free to contact Andrew Sheldon, Environmental Sustainability Manager, at (310) 456-2489 extension 251 or [asheldon@malibucity.org](mailto:asheldon@malibucity.org).

Sincerely,



Craig George  
Environmental Sustainability Director

cc: Reva Feldman, City Manager  
Andrew Sheldon, Environmental Sustainability Manager  
Sam Unger, Executive Officer, Los Angeles Regional Water Quality Control Board  
Deborah Brandes, Los Angeles Regional Water Quality Control Board

