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August 3, 2015

Mr. Samuel Unger, Executive Officer
California Regional Water Quality Control Board – Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Dear Mr. Unger,

**RESPONSE TO PETITION FOR REVIEW OF LOS ANGELES REGIONAL WATER
QUALITY CONTROL BOARD EXECUTIVE OFFICER'S ACTION TO APPROVE
NINE WATERSHED MANAGEMENT PROGRAMS**

On July 3, 2015, the Los Angeles Regional Water Quality Control Board issued a notice of opportunity to respond to the petition for review of its Executive Officer's action to approve, with conditions, nine Watershed Management Programs pursuant to the Los Angeles County Municipal Separate Storm Sewer System Permit (MS4 Permit). The City of Los Angeles, in coordination with the Los Angeles County Flood Control District, developed the Watershed Management Program for the City of Los Angeles area in Santa Monica Bay Watershed Jurisdiction 7.

This letter is to support the Executive Officer's action to conditionally approve the Santa Monica Bay Watershed Jurisdiction 7 as well as the remaining eight Watershed Management Programs. These programs are detailed documents outlining compliance measures and schedules for implementation in accordance with the requirements of the MS4 Permit. In addition, the Watershed Management Programs underwent a rigorous review process by the Los Angeles Regional Water Quality Control Board, which included the opportunity for public participation. Accordingly, the nine Watershed Management Groups revised their Watershed Management Program after receiving the initial comments from the Los Angeles Regional Water Quality Control Board and, once again, after receiving the conditional approvals. The conditional approval letter for the City of Los Angeles area in Santa Monica Bay Watershed Jurisdiction 7 did not require fundamental changes. Rather, the requested revisions focused on providing additional information and correcting typographical errors.



The Watershed Management Programs are the result of extensive collaboration among permittees and they provide a path forward to address the quality of water discharged from the MS4 and the requirements of the MS4 Permit. Denying these plans, particularly where the conditional approval simply requested minor clarifications or editorial revisions, as requested in the petition would delay the progress that has been made so far as well as endanger timely implementation. Accordingly, we support the Executive Officer's action to conditionally approve the Watershed Management Programs.

Sincerely,



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10 STATE OF CALIFORNIA
11 REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION
AND
12 STATE WATER RESOURCES CONTROL BOARD
13

14 Petition of NRDC, Los Angeles Waterkeeper, and
Heal the Bay, for Review by the California
15 Regional Water Quality Control Board, Los
Angeles Region, of the Regional Board Executive
16 Officer's Action to Conditionally Approve Nine
Watershed Management Programs Pursuant to the
17 Los Angeles County Municipal Separate
Stormwater National Pollutant Discharge
18 Elimination System (NPDES) Permit Order No.
R4-2012-0175, NPDES Permit No. CAS004001;

19 Petition of NRDC, Los Angeles Waterkeeper, and
Heal the Bay, for Review by the State Water
20 Resources Control Board of the Regional Board
Executive Officer's Action to Conditionally
21 Approve Nine Watershed Management Programs
Pursuant to the Los Angeles County Municipal
22 Separate Stormwater National Pollutant Discharge
Elimination System (NPDES) Permit, Order No.
23 R4-2012-0175, NPDES Permit No. CAS004001
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CITY OF CLAREMONT'S
RESPONSE TO PETITION FOR
REVIEW OF REGIONAL BOARD
EXECUTIVE OFFICER'S ACTION
TO CONDITIONALLY APPROVE
NINE WATERSHED
MANAGEMENT PROGRAMS

1 The City of Claremont (“City”) respectfully submits this Response to the Petition of
2 NRDC, Los Angeles Waterkeeper, and Heal the Bay (collectively, “Petitioners”) for Review of
3 the Regional Board Executive Officer’s Action to Conditionally Approve Nine Watershed
4 Management Programs Pursuant to the Los Angeles County Municipal Separate Stormwater
5 National Pollutant Discharge Elimination System (NPDES) Permit (“Permit”).

6 I.

7 **INTRODUCTION**

8 In their Petition, Petitioners request that the Los Angeles Regional Water Quality Control
9 Board (“Regional Water Board”) review and invalidate the Executive Officer’s conditional
10 approvals of nine Watershed Management Programs (“WMPs”) and deny all nine WMPs.
11 (Petition, pp. 1-2.)¹ The City is a member of the East San Gabriel Valley (“ESGV”) watershed
12 management group, and as part of the group, submitted a draft ESGV WMP to the Regional
13 Water Board in June 2014. On October 27, 2014, the Regional Water Board provided fewer than
14 twenty comments on the draft ESGV WMP. (See Petition, Exhibit A.) The group revised the
15 WMP to address all comments, submitted a revised WMP and, on April 28, 2015, received
16 conditional approval of the ESGV WMP. (See Petition, Exhibit B.) The conditional approval
17 imposed eight conditions on the ESGV WMP and required the watershed management group to
18 address the conditions by June 12, 2015. (*Ibid.*) The watershed management group modified the
19 WMP to address all eight comments and submitted the final ESGV WMP on June 12, 2015.²

20 Petitioners challenge the Executive Officer’s conditional approval of all nine WMPs on
21 three grounds: 1) that the Executive Officer acted outside the scope of authority delegated to the
22 Executive Officer by conditionally approving the WMPs because the only authority explicitly
23 delegated to the Executive Officer was to approve or deny the WMPs; 2) that the Executive
24 Officer improperly modified the Permit by failing to comply with substantive and procedural
25 requirements and exceeded statutory limits on delegation; and 3) that the Executive Officer

26 ¹ The Petitioners also petitioned the State Water Resources Control Board (“State Board”) seeking the same
27 action.

28 ² See Final ESGV WMP, available at:
http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/east_san_gabriel/EastSanGabrielRiverValley_FinalWMP.pdf.

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1 improperly imposed conditions on the approvals that are inconsistent with Permit requirements
2 and the Clean Water Act.

3 The Executive Officer’s action to conditionally approve the nine WMPs was an action
4 within the broad scope of authority delegated to the Executive Officer by the Regional Water
5 Board by Resolution No R10-009 and specified further by the Permit. As a result, the Executive
6 Officer’s conditional approval of the WMPs was within the scope of delegated authority and
7 complied with the procedural requirements of the Permit. The Petition fails to allege any specific
8 challenge to the substantive adequacy of the ESGV WMP. As a result, the sufficiency of the
9 ESGV WMP is not properly before the Regional Water Board. Finally, to the extent the Petition
10 asserts that the ESGV WMP did not address the comments provided in the initial comment letter
11 or in the conditional approval, the evidence in the record demonstrates that the ESGV watershed
12 management group revised the WMP to address all comments and conditions.

13 II.

14 FACTUAL BACKGROUND

15 A. Permit Approval

16 The Regional Water Board approved the Permit on November 8, 2012. The Permit
17 regulates discharges to and from municipal separate storm sewer systems (“MS4”), in part, by
18 prohibiting non-stormwater discharges through the MS4 to receiving waters, with limited
19 exceptions (Permit, § III.A.4), prohibiting discharges from the MS4 that cause or contribute to a
20 violation of receiving water limitations (Permit, § V.A) (“Receiving Water Limitations”), and
21 requiring compliance with water quality-based effluent limitations and receiving water
22 limitations, consistent with applicable total maximum daily loads (“TMDL”) (Permit, § VI.E)
23 (“TMDL Provisions”).

24 B. WMP and Enhanced WMP

25 The Permit’s WMP Provision provides an alternative pathway to strict compliance with
26 specific Permit requirements. Provision VI.C provides that participation in a WMP or Enhanced
27 WMP (“EWMP”) allows a Permittee to comply with the Receiving Water Limitations, TMDL
28 Provisions, and other Permit provisions. The purpose of the WMP/EWMP is “to allow

1 Permitees the flexibility ... to implement the requirements of this Order on a watershed scale
2 through customized strategies, control measures, and BMPs.” (Permit, § VI.C.1.a.) Each WMP
3 must prioritize MS4-related water quality issues, identify strategies to comply with Permit
4 requirements, include an integrated monitoring and assessment program to determine progress
5 towards meeting Permit requirements, include an adaptive management strategy and include input
6 from the public and Regional Water Board. (Permit, § VI.C.1.f.)

7 The timeline for developing, approving and implementing WMPs/EWMPs is set out in
8 Table 9 and is further described in the provisions following the table. (Permit, § VI.C.4.b-g.)
9 Once a WMP/EWMP is approved, Permitees begin implementing the approved plan. (Permit,
10 § VI.C.6.)

11 **C. Executive Officer’s Authority Under the Permit**

12 The Permit grants the Executive Officer broad authority to modify the deadlines
13 established in the Permit and to require modifications to WMP/EWMPs. The Executive Officer
14 is authorized to extend the deadlines in Table 9, including the deadline for submission of a final
15 WMP/EWMP. (Permit, § VI.C.4.g.) The Executive Officer may extend deadlines set out within
16 a WMP/EWMP (Permit, § VI.C.6.a), require Permitees to update approved WMP/EWMPs
17 (Permit, § VI.C.8.b.i) and to review and approve the modifications to WMP/EWMPs (Permit,
18 § VI.C.8.b.iii).

19 The Permit was challenged by thirty-seven petitions to the State Water Board. On June
20 16, 2015, the State Water Board adopted an order generally upholding the Permit, but with a
21 number revisions. Revisions to the Watershed Management Program Provision include, in part,
22 the following: (1) clarification that the final date for achieving Receiving Water Limitations
23 incorporated into a WMP/EWMP must be consistent with Provisions VI.C.2.a.ii.(4) and
24 VI.C.2.a.iii.(2)(c), which require establishment of the compliance date by “taking into account the
25 technological, operation, and economic factors that affect the design, development, and
26 implementation of the control measures that are necessary” (State Water Board Order No. WQ
27 2015-0075, pp. 34-35); (2) clarification that Permitees may not request extensions to final
28 compliance deadlines established in a TMDL but may seek a Time Schedule Order pursuant to

1 Water Code section 13300 (*Id.* at pp. 32, 37); and (3) requirement that Permittees
2 comprehensively update the reasonable assurance analysis and the WMP/EWMP as part of the
3 adaptive management process and undertake additional reporting (*Id.* at pp. 37-40). With the
4 exception of clarifying that the Permittees cannot seek an extension to final compliance dates
5 established in a TMDL, the State Water Board did not restrict the Executive Officer’s wide
6 discretion to modify the deadlines and require modifications to WMPs/EWMPs.

7 As a result, the Executive Officer remains authorized to extend the deadlines in Table 9,
8 including the deadline for submission of a final WMP/EWMP (Permit, § VI.C.4.g), to extend
9 deadlines set out within a WMP/EWMP, except for deadlines established in a TMDL (Permit,
10 § VI.C.6.a), to require Permittees to update approved WMP/EWMPs (Permit, § VI.C.8.b.i) and to
11 review and approve the modifications to WMP/EWMPs (Permit, § VI.C.8.b.iii).

12 III.

13 ARGUMENTS

14 A. The Executive Officer’s Delegated Authority Includes the Authority to Issue a 15 Conditional Approval

16 1. **Delegated Authority is Broad Unless Explicitly Restricted**

17 A delegation of authority creates an agency relationship and carries with it the authority
18 “to do everything necessary or proper and usual, in the ordinary course of business, for effecting
19 the purpose of [the] agency[.]” (Civ. Code, §§ 2295, 2318-2319.) The California Supreme Court
20 has described the broad scope of delegated authority as follows:

21 This principle is elementary, . . . every delegation of authority,
22 whether it be general or special, express or implied, unless the
23 contrary be made known, carries with it, as an incident, the power
24 to do all those acts, naturally and ordinarily done in such cases, and
25 which are necessary and proper to be done in the case in hand in
26 order to effectuate the purpose for which the authority in question
27 was created. It embraces all the necessary and appropriate means to
28 accomplish the desired end. This principle is founded on the
manifest intention of the party creating such authority and is in
furtherance of such intention." (*Robbins v. Pacific Eastern Corp.*
(1937) 8 Cal.2d 241, 285.)

27 A general agent’s powers may be express and implied, and delegated powers “are very
28 broad, embracing authority to do all acts customarily connected with the business in which he is

1 engaged.” (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 450; *Miller v. Wood* (1961) 188
2 Cal.App.2d 711, 713.) Only when “specifically deprived thereof by his principal” are these
3 general powers otherwise restricted. (Civ. Code, § 2318.)

4 Petitioners reverse the standard that establishes the delegation of authority, by stating that
5 the Executive Officer was limited “to *only* approve or deny the WMPs on or before April 28,
6 2015.” The Petition improperly argues that because the Permit did not specifically authorize the
7 Executive Officer to conditionally approve the WMPs, the Executive Officer acted beyond the
8 delegated authority. (Petition, at p. 7.)

9 The Regional Water Board delegated nearly all of its powers when it authorized the
10 Executive Officer to “exercise[e] any powers and duties of the Regional Board.” (Regional
11 Water Board Resolution No. R10-009, as amended by R14-00.) This comprehensive delegation
12 of authority is limited in specific ways, including the limitations required by Water Code section
13 13223(a).³ (Resolution R10-009.) Nowhere in the Regional Water Board’s extensive delegation
14 of authority to the Executive Officer has the Regional Water Board limited the delegated
15 authority to those powers specifically enumerated by the Regional Water Board. For this reason,
16 the Executive Officer retains the broad authority “to do everything necessary or proper and usual,
17 in the ordinary course of business, for effecting the purpose of [the] agency[.]” (Civ. Code,
18 § 2319.) Delegated authority is not limited to those “specifically delegated” powers. (Cf.
19 Petition, p. 7.)

20 **2. Delegated Authority Includes Conditional Approval**

21 Where there is a sweeping grant of authority to a third party, and that authority includes
22 the power to determine certain procedural elements together with the authority to approve or deny
23 particular applications, that sweeping authority “includes the authority to condition approval[.]”

24 ³ Water Code 13223(a) states, “(a) Each regional board may delegate any of its powers and duties vested in it
25 by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the
26 issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge
27 requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any
28 hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but
excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c)
of Section 13002 and Sections 13304 and 13340.” The Petition alleges that the Executive Officer’s conditional
approval violates (2) above by modifying waste discharge requirements. (See Petition, p. 9.) These arguments are
addressed in Section III.A.1 and 2 of this Response.

1 (*County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 510.) In *Bowen*, Secretary of State,
2 Debra Bowen, decertified and then immediately recertified a number of voting systems in use
3 throughout the state. As a condition of recertification, the Secretary imposed a system of
4 postelection manual ballot tallying. Counties throughout California challenged the Secretary’s
5 authority to approve the voting systems subject to a manual tallying condition. The Court
6 determined that conditional approval was within the Secretary’s delegated authority in light of the
7 “sweeping grant of authority provided by the Legislature ... with respect to the conduct of
8 elections generally” and in light of the Secretary’s specific authority to approve and “withdraw
9 approval previously granted[.]” (*Id.* at pp. 509-510.) “Given the broad delegation of powers[,]”
10 the Court concluded, “... it cannot seriously be disputed that the Secretary possesses sufficient
11 statutory authority to issue the [conditional approval].” (*Id.* at p. 510.)

12 Like the sweeping delegation of authority in *Bowen*, the Regional Water Board has
13 granted the Executive Officer the authority to “exercise[e] any powers and duties of the Regional
14 Board.” (Regional Water Board Resolution No. R10-009, as amended by R14-00.) This
15 sweeping authority includes with it the power to conditionally approve WMPs/EWMPs,
16 especially in light of the Executive Officer’s specific authority to approve and deny
17 WMPs/EWMPs clarified in the Permit. Because the agency relationship established by the grant
18 of authority from the Regional Water Board to the Executive Officer is broad, specifically
19 includes the power to approve and deny WMPs/EWMPs, to modify the approval schedule, and to
20 require revisions to the WMPs/EWMPs, it cannot seriously be disputed that the Executive Officer
21 possesses sufficient authority to issue a conditional approval.

22 The Petitioners misconstrue the Executive Officer’s conditional approval as an improper
23 extension of the Permit’s WMP deadlines that creates “a new, unauthorized schedule that will
24 only defer compliance with the Permit’s [Receiving Water Limitations] and TMDL-limitations
25 [provisions].” (Petition, at p. 8.) As noted above, the Permit explicitly authorizes the Executive
26 Officer to modify the WMP/EWMP deadlines. However, even if the Permit did not contain such
27 explicit authorization, the power to conditionally approve is a necessary and proper exercise of
28 the Executive Officer’s power to accomplish the purpose for which the Regional Water Board

1 delegated its authority. As noted above, the purpose of the WMP Provision is to provide
2 flexibility in implementing Permit requirements on a watershed basis by allowing Permittees to
3 customize regional strategies. (Permit, § VI.C.1.a.) By granting the Executive Officer the
4 authority to modify schedules and require modifications to WMPs/EWMPs, the Regional water
5 Board has also authorized the Executive Officer to use that authority to accomplish the goal of
6 providing flexibility to Permittees in developing and implementing WMPs. Conditional approval
7 thus falls squarely within the Executive Officer’s authority to use delegated authority to
8 accomplish the Regional Board’s express goals for the WMP Provision and does not modify the
9 Permit.

10 **B. The Petition Does Not Challenge the East San Gabriel Valley WMP**

11 It is well settled that a controversy must be ripe to receive proper review. (*Pacific Legal*
12 *Foundation v. Cal. Coastal Comm’n* (1982) 33 Cal.3d 158, 169, 170-171.) Without specific
13 factual allegations demonstrating that a controversy has “sufficiently congealed to permit an
14 intelligent and useful decision to be made,” a petitioner invites the reviewing body to “speculate
15 as to the type of development for which ... conditions might be imposed, and then to express an
16 opinion on the validity and proper scope of such hypothetical [conditions].” (*Id.* at pp. 171-172.)⁴
17 A general challenge “posed in a vacuum” with an “intense but abstract desire to see the [action]
18 declared violative of [relevant standards]” cannot properly be reviewed. (*Fiske v. Gillespie*
19 (1998) 200 Cal.App.3d 1243, 1245.)⁵

20 _____
21 ⁴ In *Pacific Legal*, the plaintiffs filed an action challenging the validity of guidelines adopted by the
22 California Coastal Commission regarding public access to the beach. The action was not predicated upon any
23 specific application of the guidelines. Rather, the plaintiffs asserted a “general challenge on statutory and
24 constitutional grounds to the Commissions’ access policies.” (33 Cal.3d at p. 169.) In finding that the controversy
25 was not ripe, the Court opined:

26 Plaintiffs are in essence inviting us to speculate as to the type of developments for which access
27 conditions might be imposed, and then to express an opinion on the validity and proper scope of
28 such hypothetical exactions. We decline to enter into such a contrived inquiry. (*Id.* at p. 172.)

29 ⁵ In *Fiske*, taxpayers filed an action against the Commissioner of the California Department of Insurance
30 challenging the constitutionality of state legislation in the Insurance Code. The plaintiffs alleged that a provision
31 requiring insurers to establish different rates for men and women was an equal protection violation. (*Id.* at pp. 1244-
32 1245.) The trial court entered a judgment enjoining the Commissioner of Insurance from expending funds to enforce
33 the challenged provision of the Insurance Code, and the Commissioner appealed. (*Id.*)

34 On appeal, the Commissioner asserted that the suit did not present an actual controversy. (*Id.* at p. 1245.) The Court
35 of Appeal agreed and opined in relevant part:

36 This action is merely a general challenge to a statute, posed in a vacuum; no specific application of
37 the statute is involved. ... [I]t is clear enough that this action presents no actual controversy apart

1 While the Petition alleges that “all nine WMPs ... failed to address virtually all of the
 2 identified non-compliant issues” (Petition, at p. 11, fn. 38), that “the conditions included in the
 3 conditional approvals *fail to address any of the RAA inadequacies identified by RWQCB staff*”
 4 (*Id.* at p. 14 [emphasis in original]), and that a “comprehensive list of the substantive
 5 requirements of the Permit that the conditional approvals fail to address is provided in Exhibit
 6 D[,]” the Petition does not raise any specific challenge to the ESGV WMP. The Petition and
 7 Exhibit D present factual allegations relating only to the Lower San Gabriel WMP, the Los
 8 Angeles River Upper Reach 2 WMP, and the Lower Los Angeles River WMP. (Petition at pp.
 9 13-14, Exhibit D.) By failing to specify the manner in which the ESGV WMP is deficient, the
 10 Petition expresses an intense but abstract desire to see the ESGV WMP declared invalid, but
 11 asserts no substantive factual grounds on which the Executive Officer’s approval may be
 12 reviewed.

13 To the extent that the Petition alleges that the ESGV WMP did not address the comments
 14 provided in the Regional Water Board’s October 27, 2014 comment letter or in the April 28, 2015
 15 conditional approval, the evidence in the record demonstrates that the ESGV watershed
 16 management group revised the WMP to address all comments and conditions. As shown in the
 17 following chart, the ESGV WMP has addressed all comments and conditions provided by the
 18 Regional Board.

Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
Greater detail on the water quality characterization, including (1) a map of the locations of the monitoring sites for each of the four sources of data identified on page 7 relative to the watershed management area, and (2) a tabular summary of the data should be provided.	
In Section 5.1.4, the data used to establish existing concentrations should be described in more detail and	

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 28 from the [taxpayers’] intense but abstract desire to see the statute declared violative of the constitutional guarantees of equal protection. (*Id.*)

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
presented in tabular form. Additionally, Table 5-2 appears to omit from the analysis San Jose Creek. Discharges to San Jose Creek are subject to a dry-weather water quality-based effluent limitation (WOBEL) for selenium; therefore, data on existing concentration should be included for San Jose Creek	
The MS4 permit requires WMPs to include the applicable WQBELS for every approved TMDL within the WMA. The draft WMP does not include the WQBELS for Puddingstone Reservoir for total phosphorus and total nitrogen, total mercury, and PCBs, chlordane, dieldrin, total DDT and 4,4-DDT.	
The WMP needs to address all applicable WQBELS to comply with provisions of Part VIE and Attachment P related to the Los Angeles Lakes TMDLs (specifically, Puddingstone Reservoir for nitrogen, phosphorus, mercury, PCBs, chlordane, dieldrin and DDT compounds). Attachment P identifies wasteload allocations for each of the four municipalities in the ESGV WMG and states these are to be measured at the point of discharge into the receiving waters. Also, if implementation will take more than one year, then interim milestones and dates for their achievement must also be included.	
The WMP needs to specify the applicable receiving water limitations for Category 3 waterbody-pollutant combinations (WBPCs).	
The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. Whereas Tables 5-6	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
through 5-9 present the type of structural BMPs to be implemented by each City, there are no specific dates for installation; the WMP schedule should describe timelines through 2022.	
The WMP proposes to increase frequency of construction site inspections although this appears to apply only for City of San Dimas. The WMP should either increase such frequency for other Cities or provide rationale for no changes for the other cities of the ESGV WMG. The WMP also proposes to require inventory of existing developments for future BMP retrofits; however no timeframe is included.	
The draft RAA addresses WBPCs for the San Gabriel Metals TMDLs; however the RAA does not address activities and control measures to address selenium in San Jose Creek Reach 2, nor pollutants in the Puddingstone Reservoir TMDLs. Greater clarity should be provided on the volume based approach taken by the ESGV WMG.	
Activities and control measures for Category 3 WBPCs for Walnut Creek Wash and San Gabriel River Reach 2 and Reach 3 are not included. To the extent that the group intends to address these through the volume based approach, this should be more clearly stated in the WMP.	
The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least specify the number of projects needed to	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
<p>ensure timely compliance with permit requirements.</p>	
<p>The draft WMP assumes a 10% pollutant reduction from new non-structural controls. Although 10% is a modest fraction of the overall controls necessary, additional support for this assumption should be provided, or as part of the adaptive management process, the Permittees could commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not warranted.</p>	
<p>... it is important that the Group's actions under its Industrial/Commercial Facilities Program—including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities—ensure that all industrial facilities are implementing BMPs as required.</p>	
<p>... the Group should ensure that it is closely coordinating with appropriate Caltrans District staff regarding the identification and implementation of watershed control measures to achieve water quality requirements (i.e. applicable Receiving Water Limitations and WQBELs).</p>	
<p>The required reductions for dry weather were calculated based on the median and the 90th percentile existing concentrations in Section 5.1.4 of the WMP. Specific required reductions for Thompson Creek, San Dimas, and Puddingstone Reservoir were listed in Table 5-2 on page 42 of the draft WMP. However, the required reductions for dry weather for San Jose Creek were not included in the table. The WMP should be revised to include the required reductions for</p>	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
identified priority pollutants for San Jose Creek.	
The predicted runoff volumes presented in Figure 5-12 and Table 5-1 should be presented and explained in more detail to provide clarity on how those values were obtained from the hourly model output results of runoff volume over the 24-hour design event for each subwatershed or city-subwatershed.	
The report did not describe how the model was calibrated, including calibration results compared to calibration criteria in Table 3.0 of the RAA Guidelines, and no historical hydrology data were used for comparison with the model results for the baseline prediction. According to Part G, pages 12-13 of the RAA Guidelines, model calibration is necessary to ensure that the model can properly assess all the variables and conditions in a watershed system. The hydrology calibration is particularly important in the case of the East San Gabriel Valley RAA, since the group is used a volume-based approach.	
The report presents the existing runoff volumes and required volume reductions to achieve the 85 th percentile, 24-hour volume retention standard for each watershed area. The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
<p>that would otherwise be discharged through the MS4 in each watershed area.</p>	
<p>The index of subwatersheds shown in Figure 5-15 does not match that used in the model input file. The ID numbers for 67 subwatersheds from the model input file (and the correspondence of these 67 subwatersheds to the 98 city-subwatersheds) must be provided and be shown in the simulation domain to present the geographic relationship of these subwatersheds and city-subwatersheds that are simulated in the LSPC model.</p>	
<p>In the analysis of the required reduction for lead, zinc, selenium and E. coli under the dry weather condition, more detailed information about the baseline condition for 50th and 90th percentile existing concentration presented in Table 5-2 should be provided.</p>	

Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
<p>Correct Tables 3-3 and 5-5 of the revised draft WMP by removing reference to the dry-weather copper waste load allocations (WLAs). The East San Gabriel Valley Permittees' MS4 discharges are not subject to the dry-weather copper WLAs in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (Attachment P of the LA County MS4 Permit) assigned to discharges to the San Gabriel River Reach 1 and San Gabriel River Estuary.</p>	<p>Corrected Tables 3-3 and 5-5 to remove reference to dry-weather copper WLAs.</p>
<p>Revise Table 4-3 of the revised draft WMP to include "Interagency coordination," "Hydromodification</p>	

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Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
Control Plan," and "Sewage system maintenance, overflow, and spill prevention," which are requirements of the LA County MS4 Permit. (See Parts VI.A.2.a.viii, VI.A.4.a.iii, and VI.D.2, among others, regarding "interagency coordination"; Part VI.D.7.c.iv regarding "Hydromodification Control Plan"; and Parts VI.D.9.h.ix and VI.D.10.c-e regarding "sewer system maintenance, overflow, and spill prevention.")	
Revise and separate Table 4-2 of the revised draft WMP, "Recently Constructed and Planned BMPs in the WMP Area," into two tables to clearly distinguish between: (a) those best management practices (BMPs) that are already constructed (providing the completion date for each), and (b) those BMPs that are planned (providing the scheduled completion date for each).	
Clarify the responsibilities of each Permittee of the ESGV WMG for implementation of watershed control measures in Table 5-17 of the revised draft WMP, "Control Measures to be Implemented for Attainment of 10% Milestone" and Table 5-18, "Schedule for Implementation of the Rooftop Runoff Reduction Program" to attain the 10% interim milestone in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL.	Revised Table 5-17 to clarify responsibilities.
Correct inconsistencies between Table 5-4 and Table 5-6 of the revised draft WMP, including: (a) information on selenium, which indicates exceedances downstream in Table 5-4 of the revised draft WMP, but indicates that no reductions are necessary in Table 5-6, and (b) missing information on E. coli exceedances in Table 5-4.	

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IV.
CONCLUSION

The City respectfully requests that the Petition be denied on the grounds that the Executive Officer’s action to conditionally approve the nine WMPs was an action within the broad scope of authority delegated to the Executive Officer and within the procedural requirements of the Permit. The Petition also fails to allege any specific challenge to the adequacy of the ESGV WMP and the evidence in the record demonstrates that the ESGV watershed management group revised the WMP to address all comments and conditions.

Dated: July _____, 2015

BEST BEST & KRIEGER LLP

By: _____
J. G. ANDRE MONETTE
REBECCA ANDREWS
Attorneys for City of Claremont

Comment Letter-LA County MS4 Permit –Response to Petition for Review of WMP Approvals due 8.3.2015

The Petitioners state:

*Petitioners' members are aggrieved by the Executive Officer's action to conditionally approve the nine WMPs pursuant to the 2012 MS4 Permit because such action is an obstruction to achieving the Permit's ultimate goal of meeting Water Quality Standards ("WQS"), as required by the CWA. **Specifically, the Executive Officer's failure to deny the WMPs as required by the 2012 MS4 Permit – and thereby failure to adequately control urban stormwater runoff through the Permit and to ensure that pollution in stormwater discharges will not degrade the region's waters – has enormous consequences for Los Angeles County residents and Petitioners' members. Urban stormwater runoff is one of the largest sources of pollution to the coastal and other receiving waters of the nation, and is a particularly severe problem in the Los Angeles region.** Waters discharged from municipal storm drains carry bacteria, metals, and other pollutants at unsafe levels to rivers, lakes, and beaches in Los Angeles County. This pollution has damaging effects on both human health and aquatic ecosystems, causing increased rates of human illness and resulting in an economic loss of tens to hundreds of millions of dollars every year from public health impacts alone. The pollutants also adversely impact aquatic animals and plant life in receiving waters.*

*Receiving waters in the Permittees' jurisdiction continue to be impaired for a variety of pollutants, and monitoring data show that stormwater discharges continue to contain pollutants at levels that cause or contribute to these impairments. **Urban development increases impervious land cover and exacerbates problems of stormwater volume, rate, and pollutant loading.** Consequently, Los Angeles County's high rate of urbanization and persistent water quality problems demand that the most effective stormwater management tools be required. Both the Regional and State Board have defined the WMPs as the means by which compliance with WQSs is determined. **By conditionally approving clearly deficient WMPs, however, the Executive Officer is allowing Permittees to defer compliance with WQSs, resulting in zero improvement in water quality.***

All of these documented facts demonstrate the considerable negative impact on Petitioners' members and the environment that continues today as a result of the Executive Officer's failure to comply with the terms of the 2012 MS4 Permit.

Comments:

More than just membership non-profit organizations with interests, the public has been denied the right for inclusion in the process with concerns about water quality beyond the scope of the non-profits mission statements.

Stormwater management is a flood control issue as the taxpayers approve bonds accordingly.

This permit has omitted the public process consistently.

Participation in Watershed Management Programs are voluntary (Section Part VI.C.1.b)

TAC Technical Advisory Committee was not agenzized to be open to the public.
Watershed Management Programs stakeholder membership as stated in the Order:

*v. Provide appropriate opportunity for meaningful stakeholder input, including but not limited to, a permit-wide watershed management program technical advisory committee (TAC) that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval. The composition of the TAC may include at least one Permittee representative from each Watershed Management Area for which a Watershed Management Program will be developed, and must **include a minimum of one public representative from a non-governmental organization with public membership**, and staff from the Regional Water Board and USEPA Region IX.*

Please note that there is no such category as “public membership”. NGOs or non-profit organizations are private and not open to the public.

Delegation to the Executive Officer for conditional approval eliminated the open meeting process with time for Public Comment.

ORDER NO. R4-2012-0175 as amended by Order WQ 2015-0075 states:

5. Public Review

- a. All documents submitted to the Regional Water Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended)) and the Public Records Act (Cal. Government Code § 6250 et seq.).*
- b. All documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.*

-

There is difficulty in understanding this permit at all. State Board Resolution 68-16 Antidegradation Policy is vague as to recognition of baselines and, therefore, execution and compliance of this permit. State Board has yet to determine “maximum benefit to the people of the state” and “best practicable treatment or control”.

There is no CEQA process for the public to become involved.

Approvals and compliance issues appear to be an open-ended process without economic impacts disclosed. What will this cost the taxpayer?

Can anyone answer that question?

We are now concerned that a financial market of Cap and Trade in Stormwater Capture Credits is in process without any public input whatsoever.

This whole process is not consistent with Source Point permitting.

Joyce Dillard
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August 3, 2015

VIA EMAIL [losangeles@waterboards.ca.gov]

Sam Unger, Executive Officer
c/o Renee Purdy, Chief, Regional Programs Section
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

**Re: LA County MS4 Permit – Response to Petition for Review of
WMP Approvals**

Dear Ms. Purdy,

The East San Gabriel Valley Watershed Management Group (“ESGV”) respectfully submits this Response to the Petition of NRDC, Los Angeles Waterkeeper, and Heal the Bay (collectively, “Environmental Groups”) for Review of the Regional Board Executive Officer’s Action to Conditionally Approve Nine Watershed Management Programs pursuant to the Los Angeles County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (“Permit”). In their Petition, the Environmental Groups request that the Los Angeles Regional Water Quality Control Board (“Regional Water Board”) review and invalidate the Executive Officer’s conditional approvals of nine Watershed Management Programs (“WMPs”) and deny all nine WMPs. (Petition, pp. 1-2.)¹ The Petition should be denied, as conditional approval of the nine WMPs is within the scope of authority delegated to the Executive Officer and within the procedural requirements of the Permit. Further, the evidence in the record demonstrates that the ESGV watershed management group revised the WMP to address all comments and conditions and the ESGV WMP is fully compliant with all permit requirements.

I. INTRODUCTION

The East San Gabriel Valley watershed management group, consisting of the cities of Claremont, La Verne, Pomona and San Dimas, submitted a draft ESGV WMP to the Regional Water Board in June 2014. On October 27, 2014, the Regional Water Board

¹ The Environmental Groups also petitioned the State Water Resources Control Board (“State Board”) seeking the same action.

provided fewer than twenty comments on the draft ESGV WMP. (See Petition, Exhibit A.) The group revised the WMP to address all comments, submitted a revised WMP and, on April 28, 2015, received conditional approval of the ESGV WMP. (See Petition, Exhibit B.) The conditional approval imposed eight conditions on the ESGV WMP and required the watershed management group to address the conditions by June 12, 2015. (*Ibid.*) The watershed management group modified the WMP to address all eight comments and submitted the final ESGV WMP on June 12, 2015.²

The Environmental Groups challenge the Executive Officer's conditional approval of all nine WMPs on three grounds: 1) that the Executive Officer acted outside the scope of authority delegated to the Executive Officer by conditionally approving the WMPs because the only authority explicitly delegated to the Executive Officer was to approve or deny the WMPs; 2) that the Executive Officer improperly modified the Permit by failing to comply with substantive and procedural requirements and exceeded statutory limits on delegation; and 3) that the Executive Officer improperly imposed conditions on the approvals that are inconsistent with Permit requirements and the Clean Water Act.

The Executive Officer's action to conditionally approve the nine WMPs was an action within the broad scope of authority delegated to the Executive Officer by the Regional Water Board by Resolution No. R10-009 and specified further by the Permit. As a result, the Executive Officer's conditional approval of the WMPs was within the scope of delegated authority and complied with the procedural requirements of the Permit. Finally, to the extent the Petition asserts that the ESGV WMP did not address the comments provided in the initial comment letter or in the conditional approval, the evidence in the record demonstrates that the ESGV watershed management group revised the WMP to address all comments and conditions.

II. FACTUAL BACKGROUND

The Regional Water Board approved the Permit on November 8, 2012. The Permit regulates discharges to and from municipal separate storm sewer systems ("MS4"), in part, by prohibiting non-stormwater discharges through the MS4 to receiving waters, with limited exceptions (Permit, § III.A.4), prohibiting discharges from the MS4 that cause or contribute to a violation of receiving water limitations (Permit, § V.A) ("Receiving Water Limitations"), and requiring compliance with water quality-based effluent limitations and receiving water limitations, consistent with applicable total maximum daily loads ("TMDL") (Permit, § VI.E) ("TMDL Provisions").

The Permit's WMP Provision provides an alternative pathway to strict compliance with

² See Final ESGV WMP, available at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/east_san_gabriel/EastSanGabrielRiverValley_FinalWMP.pdf.

specific Permit requirements. Provision VI.C provides that participation in a WMP or Enhanced WMP (“EWMP”) allows a Permittee to comply with the Receiving Water Limitations, TMDL Provisions, and other Permit provisions. The purpose of the WMP/EWMP is “to allow Permittees the flexibility ... to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs.” (Permit, § VI.C.1.a.) Each WMP must prioritize MS4-related water quality issues, identify strategies to comply with Permit requirements, include an integrated monitoring and assessment program to determine progress towards meeting Permit requirements, include an adaptive management strategy and include input from the public and Regional Water Board. (Permit, § VI.C.1.f.)

The timeline for developing, approving and implementing WMPs/EWMPs is set out in Table 9 of the Permit and is further described in the provisions following the table. (Permit, § VI.C.4.b-g.) Once a WMP/EWMP is approved, Permittees begin implementing the approved plan. (Permit, § VI.C.6.)

The Permit grants the Executive Officer broad authority to modify the deadlines established in the Permit and to require modifications to WMP/EWMPs. The Executive Officer is authorized to extend the deadlines in Table 9, including the deadline for submission of a final WMP/EWMP. (Permit, § VI.C.4.g.) The Executive Officer may also extend deadlines set out within a WMP/EWMP (Permit, § VI.C.6.a), require Permittees to update approved WMP/EWMPs (Permit, § VI.C.8.b.i) and review and approve the modifications to WMP/EWMPs (Permit, § VI.C.8.b.iii).

The Permit itself was challenged by thirty-seven petitions to the State Water Board. On June 16, 2015, the State Water Board adopted an order generally upholding the Permit, but with a number revisions. Revisions to the Watershed Management Program Provision include, in part, the following: (1) clarification that the final date for achieving Receiving Water Limitations incorporated into a WMP/EWMP must be consistent with Provisions VI.C.2.a.ii.(4) and VI.C.2.a.iii.(2)(c), which require establishment of the compliance date by “taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary” (State Water Board Order No. WQ 2015-0075, pp. 34-35); (2) clarification that Permittees may not request extensions to final compliance deadlines established in a TMDL but may seek a Time Schedule Order pursuant to Water Code section 13300 (*Id.* at pp. 32, 37); and (3) requirement that Permittees comprehensively update the reasonable assurance analysis and the WMP/EWMP as part of the adaptive management process and undertake additional reporting (*Id.* at pp. 37-40). With the exception of clarifying that the Permittees cannot seek an extension to final compliance dates established in a TMDL, the State Water Board did not restrict the Executive Officer’s broad discretion to modify the deadlines and require modifications to WMPs/EWMPs.

As a result, the Executive Officer remains authorized to extend the deadlines in Table 9, including the deadline for submission of a final WMP/EWMP (Permit, § VI.C.4.g), to extend deadlines set out within a WMP/EWMP, except for deadlines established in a TMDL (Permit, § VI.C.6.a), to require Permittees to update approved WMP/EWMPs

(Permit, § VI.C.8.b.i) and to review and approve the modifications to WMP/EWMPs (Permit, § VI.C.8.b.iii).

III. COMMENTS

THE EXECUTIVE OFFICER'S DELEGATED AUTHORITY INCLUDES THE AUTHORITY TO ISSUE A CONDITIONAL APPROVAL

The Regional Water Board delegated nearly all of its powers to the Executive Officer when it authorized the Executive Officer to “exercise[e] any powers and duties of the Regional Board.” (Resolution R10-009.) This comprehensive delegation of authority has been limited in specific ways, including the limitations required by Water Code section 13223(a).³ Nowhere in the Regional Water Board’s extensive delegation of authority to the Executive Officer has the Regional Water Board limited the delegated authority to those powers specifically enumerated by the Regional Water Board. For this reason, the Executive Officer retains the broad authority “to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of [the] agency[.]” (Civ. Code, § 2319.) Delegated authority is not limited to those “specifically delegated” powers.

The Environmental Groups assert that conditional approval creates “a new, unauthorized schedule that will only defer compliance with the Permit’s [Receiving Water Limitations] and TMDL-limitations [provisions].” (Petition, at p. 8.) As noted above, the Permit explicitly authorizes the Executive Officer to modify the WMP/EWMP deadlines. However, even if the Permit did not contain such explicit authorization, the power to conditionally approve is a necessary and proper exercise of the Executive Officer’s power to accomplish the purpose for which the Regional Water Board delegated its authority. (Civil Code, § 2319; see also *County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 510 [a sweeping grant of authority that includes the power to determine certain procedural elements together with the authority to approve or deny particular applications, “includes the authority to condition approval”].) Where there is such a “broad delegation of powers ... it cannot seriously be disputed that the [agent] possesses sufficient ... authority to issue the [conditional approval].” (*Bowen, supra*, at p. 510.)

The Regional Water Board has granted the Executive Officer the authority to “exercise[e] any powers and duties of the Regional Board.” (Resolution R10-009.) This sweeping authority includes with it the power to conditionally approve WMPs/EWMPs,

³ Water Code 13223(a) states, “(a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340.” The Petition alleges that the Executive Officer’s conditional approval violates (2) above by modifying waste discharge requirements. (See Petition, p. 9.) These arguments are addressed in Section III.A.1 and 2 of this Response.

especially in light of the Executive Officer's specific authority to approve and deny WMPs/EWMPs clarified in the Permit. Because the agency relationship established by the grant of authority from the Regional Water Board to the Executive Officer is broad, and specifically includes the power to approve and deny WMPs/EWMPs, to modify the approval schedule, and to require revisions to the WMPs/EWMPs, it cannot seriously be disputed that the Executive Officer possesses sufficient authority to issue a conditional approval.

A. The East San Gabriel Valley WMP Addressed All Comments from the Regional Board and is Fully Compliant with Permit requirements

The ESGV group fully revised its WMP to address all comments provided in the Regional Water Board's October 27, 2014 comment letter and in the April 28, 2015 conditional approval. Specific changes are shown in the chart below. As a result of these changes, the substance of the ESGV WMP is not at issue and it remains largely unchanged from the version that was presented to the Regional Board in open session in April 2015.

IV.
CONCLUSION

The East San Gabriel Valley Watershed Management group respectfully requests that the Petition be denied on the grounds that the Executive Officer's action to conditionally approve the nine WMPs was an action within the broad scope of authority delegated to the Executive Officer and within the procedural requirements of the Permit.

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
1	Greater detail on the water quality characterization, including (1) a map of the locations of the monitoring sites for each of the four sources of data identified on page 7 relative to the watershed management area, and (2) a tabular summary of the data should be provided.	Additional detail has been added to augment the WMP document. Figure 3-1 has been added to show monitoring site locations. Table 3-1 has been added to summarize the data collected during development of the WQPs.
2	In Section 5.1.4, the data used to establish existing concentrations should be described in more detail and presented in tabular form. Additionally, Table 5-2 appears to omit from the analysis San Jose Creek. Discharges to San Jose Creek are subject to a dry-weather water quality-based effluent limitation (WQBEL) for selenium; therefore, data on existing concentration should be included for San Jose Creek.	Selenium is a natural source. The discharge of the MS4 should be low Se (other than groundwater infiltration to the MS4) monitoring will confirm. Table 5-4 has been added to provide clarification. The section of "San Jose Creek" through the WMP area is called "Thompson Creek"

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
3	The MS4 permit requires WMPs to include the applicable WQBELs for every approved TMDL within the WMA. The draft WMP does not include the WQBELs for Puddingstone Reservoir for total phosphorus and total nitrogen, total mercury, and PCBs, chlordane, dieldrin, total DDT and 4,4-DDT.	Table 5-5 and Appendix D have been added to provide clarification.
4	The WMP needs to address all applicable WQBELs to comply with provisions of Part VI.E and Attachment P related to the Los Angeles Lakes TMDLs (specifically, Puddingstone Reservoir for nitrogen, phosphorus, mercury, PCBs, chlordane, dieldrin and DDT compounds). Attachment P identifies wasteload allocations for each of the four municipalities in the ESGV WMG and states these are to be measured at the point of discharge into the receiving waters. Also, if implementation will take more than one year, then interim milestones and dates for their achievement must also be included. in the ESGV WMG and states these are to be measured at the point of discharge into the receiving waters. Also, if implementation will take more than one year, then interim milestones and dates for their achievement must also be included.	<p>The WMP is based on retention of the 85th percentile, 24-hour storm by 2026. Achievement of this implementation goal will address <u>all</u> Water Quality Priorities in the WMP area. See Section 5.3. Clear milestones are provided in Section 5.3, see Table 5-15, Table 5-16, and Figure 5-23. New clarifying language on the benefits of the design storm approach was added to the opening of Section 5 on page 30, as follows:</p> <p>“By using design storm retention as the basis for the RAA, it comprehensively addresses all Water Quality Priorities, as follows:</p> <ul style="list-style-type: none"> • Retention of the design storm addresses all Category 1, 2 and 3 pollutants • Retention of the design storm addresses any additional pollutants that may arise as Water Quality Priorities during EWMP implementation • Retention of the design storm addresses both wet and dry weather issues • The schedule for implementing BMPs to retain the design storm (Section 5.3) is the schedule for addressing all current and future Water Quality Priorities, including Puddingstone Reservoir.”
5	The WMP needs to specify the applicable receiving water limitations for Category 3 waterbody-pollutant combinations (WBPCs).	A Table of Applicable WQOs has been added as Appendix D.

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
6	<p>The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. Whereas Tables 5-6 through 5-9 present the type of structural BMPs to be implemented by each City, there are no specific dates for installation; the WMP schedule should describe timelines through 2022.</p>	<p>A clear schedule for retaining the design storm volume is presented in Table 5-15, Table 5-16, and Figure 5-23. The % capacity matches exactly the SGR Metals TMDL milestones. And because the RAA is based on the design storm. The schedule for interim pacing shown in Table 5-16 is the schedule for addressing all Water Quality Priorities in the WMP area. Many pollutants will likely be addressed well before full implementation of the design storm BMPs.</p>
7	<p>The WMP proposes to increase frequency of construction site inspections although this appears to apply only for City of San Dimas. The WMP should either increase such frequency for other Cities or provide rationale for no changes for the other cities of the ESGV WMG. The WMP also proposes to require inventory of existing developments for future BMP retrofits; however no timeframe is included.</p>	<p>Clarifying language has been added. The frequency of construction site inspections is not increasing; rather it would be aligned with frequency of San Dimas' building permit inspections.</p>
8	<p>The draft RAA addresses WBPCs for the San Gabriel Metals TMDLs; however the RAA does not address activities and control measures to address selenium in San Jose Creek Reach 2, nor pollutants in the Puddingstone Reservoir TMDLs. Greater clarity should be provided on the volume based approach taken by the ESGV WMG.</p>	<p>The WMP is based on retention of the 85th percentile, 24-hour storm by 2026. Achievement of this implementation goal will address <u>all</u> Water Quality Priorities. See Section 5.3. New clarifying language was added to the opening of Section 5 on page 30.</p>
9	<p>Activities and control measures for Category 3 WBPCs for Walnut Creek Wash and San Gabriel River Reach 2 and Reach 3 are not included. To the extent that the group intends to address these through the volume based approach, this should be more clearly stated in the WMP.</p>	<p>The WMP is based on retention of the 85th percentile, 24-hour storm by 2026. Achievement of this implementation goal will address <u>all</u> Water Quality Priorities. See Section 5.3. New clarifying language was added to the opening of Section 5 on page 30.</p>

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
10	<p>The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least specify the number of projects needed to ensure timely compliance with permit requirements.</p>	<p>The locations for implementing green streets are presented in great detail in the WMP. Each subwatershed is prescribed a unique recipe for green streets implementation (as detailed in Table 5-11 to 5-14). See Figure 5-21. IN order words, the green street capacities to be implemented by WMP are detailed with a spatial resolution that matches the WMMS subwatersheds, approximately 1 to 2 square miles.</p>
11	<p>The draft WMP assumes a 10% pollutant reduction from new non-structural controls. Although 10% is a modest fraction of the overall controls necessary, additional support for this assumption should be provided, or as part of the adaptive management process, the Permittees could commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not warranted.</p>	<p>The Group committed to specific BMPs associated with the 10% reduction, including a Rainfall Runoff Reduction program (see Section 5.4) As stated in the revised WMP, "All of these control measures represent <i>enhanced BMP implementation</i> from the baseline condition that existed prior to the 2012 Permit." Table 5-17 details the institutional controls and discusses their status prior to the 2012 Permit. Language was also added to clarify the approach if the 10% milestone is not attained as expected "During adaptive management, if the 10% milestone is not attained in 2017, then the Group will develop alternate institutional controls or additional structural controls as necessary."</p>
12	<p>The draft WMP, including the RAA, excludes stormwater runoff from "non-MS4" facilities within the WMA from the stormwater treatment target. In particular, industrial facilities that are permitted by the Water Boards under the Industrial General Permit or an individual stormwater permit were identified and subtracted from the treatment target.</p> <p>Regional Water Board staff recognizes that this was done with the assumption that these industrial facilities will retain their runoff and/or eliminate their cause/contribution to receiving water exceedances, as required by their respective NPDES permit. However, it is important that the Group's actions under its Industrial/Commercial Facilities Program- including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities- ensure that all industrial facilities are implementing BMPs as required.</p>	<p>Noted. The following language was added to Section 5.2.2 page 58: "Note: the Group will continue to inspect industrial facilities under the Permit inspection programs."</p>

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
13	<p>The draft WMP, including the RAA, takes a similar approach for areas under the jurisdiction of the California Department of Transportation (Caltrans). Caltrans facilities that are permitted under the Caltrans MS4 permit (Order No. 2012-0011-DWQ) were also identified and subtracted from the treatment target.</p> <p>It should be noted that the Amendment to the Caltrans Permit (Order WQ 2014-0077-DWQ) includes provisions to address TMDL requirements throughout the state. Revisions to Attachment IV of the Caltrans Permit require that Caltrans prioritize all TMDLs for implementation of source control measures and BMPs, with prioritization being "consistent with the final TMDL deadlines to the extent feasible."</p> <p>Additionally, the Caltrans Permit also includes provisions for collaborative implementation through Cooperative Implementation Agreements between Caltrans and other responsible entities to conduct work to comply with a TMDL. By contributing funds to Cooperative Implementation Agreements and/or the Cooperative Implementation Grant Program, Caltrans may receive credit for compliance units, which are needed for compliance under the Caltrans Permit.</p> <p>In a similar manner, the LA County MS4 Permit includes provisions for Permittees to control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements with other MS4 owners-such as Caltrans-to successfully implement the provisions of the Order (see Parts VI.A.2.a .viii and VI.A.4.a.iii). Therefore, the Group should ensure that it is closely coordinating with appropriate Caltrans District staff regarding the identification and implementation of watershed control measures to achieve water quality requirements (i.e. applicable Receiving Water Limitations and WQBELs).</p>	<p>The Group has reached out to Caltrans (Robert Wu) to coordinate on BMPs that Caltrans has/will be installing on Caltrans property through the Group's jurisdiction. The following language was added to Section 5.2.2 page 58: "In addition, the Group will work with Caltrans on potential options for collaborating during WMP implementation."</p>
14	<p>The required reductions for dry weather were calculated based on the median and the 90th percentile existing concentrations in Section 5.1.4 of the WMP. Specific required reductions for Thompson Creek, San Dimas, and Puddingstone Reservoir were listed in Table 5-2 on page 42 of the draft WMP. However, the required reductions for dry weather for San Jose reek were not included in the table. The WMP should be revised to include the required reductions for identified priority pollutants for San Jose Creek.</p>	<p>San Jose Creek and Thompson Creek are the same watershed/waterbody for purposes of the WMP. The Thompson Creek watershed refers also to San Jose Creek.</p>

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
15	The predicted runoff volumes presented in Figure 5-12 and Table 5-1 should be presented and explained in more detail to provide clarity on how those values were obtained from the hourly model output results of runoff volume over the 24-hour design event for each subwatershed or city-subwatershed.	The modeling files provided the Group show the 24-hour simulation used to estimate design storm volumes. See Section 5.1.4 for details on the hydrologic simulation. The assumed design storm characteristics (shape, duration, etc.) match the County hydrology manual.
16	The report did not describe how the model was calibrated, including calibration results compared to calibration criteria in Table 3.0 of the RAA Guidelines, and no historical hydrology data were used for comparison with the model results for the baseline prediction. According to Part G, pages 12-13 of the RAA Guidelines, model calibration is necessary to ensure that the model can properly assess all the variables and conditions in a watershed system. The hydrology calibration is particularly important in the case of the East San Gabriel Valley RAA, since the group is used a volume-based approach.	A new section 5.1.2 is added to report the hydrology calibration.
17	The report presents the existing runoff volumes and required volume reductions to achieve the 85th percentile, 24-hour volume retention standard for each watershed area. The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of nonstormwater that would otherwise be discharged through the MS4 in each watershed area.	Non-stormwater runoff will be controlled by stormwater BMPs. By 2023, the dry weather compliance date for the SGR metals TMDL, 65% of the design storm runoff will be captured in each subwatershed within the WMP area. That BMP capacity will easily address non-stormwater flows. See the paragraph at the bottom of page 66.

Comment	Regional Board Comment October 27, 2014	Response Comments/Notes
18	The index of subwatersheds shown in Figure 5-15 does not match that used in the model input file. The ID numbers for 67 subwatersheds from the model input file (and the correspondence of these 67 subwatersheds to the 98 city-subwatersheds) must be provided and be shown in the simulation domain to present the geographic relationship of these subwatersheds and city-subwatersheds that are simulated in the LSPC model.	To explain the subwatershed index, the following footnote was added to the end of Section 5.2, as follows: "The 67 LSPC subwatersheds within the WMP boundary were overlaid with the jurisdictional boundaries to create 98 city-subwatersheds. The city-subwatershed ID is composed of the jurisdictional identifier (the first two digits) and the original LSPC subwatershed ID (the last four digits). To identify the geographical relationship between the LSPC model subwatersheds and the city-subwatersheds shown in Figure 5-20, the last four digits of the city-subwatershed correspond to the LSPC Subwatershed IDs."
19	In the analysis of the required reduction for lead, zinc, selenium and E. coli under the dry weather condition, more detailed information about the baseline condition for 50th and 90th percentile existing concentration presented in Table 5-2 should be provided.	The design storm approach of the RAA comprehensively address all Water Quality Priorities during both dry and wet weather. By 2023, the dry weather compliance date for the SGR metals TMDL, 65% of the design storm runoff will be captured in each subwatershed within the WMP area. That BMP capacity will easily address non-stormwater flows. See the paragraph at the bottom of page 66.

Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
Correct Tables 3-3 and 5-5 of the revised draft WMP by removing reference to the dry-weather copper waste load allocations (WLAs). The East San Gabriel Valley Permittees' MS4 discharges are not subject to the dry-weather copper WLAs in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (Attachment P of the LA County MS4 Permit) assigned to discharges to the San Gabriel River Reach 1 and San Gabriel River Estuary.	Corrected Tables 3-3 and 5-5 to remove reference to dry-weather copper WLAs.

Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
<p>Revise Table 4-3 of the revised draft WMP to include "Interagency coordination," "Hydromodification Control Plan," and "Sewage system maintenance, overflow, and spill prevention," which are requirements of the LA County MS4 Permit. (See Parts VI.A.2.a.viii, VI.A.4.a.iii, and VI.D.2, among others, regarding "interagency coordination"; Part VI.D.7.c.iv regarding "Hydromodification Control Plan"; and Parts VI.D.9.h.ix and VI.D.10.c-e regarding "sewer system maintenance, overflow, and spill prevention.")</p>	<p>Revised Table to include "Interagency Coordination", Hydromodification Control Plan", and "Sewage System Maintenance, Overflow, and Spill Prevention".</p>
<p>Revise and separate Table 4-2 of the revised draft WMP, "Recently Constructed and Planned BMPs in the WMP Area," into two tables to clearly distinguish between: (a) those best management practices (BMPs) that are already constructed (providing the completion date for each), and (b) those BMPs that are planned (providing the scheduled completion date for each).</p>	<p>Revised and separated Table 4-2 into two tables as noted.</p>
<p>Clarify the responsibilities of each Permittee of the ESGV WMG for implementation of watershed control measures in Table 5-17 of the revised draft WMP, "Control Measures to be Implemented for Attainment of 10% Milestone" and Table 5-18, "Schedule for Implementation of the Rooftop Runoff Reduction Program" to attain the 10% interim milestone in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL.</p>	<p>Revised Table 5-17 to clarify responsibilities.</p>
<p>Correct inconsistencies between Table 5-4 and Table 5-6 of the revised draft WMP, including: (a) information on selenium, which indicates exceedances downstream in Table 5-4 of the revised draft WMP, but indicates that no reductions are necessary in Table 5-6, and (b) missing information on E. coli exceedances in Table 5-4.</p>	<p>Tables 5-4 and 5-6 have been revised to correct inconsistencies.</p>

Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
<p>Revise Appendix D of the revised draft WMP to include: (a) both the geometric mean water quality objective (126/100 mL) and the single sample maximum water quality objective (235/100 mL) for E. coli density and (b) a table of the water quality-based effluent limitations (WQBELs) applicable to the ESGV WMG for lead, selenium, total nitrogen, total phosphorus, total mercury, total PCBs, total chlordane, dieldrin, total DDT, and 4,4-DDT as set forth in Attachment P of the LA County MS4 Permit.</p>	<p>Revised Appendix D to include all information requested.</p>
<p>Confirm in the revised draft WMP that Permittees of the ESGV WMG shall implement permit provisions in Part III Discharge Prohibitions and Part VI.D Stormwater Management Program Minimum Control Measures as set forth in the LA County MS4 Permit, unless noted otherwise in the revised draft WMP.</p>	<p>The WMP has been revised to confirm that the Permittees will implement the permit provisions cited.</p>
<p>Provide in an Appendix the comparison of the volume reductions required by the load-based and volume-based numeric goals conducted as the initial step in the WMP Reasonable Assurance Analysis (RAA).</p>	<p>The comparison of the volume reductions have been provided in Appendix A.</p>

Sincerely,



Tony Ramos
City Manager
City of Claremont



Bob Russi
City Manager
City of La Verne



Mark Lazzaretto
Acting City Manager
City of Pomona



Blaine Michaelis
City Manager
City of San Dimas



GAIL FARBER, Director

COUNTY OF LOS ANGELES

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August 3, 2015

IN REPLY PLEASE
REFER TO FILE **WM-11**

Ms. Renee Purdy, Chief
Regional Programs Section
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Dear Ms. Purdy:

**LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM
SEWER SYSTEM PERMIT – RESPONSE TO PETITION
FOR REVIEW OF WATERSHED MANAGEMENT PROGRAM APPROVALS**

Enclosed are the County of Los Angeles' and Los Angeles County Flood Control District's written comments in response to the Petition For Review of the Los Angeles Regional Water Quality Control Board Executive Officer's action to approve, with conditions, nine Watershed Management Programs pursuant to Order No. R4-2012-0175, NPDES Permit No. CAS004001, waste discharge requirements for Municipal Separate Storm Sewer System Permit (MS4) discharges within the coastal watersheds of Los Angeles County, except those discharges originating from the City of Long Beach Municipal Separate Storm Sewer System Permit ("2012 MS4 Permit" or "Permit").

If you have any questions or need additional information, please contact me at (626) 458-4300 or ageorge@dpw.lacounty.gov or your staff may contact Ms. Jolene Guerrero at (626) 458-4364 or jguerrer@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Chief Engineer, Los Angeles County Flood Control District

ANGELA R. GEORGE
Assistant Deputy Director
Watershed Management Division

JFG:sw

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RB-AR18083

**Comments of the County of Los Angeles and Los Angeles County Flood
Control District
In Response to Petition for Review of the Executive Officer's Approval of
Nine Watershed Management Plans**

These comments are submitted in response to the Petition for Review Of The Los Angeles Regional Water Quality Control Board Executive Officer's Action To Approve, With Conditions, Nine Watershed Management Programs ("Petition") submitted to the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") by NRDC, Los Angeles Waterkeeper, and Heal the Bay (collectively "Petitioners"). The Petition seeks review of the Regional Board Executive Officer's April 28, 2015 action approving nine Watershed Management Programs ("WMPs"). The County of Los Angeles ("County"), the Los Angeles County Flood Control District ("District"), or both, are participants in six of the challenged WMPs.

Pursuant to Part VI.C of 2012 MS4 Permit, permittees may develop a WMP or an Enhanced Watershed Management Program ("EWMP") that includes control measures and best management practices to address the highest watershed priorities. (2012 MS4 Permit, Part VI.C.) The Executive Officer's action in approving the WMPs should be upheld.

I. Approved WMPs at Issue with County/District Participation

The County and District are permittees under the 2012 MS4 Permit and jointly submitted with other permittees six of the nine approved WMPs at issue in this petition. They are:

- Los Angeles River Upper Reach 2 Sub Watershed WMP (District);
- Lower Los Angeles River Watershed WMP (District);
- Alamitos Bay/Los Cerritos Channel WMP (County/District);
- Los Cerritos Channel Watershed WMP (District);
- Lower San Gabriel River WMP (District);
- Santa Monica Bay Jurisdictional Group 7 WMP (District).

II. The Executive Officer Acted Within His Delegated Authority in Approving the WMPs with Conditions

A. The Executive Officer Had the Authority to Attach Conditions to His Approval of the WMPs

A Regional Board has authority to delegate any of its powers and duties, with limited exceptions, to its Executive Officer. (Water Code § 13223(a).) Petitioners contend that the Executive Officer did not have the authority to attach conditions to his approval of the WMPs. (Petitioners' Memorandum of Points and Authorities ("Petitioners' Mem."), at 7.) The imposition of conditions, however, is

inherent in the National Pollutant Discharge Elimination System (“NPDES”) program. For example, section 402(a)(1) of the Clean Water Act (33 U.S.C. § 1342(a)(1)) provides that an NPDES permit may be issued that will either meet applicable requirements under various sections of the Act or “such conditions as the administrator determines are necessary” to carry out the Act. The permit issuer shall “prescribe conditions” for such permits to assure compliance with the requirements of the Act “including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.” 33 U.S.C. § 1342(a)(2).

Indeed, it is an established principle of administrative law that an agency's power to approve or disapprove implicitly includes the power to conditionally approve. The petitioners in *Connecticut Fund for the Environment, Inc. v. Environmental Protection Agency*, 672 F.2d 998 (2nd Cir.), cert. denied, 459 U.S. 1035 (1982), made the identical argument that Petitioners are making to this Board, there that the U.S. Environmental Protection Agency could not conditionally approve a state implementation plan under the Clean Air Act because the governing statute required the EPA Administrator to “approve or disapprove [the] plan” within four months of submission. Former 42 U.S.C. § 7410(a)(2) . The Second Circuit Court of Appeals disagreed:

Petitioners claim that the literal “approve or disapprove” language of § 7410(a)(2) and the absence of any mention of conditional approvals in the Clean Air Act preclude EPA's conditional approval of a Part D submission. But this Court has held that an agency's power to approve conditionally is inherent in the power to approve or disapprove.

(T)he power to condition ... approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove. We would be sacrificing substance to form if we held invalid any conditional approval but affirmed an unqualified rejection accompanied by an opinion which explicitly stated that approval would be forthcoming if modifications were made.

McManus v. CAB, 286 F.2d 414, 419 (2d Cir.), cert. denied, 366 U.S. 928, 81 S. Ct. 1649, 6 L. Ed. 2d 388 (1961). *McManus* involved the administration of a different statute by a different agency, but the underlying principles of administrative law are fully applicable here. Conditional approval offers administrative agencies a measured course that may be more precisely tailored to particular circumstances than the all-or-nothing choice of outright approval or disapproval. Cf. *United States v. Chesapeake & Ohio*

Ry., 426 U.S. 500, 514, 96 S. Ct. 2318, 2325, 49 L. Ed. 2d 14 (1976).

In the context of the Clean Air Act, the conditional approval mechanism gives EPA the necessary flexibility to work more closely with the states, which, even after the 1977 Amendments, retain the primary responsibility for assuring air quality. § 7407(a). . . . We have in the past been careful to defer to EPA's choice of methods to carry out its "difficult and complex job" as long as that choice is reasonable and consistent with the Act. *Friends of the Earth v. USEPA*, 499 F.2d 1118, 1124 (2d Cir. 1974). . . . Accordingly, we decline to construe the statute as permitting only outright approval or disapproval of state plans. Conditional approval is a direct adjunct of EPA's general responsibility for administration of the Act, § 7601(a), and the more specific authority to approve or disapprove state plans, § 7410(a)(2).

The principle described above is not limited to EPA's powers under the Clean Air Act. The United States Supreme Court's expressed the same principle in *United States v. Chesapeake & Ohio Ry.*, involving the Interstate Commerce Commission's powers under the Interstate Commerce Act. And EPA has itself promulgated policies and procedures that provide for conditional approvals under the Clean Water Act. For example, in section 6.2.1 of its Water Quality Standards Handbook - Chapter 6: Procedures for Review and Revision of Water Quality Standards (40 CFR 131 - Subpart C), the EPA specifically sanctions use of conditional approvals in carrying out its review of a state's water quality standards under section 303(c) of the Clean Water Act, notwithstanding the lack of any express "conditional approval" language in Section 303(c). See also *EPA's Guidance for the Use of Conditional Approvals for State Water Quality Standards (1989)*, in which EPA states that this guidance is modeled after that applied to EPA approval of state implementation plans under the Clean Air Act.

Regional Boards throughout the state, as well as this Board itself, have issued formal approvals of plans and other implementation documents subject to conditions. For example, the Executive Officer of this Board issued a conditional approval of a sampling plan for the El Segundo Generating Station operated by El Segundo Power, LLC (Letter dated December 6, 2005 from Jonathan S. Bishop to Roy Craft). Similarly, the Executive Officer of the Santa Ana Water Board issued a conditional approval of an integrated watershed monitoring program and quality assurance program plan for San Bernardino County's stormwater program required under that program's MS4 permit (Letter dated December 16, 2011 from Kurt V. Berchtold to Granville M. Bowman). Also, the Central Valley Water Board issued a conditional approval of a monitoring and

reporting program required for the Southern San Joaquin Valley Water Quality Coalition (Letter dated July 26, 2010 from Pamela C. Creedon to David Orth.¹

These approvals with conditions reflect a common practice by Executive Officers around the State. To argue that the Executive Officers cannot conditionally approve would be to strictly limit the ability of this and the other regional boards to manage their programs.

All nine approval letters clearly state that the letter is an “[a]pproval, with conditions.” (Letters of Approval With Conditions (“Approval Letters”), at 3.) Approval with conditions allowed the Executive Officer to more precisely tailor his approval to the needs of the 2012 MS4 Permit. The Executive Officer had the authority to issue this approval.

B. The Executive Officer’s Approval Did Not Create a New Schedule

The Executive Officer required that his conditions be met by a specified date. Contrary to Petitioners’ assertion, the Executive Officer’s deadlines did not “indefinitely extend” any Permit deadline, nor did it create “endless extensions without ever achieving Permit compliance.” (Petitioners’ Mem. at 7-8.) The deadline to address the conditions was just that: a date certain by which certain required changes to the language of WMPs must have been made. Indeed, the deadlines have already been met — the permittees all submitted the requested WMP revisions by the stated deadline and the Executive Officer has confirmed that the conditions have been met, at least with respect to the revisions for which review has been completed. (See Letters dated July 21, 2015 for the Lower San Gabriel River and Los Cerritos Channel WMPs.)²

¹ These letters are attached as Exhibit A for the convenience of the Regional Board and the parties. The County and District request the Regional Board to take official notice of these letters as official acts of the executive branch of this state pursuant to 23 Cal. Code Reg. § 648.2. The letters in Exhibit A can be found in the following files:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/power_plants/el_segundo/el_segundo_documents.shtml;

http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/san_bernardino_permit_iwmp.shtml; and

http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_land/monitoring_plans_reports_reviews/monitoring_reporting_program_plans/coalitions/south_sanjoaquin/index.shtml.

² Moreover, the fact that the Executive Officer has confirmed that there are final, approved WMPs means that this Board does not have to address Petitioners’ argument that an approval with conditions could indefinitely extend the Permit’s deadlines (Petitioners’ Mem. at 7). The Executive Officer’s letters confirming that the submitted WMPs are final, approved WMPs renders this issue moot.

Nor did the conditions accompanying the approvals create a new permit schedule. The conditions did not relieve permittees of any substantive Permit requirements or create any additional grace period for WMP participants. Instead, the letters specifically provided that WMP participants must “fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP.” (*E.g.*, Lower San Gabriel Approval Letter dated April 28, 2015, p. 4.) Such implementation “shall begin . . . immediately.” (*E.g.*, Lower Los Angeles River Approval Letter dated April 28, 2015, p. 4.)

Finally, contrary to Petitioners’ assertions, the form of the approval letters will not “fail to put Permittees on a rigorous path to achieving Permit compliance” (Petitioners’ Mem. at 9.), including receiving water limitations or TMDL requirements (Petitioners’ Mem. at 8). The Executive Officer clearly stated in his letters that, in the event that “Permittees fail to meet **any requirement or date** for its achievement in **the approved WMP**... the [Permittee] shall be subject to the baseline requirements of the LA County MS4 Permit” (*E.g.*, Approval Letters dated April 28, 2015 at p. 5, emphasis added.).

A permitting agency is given substantial deference in interpreting its own permits. “In construing a permit provision, the Court should defer to the interpretation of the agency charged with enforcement of the terms.” (*Natural Resources Defense Council, Inc. v. Texaco Refining & Marketing, Inc.*, 20 F. Supp. 2d 700, 709-10 (D. Del. 1998); also see *Beazer East, Inc. v. United States Environmental Protection Agency*, 963 F.2d 603, 606 (3rd Cir.1992) (discussing agency’s interpretation of its own regulations); *New Jersey Department of Environmental Protection and Energy v. Circuit Foil USA, Inc.* (D.N.J. Apr.12, 1993) 1993 WL 118195 (deferring to state agency’s interpretation of the permit language).)

Here, the Regional Board has delegated its authority to approve the WMPs to the Executive Officer. Before the Executive Officer acted, the WMPs underwent extensive review by both Regional Board staff and the public. The Executive Officer issued letters of review, which included requested revisions. Permittees then submitted revised WMPs in response to these letters and, where requested, submitted additional revised WMPs reflecting the terms of the approval letters. He found that the WMPs meet the Permit’s requirements, both substantively and procedurally. The form of the Executive Officer’s approval has not created a new permit schedule.

III. WMP Approval Is Explicitly Authorized Under the Permit and Was Not A Modification of the Permit

Petitioners argue that the Executive Officer’s approvals modify the 2012 MS4 Permit, asserting that the Executive Officer did not approve or deny the WMPs,

but instead created a new process (Petitioners' Mem. at 9-10). This argument lacks merit.

First, this argument ignores the doctrine of *Connecticut Fund* and other cases (as well as EPA Guidance) that the power to attach conditions is inherent in the power to approve granted by the Regional Board to the Executive Officer. Attaching conditions to the approval of the WMPs was not a modification or amendment of any Permit terms.

Second, the approvals did not create a new process. The 2012 MS4 delegates to the Executive Officer the authority to approve WMPs. The WMP approvals were in accordance with those provisions. In this regard, it is well settled law that regulatory agencies must be given deference to interpret their own requirements and regulations, including their own permits. (See *NRDC v. Texaco Refining & Marketing, Inc.*, 20 F. Supp.2d at 709-10.) Here, the Executive Officer has found that the WMPs comply with Permit requirements, while requiring certain additional clarifications and information.

There is, moreover, “a **strong presumption of correctness** concerning . . . administrative findings.” (*California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal. App. 4th 1438, 1453; quoting *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1384.) (emphasis added).³ The Executive Officer's approvals were authorized by the Permit. The approvals did not extend any compliance dates or otherwise modify the Permit requirements. Indeed, the letters specifically provided that WMP participants must “fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP.” (Approval Letters at 4.)

IV. The Terms of the Conditional Approvals are Consistent with Permit Requirements and the Clean Water Act

³ Petitioners cite *Environmental Defense Center, Inc. v. EPA*, 344 F.3d, 832, 853 (9th Cir. 2003), arguing that the WMP provisions are substantive terms of the Permit, and once approved, become enforceable (Petitioners' Mem. at 9 n. 28).

Environmental Defense Center is completely inapposite. In that case, the court concluded that a Notice of Intent was improper because it was “unreviewed” by the regulatory agency and had not been subject to meaningful public review. (*Environmental Defense Center*, 344 F.3d at 853.) Here, as previously noted, the WMPs were submitted to the Regional Board and were subject to public comment. Petitioners themselves submitted comments letters, ranging in length from two to 27 pages, on at least 14 of the WMPs as well as twice submitting “General Comments on Group WMPs,” and the Regional Board held a public workshop on the draft WMPs.

Petitioners argue that, with respect to three of the nine WMPs at issue, the approved WMPs failed to address alleged inadequacies previously cited by Regional Board staff relating to Reasonable Assurance Analyses and other alleged substantive failures. (Petitioners' Mem. at 11-15.)

The process followed by Regional Board staff and the Permittees for the review and approval of the WMPs refutes these allegations. Upon receiving the Regional Board's comment on the draft WMPs in October 2014, the watershed groups each met with the Regional Board staff to ensure a full comprehension of the comments. The WMPs were then revised and resubmitted in January 2015. Because many of the Regional Board's comments required clarifications or explanations, rather than a change to the WMP, the permittees also submitted Responses to Comments in January 2015.

VI. Conclusion

The WMPs approved by the Executive Officer are detailed, complete and modeled programs to address bacteria, nutrients, toxics, metals and other pollutants in stormwater and urban runoff. These programs include appropriate water quality priorities, compliance measures and aggressive schedules. The plans fully comply with the 2012 MS4 Permit, have been submitted by the required deadlines and are already being implemented by the permittees.

The WMPs are the culmination of an unprecedented collaboration and commitment on the part of the permittees, as well as Regional Board staff, to address in a systematic and data-driven way the quality of water discharged from the MS4 system. Rejecting the WMPs would take the permit compliance efforts back to the unsatisfactory days of "iterative process" and would delay or potentially stop the progress already made, and to be made, to achieve water quality standards in receiving waters.

For the foregoing reasons, the County and District respectfully ask this Board to DENY the Petition.

P:\wmpub\Secretarial\2015 Documents\Letter\County MS4 Response\County MS4 Reponse to WMP Petition 8-3-15.docx

EXHIBIT A



California Regional Water Quality Control Board Los Angeles Region



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

Alan C. Lloyd, Ph.D.
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

December 6, 2005

Mr. Roy Craft
Plant Manager
El Segundo Power, LLC
301 Vista Del Mar
El Segundo, CA 90245

PHASE II 316(B) PROPOSAL FOR INFORMATION COLLECTION AND IMPINGEMENT MORTALITY AND ENTRAINMENT CHARACTERIZATION STUDY SAMPLING PLAN, EL SEGUNDO POWER, LLC; EL SEGUNDO GENERATING STATION, NPDES PERMIT NO. CA0001147, CI-4667

Dear Mr. Craft:

Reference is made to the November 17, 2005 comment letter submitted by El Segundo Power, LLC (ESP), along with a revised Phase II 316(b) Proposal for Information Collection (PIC) and Impingement Mortality and Entrainment (IM&E) Characterization Study Sampling Plan (Sampling Plan) for the El Segundo Generating Station (ESGS) dated November 17, 2005. This additional information was submitted in response to initial comments made by the Regional Board staff on October 21, 2005.

In general, the revised PIC submitted generally meets the requirements of the 316(b) Phase II regulations in 40 CFR 125.95 (a)(1) and (b)(1). The Regional Board staff have no objection to you implementing the revised PIC as proposed subject to the following conditions:

1. Hydrologic modeling to identify cooling water intake structure (CWIS) radius of influence (ROI) and cumulative impacts evaluation

The delineation of the ROI is essential for evaluation of impacts in the vicinity of ESGS. Assessment of the ROI provides a hydrodynamic characterization of the effective reach of the ESGS intake systems into Santa Monica Bay.

Such delineation of the ROI is required to quantify the region of the Santa Monica Bay (and associated volume) within which the biota are directly impacted by ESGS. This information shall be used to design a sampling plan and select sample locations that will enable quantification of such impacts. As such, the Regional Board staff recognize that historical sample locations are to be incorporated into the sampling plan to allow analysis and comparison to historical data collection.

The Regional Board staff acknowledge that the delineation of the ROI and incorporation into a sampling plan will prove useful when aggregated with similar studies from other Santa Monica

California Environmental Protection Agency



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RB-AR18092

Bay power plants (Los Angeles Department of Water and Power, Scattergood and AES Redondo Beach). Although cumulative impact studies are not required as part of the Phase II rule, the United States Environmental Protection Agency (USEPA) does not discount the possibility of cumulative impacts nor does it proscribe or discourage their inclusion as part of the evaluation process. USEPA notes that cumulative impact studies available at the time of rule development were insufficient to make any determination as to the exact nature or extent of cumulative impacts but acknowledges anecdotal evidence suggesting the need for further evaluation. USEPA presents the example of impacts identified at three Hudson River facilities in New York stating "[t]he multiple facilities on the Hudson River act cumulatively on the entire aquatic community" (69 FR 41587).

Decisions regarding the need for cumulative impact studies are reserved for the permitting authority. 40 CFR 125.90(d) preserves the right of an authorized agency to "adopt or enforce any requirement...that is not less stringent than those required by Federal law." In addition, in accordance with Section C, Page C-1, Action for Bay Restoration of the Santa Monica Bay Restoration Plan, the goals are to "Restore, rehabilitate, and protect the marine ecosystem, living resources, and biodiversity of the Santa Monica Bay and its watershed." As such, the Regional Board staff recognize that a cumulative impact study is in keeping with the stated goals of improving the overall aquatic health of Santa Monica Bay.

2. Calculation baseline and Velocity Cap Inlet

In section 2.5, ESGS states the following: "Therefore, ESGS has demonstrated through site-specific studies of its existing, in-use intake velocity caps that the facility is in full compliance with the applicable performance standard for impingement mortality. Further justification for this is provided in Section 4.1.1 of this PIC."

Based on the requirements of 40 CFR 125.95, this statement cannot be considered accurate. Use of any technology, including velocity caps, must be demonstrably shown to achieve, either in whole or in part, compliance with the appropriate performance standards *by the Discharger* [emphasis added].

40 CFR 125.95(a)(4)(i) requires the Discharger to submit, as part of the comprehensive demonstration study, the following:

- (C) Calculations of the reduction in impingement mortality and entrainment...that would be achieved by the technologies and or/operational measures [the Discharger has] selected; and
- (D) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the description [of design and construction technologies that will be used to meet the requirements to reduce impingement mortality and entrainment].

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In addition, Section X.B of the preamble to the Phase II rule discusses USEPA's use of model facilities in the development of engineering cost estimates and technology performance profiles. USEPA notes on 69 FR 41649 that:

"While the Agency is confident that the suite of available technologies can achieve the performance standards..., EPA lacks sufficient data to determine the precise performance of each technology on a site-specific basis[.]"

Regional Board staff acknowledge the additional data included in PIC Section 5.1.1 and recognize the potential for the velocity cap configuration at ESGS to contribute to meeting the performance standards under the Phase II rule. However, inclusion of any statement in the PIC that, intentionally or otherwise, conveys any sense of approval by the Regional Board of a specific technology currently in use for the purposes of determining compliance with Phase II requirements, is at best premature. The Regional Board, as the delegated authority for NPDES permits in the Los Angeles Region, will make all determinations as to BTA with regard to ESGS at such time when all supporting documentation has been submitted and reviewed, thereby making a final determination feasible.

3. Impingement Mortality and Entrainment Sampling

Fish Eggs

As discussed in the October 21, 2005 letter from the Regional Board to ESP, fish eggs should be included in any analysis of entrainment at ESGS. Specifically, "The egg represents a critical life stage, the presence and abundance of which may not be accurately represented based on larval, juvenile, and adult presence." Therefore, Regional Board staff believe that the entrainment study should include not only enumeration of collected fish eggs, but also identification of collected eggs to the lowest practical taxonomic level. Enumeration and identification of fish eggs in the entrainment study should be included not only to increase the scientific validity of the study and allow for a more accurate estimate of entrainment effects, but also because the Phase II regulations mandate their inclusion. Specifically, 40 CFR 125.95(b)(3) states that the impingement mortality and/or entrainment characterization study must include "taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structures(s) and are susceptible to impingement and entrainment".

Target Taxa

Regional Board staff agree that it is not appropriate to perform assessments of population-level impacts on all taxa collected during this study. However, it should be emphasized that it is appropriate to count and identify all collected organisms. Where appropriate and as indicated in the sampling design, collected samples may be sub-sampled, but enumeration and identification of all collected taxa is critical to completion of a scientifically defensible study. Therefore, specific data analysis techniques may be used for selected taxa, but all taxa regardless of abundance or commercial/recreational importance should be counted and identified in samples.

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Cancer Crabs

ESP has placed emphasis on cancer crabs to the exclusion of other crabs collected during impingement and entrainment sampling because "they are the most important commercial and recreational group of crabs found in the vicinity of the ESGS". Further, ESP states that "ESP believes that 'shellfish' refers to species of crustaceans and mollusks that are targeted by commercial and recreational fisheries". While Regional Board staff agree that inclusion of commercially and recreationally important crustaceans and mollusks are important to the evaluation of entrainment and impingement mortality at ESGS, we disagree with ESP's definition of shellfish. As noted above, 40 CFR 125.95(b)(3) states that the impingement mortality and/or entrainment characterization study must include "taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structures(s) and are susceptible to impingement and entrainment". The regulation is not limited to recreationally or commercially important shellfish, but includes all shellfish in the vicinity of the CWIS. Regional Board staff recommend that all shellfish (typically meaning crustaceans and mollusks) collected in impingement and entrainment samples be enumerated and identified to the lowest practical taxonomic level.

Regional Board staff caution that all samples should be preserved until the issues regarding enumeration and identification of all organisms are resolved; nothing should be discarded that may potentially add to the study.

If you have any questions, please contact David Hung at 213/576-6664 or Dr. Tony Rizk at 213/576-6756.

Sincerely,

ORIGINAL SIGNED BY

Jonathan S. Bishop
Executive Officer

Cc: See mailing list

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RB-AR18095

Mailing List

U. S. Environmental Protection Agency, Region 9, Permit Branch (WTR-5)
Ms. Nancy Yoshikawa, U. S. Environmental Protection Agency, Region 9
Ms. Robyn Stuber, U. S. Environmental Protection Agency, Region 9
U.S. Army Corps of Engineers
Mr. Bib Hoffman, NOAA National Marine Fisheries Service
Department of Interior, U. S. Fish and Wildlife Service
Mr. Michael Levy, State Water Resources Control Board, Office of Chief Counsel
Mr. Jim Maughan, State Water Resources Control Board, Division of Water Quality
Mr. Dominic Gregorio, State Water Resources Control Board, Division of Water Quality
Mr. James Reed, California Energy Commission
Mr. Rick York, California Energy Commission
Mr. Tom Luster, California Coastal Commission
Mr. William Paznokas, California Department of Fish & Game, Region 5
Mr. Guangyu Wang, Santa Monica Bay Restoration Commission
Department of Health Services, Sanitary Engineering Section
California State Parks and Recreation
South Coast Air Quality Management District
Water Replenishment District of Southern California
Los Angeles County, Department of Public Works, Waste Management Division
Los Angeles County, Department of Health Services
Mr. Mark Gold, Heal the Bay
Ms. Heather L. Hoecherl, Heal the Bay
Mr. Dana Palmer, Santa Monica Baykeeper
Mr. David Beckman, Natural Resources Defense Council
Mr. Daniel Cooper, Lawyers for Clean Water
Environment Now
Mr. Tim Hemig, El Segundo Power LLC
Ms. Susan Damron, Los Angeles, Department of Water and Power
Mr. Steve Maghy, AES Southland LLC
Ms. Julie Babcock, Reliant Energy
Mr. Tim Havey, TetraTech
Mr. Shane Beck, MBC Applied Environmental Sciences
Mr. Scott Seipel, Shaw Environmental & Infrastructure, Inc.
Mr. John Steinbeck, Tenera Environmental
Mr. Mary Jane Forster-Foley

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RB-AR18096



California Regional Water Quality Control Board
Santa Ana Region



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

December 16, 2011

Mr. Granville M. Bowman
San Bernardino County Stormwater Program
825 East Third Street
San Bernardino, CA 92413-0835

**CONDITIONAL APPROVAL OF INTEGRATED WATERSHED MONITORING
PROGRAM AND QUALITY ASSURANCE PROGRAM PLAN; ORDER NO. R8-2010-
0036, NPDES NO. CAS618036 (MS4 PERMIT)**

Dear Mr. Bowman:

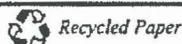
On August 1, 2011, the Permittees submitted a final draft of the Integrated Watershed Monitoring Program (IWMP) and the Quality Assurance Program Plan (QAPP). These documents were posted on our website for public review and comments. No public comment was received.

We have completed our review of the final draft of the IWMP and the QAPP and have determined that they meet the Receiving Waters and Urban Runoff Monitoring and Reporting Program (MRP) requirements provided the following comments are addressed in the next update of the documents:

1. Since the IWMP will replace the current monitoring program when it is approved, we would like this document to be a standalone document. The Permittees' response to our comment in this matter stated that a compilation of the summary of the evolution of the monitoring program will be attached in the introductory section of the 2010-2011 Annual Report. Please include that summary in the IWMP.
2. Tables 6 & 7 of the IWMP should include the following constituent:
 - Methylene Blue-Activated Substances (MBAS)
3. Please indicate the Pilot Pollutant Source Identification and Control Plan sampling locations in Figure 3: Site 5 Drainage Map on page 19 of the IWMP.
4. Please incorporate the attached errata sheet into the IWMP.

In accordance with Section IV.A of the MRP, the IWMP and the QAPP are hereby approved with the above changes and the changes as indicated in the enclosed errata

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sheet. As per Section IV.A of the MRP, the approved IWMP shall be implemented within six months of approval.

If you have any questions, please contact Milasol Gaslan at mgaslan@waterboards.ca.gov or at (951) 782-4419 or Kathleen Fong at kyfong@waterboards.ca.gov or at (951) 774-0114.

Sincerely,



Kurt V. Berchtold
Executive Officer

Enclosure: Errata Sheet, dated December 15, 2011 (2 pages)

cc: Pavlova Vitale, Stormwater Program Manager, San Bernardino County Flood Control District, pavlova.vitale@dpw.sbcounty.gov



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair

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Arnold
Schwarzenegger
Governor

FILE

26 July 2010

Mr. David Orth
Coordinator, Southern San Joaquin Valley Water Quality Coalition
4886 E. Jensen Ave.
Fresno, CA 93725

MONITORING AND REPORTING PROGRAM CONDITIONAL APPROVAL LETTER

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) received from the Southern San Joaquin Valley Water Quality Coalition (Coalition) a Monitoring and Reporting Program Plan (MRP Plan) and a Quality Assurance Project Plan (QAPP) on 25 July 2008. Subsequent discussions with staff culminated in a revised MRP Plan submitted on 8 May 2009. In addition, a letter addendum was submitted on 23 July 2010. The Coalition prepared the MRP Plan and QAPP to meet the requirements of Monitoring and Reporting Program Order No. R5-2008-0005 (MRP Order) for Coalition Groups under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Amended Order No. R5-2006-0053 (Conditional Waiver). The QAPP is being handled separately.

Central Valley Water Board staff (staff) evaluated the submittals for the required components described in the MRP Order, and identified a variety of issues with the Coalition's proposed MRP Plan. Staff and representatives of the Coalition held a number of meetings which culminated in the submittal of a revised MRP Plan on 23 November 2009.

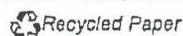
We recognize that a significant amount of time and work has been invested by the Coalition to coordinate with the four separate sub-watershed groups and to collect and compile the information presented in the revised MRP Plan.

The Coalition's revised MRP Plan is conditionally approved, provided you implement the three changes listed below and on Table 1.

The three changes (i.e., conditions) are listed below.

1. Seven of the Coalition's MRP Plan monitoring sites require additional modification. The Tule River sites at Road 144 and Road 92, and the Deer Creek sites at Road 176 and at Road 120 may be designated as Core Monitoring sites provided that sediment (twice yearly) and three species water column toxicity testing (monthly) are added as parameters of concern to the required core sampling parameters. The Core monitoring needs to be conducted monthly for a period of one year. The requirements of core sampling are specified in Table II.B.1 and Table II.D., and the required additional toxicity testing will follow the schedule presented in Table II.A of the MRP Order.

California Environmental Protection Agency



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Toxicity sampling has been added to the Core Monitoring for the Tule River and Deer Creek sites as parameters of concern (see footnote to Table II.B.1 on page 10 of the MRP Order) due to toxicity detections identified during previous monitoring. Monthly photographic documentation must also be provided with views both upstream and downstream from the approved sampling locations. During the monthly monitoring, if no water is present at the sampling location, it should be recorded as "dry" with photo documentation.

The Westside Canal at 7th Standard and Eastside Canal at 7th Standard require further evaluation of whether they meet the requirements of Assessment Monitoring locations. Central Valley Water Board staff and members of the Coalition will work together to make that determination. Central Valley Water Board staff and the Coalition will conduct further review of Tejon Creek to evaluate whether this water body is a candidate for Assessment Monitoring.

2. Additional Assessment Monitoring sites are required to sufficiently characterize water quality for all waters of the State within the Coalition group boundaries as required by the MRP Order (page 6), and to achieve MRP Plan objective No. 1 as required by MRP Order Attachment A.

Current Assessment Monitoring sites must include the waterways listed below, which were discussed during meetings between staff and Coalition representatives. The waterways and the rationale for including them are provided below:

Streams West of State Highway 99 within the Kaweah Sub-watershed:

Irrigated agriculture lands in this area have the potential to discharge to waters of the State and are not represented in the MRP Plan sample sites. The Coalition will conduct special studies by sampling discharges (pipe flow) at three or more representative sites agreed upon by staff, to determine whether discharges from crops to this area have the potential to affect beneficial uses of surface waters. Samples are to be analyzed for Assessment parameters and the crop type sourcing the discharge must be provided along with the analytical results in the semi annual and annual monitoring reports. The Kaweah Sub-watershed needs to provide locations where the samples will be collected and the procedures that will be used to coordinate the sample collection with discharges within **90 days** of the date of this letter.

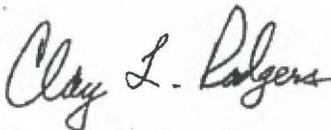
Above Lake Success: The Tule River Sub-watershed and Central Valley Water Board staff will conduct a joint monitoring effort of irrigated agriculture lands above Lake Success. Staff has identified an appropriate site for sample collection and collected and analyzed a river sample. The monitoring information will be transmitted to the coalition by staff and the coalition needs to collect and analyze a sample from the same location for Assessment parameters and sediment toxicity. Staff will advise the Tule River Sub-watershed of an appropriate time to collect the second sample. Results of the sampling events will be evaluated to determine if discharges off of irrigated agriculture lands above Lake Success warrant additional Monitoring.

Central Valley Water Board staff and the Coalition will evaluate what type of monitoring would be conducted, if needed.

Above Lake Isabella: The Kern Sub-watershed and Central Valley Water Board staff will conduct a joint monitoring effort above Lake Isabella similar to the study required above Lake Success. Staff has identified an appropriate site for sample collection and collected and analyzed a river sample. The monitoring information will be transmitted to the coalition by staff and the coalition needs to collect and analyze a sample from the same location for Assessment parameters and sediment toxicity. Staff will advise the Kern Sub-watershed of an appropriate time to collect the second sample. Results of the sampling events will be evaluated to determine if discharges off of irrigated agriculture lands above Lake Isabella warrant additional Monitoring. Central Valley Water Board staff and the Coalition will evaluate what type of monitoring would be conducted, if needed.

3. Locations of management practices need to be provided for the Kings, Kaweah, and Kern River Sub-Watersheds in order to produce information necessary to meet MRP Plan objectives No. 3 and No. 4 as required by Attachment A, and component No. 11 of the MRP Order (page 4). The documentation provided by the Tule River Sub-Watershed may be used as a template for the development of the required information. This information should be provided within **90 days** of the date of this letter.

I would like to thank you for all of your efforts in developing the MRP Plan. If you have any questions or comments about this conditional approval, please contact Clay Rodgers at crodggers@waterboards.ca.gov or (559) 445-5116.



for Pamela C. Creedon
Executive Officer

Enclosure(s) Table 1 – Monitoring Site Requirements

cc: Dennis Keller, Keller Wegley Consulting Engineers, Visalia
Dick Schafer, R.L. Schafer and Associates, Visalia
Nick Gatti, Kern County Water Agency, Bakersfield
Bill Thomas; Best, Best & Krieger LLP; Sacramento



TABLE 1
Southern San Joaquin Valley Water Quality Coalition
Monitoring Site Requirements

Site Description	Sub-watershed	MRP Plan Designation	Required Designation
Manning Avenue	Kings	Core	
Empire #2	Kings	Assessment	
Lemoore Weir	Kings	Core	
Jackson Avenue	Kings	Special	
Tivy Valley	Kings	Assessment	
Gould Canal	Kings	Assessment	
Crecent Weir	Kings	Assessment	
Stinson Weir	Kings	Assessment	
Kaweah River at Rd 158	Kaweah	Assessment	
St. Johns River at Ben Maddox	Kaweah	Assessment	
Stone Corral ID at Rd 156	Kaweah	Assessment	
Streams west of HWY 99^{1,2}	Kaweah	N/A	Assessment ³
Elk Bayou	Kaweah	Assessment	
Goshen Ditch	Kaweah	Assessment	
Porter Slough at Rd 192	Tule	Assessment	
Elk Bayou at Rd 96	Tule	Assessment	
Deer Creek at Rd 248	Tule	Assessment	
Above Lake Success¹	Tule	N/A ⁴	
Tule River at Rd 144	Tule	Core	Core + Parameters of Concern ⁵
Tule River at Rd 92	Tule	Core	Core + Parameters of Concern ⁵
Deer Creek at Rd 176	Tule	Core	Core + Parameters of Concern ⁵
Deer Creek at Rd 120	Tule	Core	Core + Parameters of Concern ⁵
Poso Creek at Zerker Rd	Kern	Assessment	
Chanac Creek at Pellicer Rd	Kern	Assessment	
White River at Rd 208	Kern	Assessment	
El Paso Creek at Sebastian Rd	Kern	Assessment	
Main Drian at Buttonwillow Rd	Kern	Special ⁶	
Main Drian at 7th Standard Rd	Kern	Special ⁶	
Main Drain at Hwy 46	Kern	Special ⁶	
Main Drian at Front St	Kern	Special ⁶	
Westside Canal at 7th Standard ²	Kern	Special ⁷	Assessment
Eastside Canal at 7th Standard ²	Kern	Special ⁷	Assessment
Tejon Creek ²	Kern	Special ⁷	
Above Lake Isabella¹	Kern	N/A ⁴	

¹Site needs to be added (BOLD).

²Central Valley Water Board Staff and the Coalition will work together to determine if additional monitoring is required.

³End of pipe samples. Assessment parameters required.

⁴Coalition/Waterboard joint monitoring effort. Samples analyzed for Assessment parameters and sediment toxicity.

⁵Water column and sediment toxicity.

⁶Special Project Monitoring designation appropriate due to Management Plan on Main Drain Canal.

⁷Special "Study" designation conflicts with language in the MRP Order. Assessment monitoring required for all new sites. Coalition may propose a schedule for future Assessment monitoring.

August 3, 2015

Ms. Renee Purdy, Regional Programs Section
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Transmitted by email to losangeles@waterboards.ca.gov

Subject: LA County MS4 Permit – Response to Petition for Review of WMP Approvals

Dear Ms. Purdy;

The Los Angeles River Upper Reach 2 Watershed Management Area (LAR UR2 WMA) includes the Cities of Bell, Bell Gardens, Commerce, Cudahy, Huntington Park, Maywood, Vernon, and the Los Angeles County Flood Control District. Some of these Municipal Separate Storm Sewer (MS4) Permittees, such as the District, intend to separately submit responses to address issues beyond those of the LAR UR2 WMA group. On behalf of the LAR UR2 WMA, we are responding to the subject Petition for Review filed on May 28, 2015 by the Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay, henceforth identified as "Petitioners". In brief, the LAR UR2 WMA encourages the Regional Board to ratify the April 2015, Executive Officer's approval of nine Revised Watershed Management Program (WMP) Plans, including that of the LAR UR2 WMA, so that implementation of the Approved Final WMPs may proceed with certainty and no additional time-consuming proceedings.

Executive Officer WMP Approvals Conformed with the Regional Board's MS4 Permit

On April 28, 2015, the Regional Board Executive Officer issued an LAR UR2 WMA WMP Approval letter comparable with many such other communications issued by Executive Officers over the years. This letter confirmed the expressed directions of the Regional Board in adopting the 2012 MS4 Permit. In the third paragraph of page 2, the letter states "*The Los Angeles Water Board hereby approves, subject to the following conditions, the LAR UR2 WMG's January 27, 2015 revised draft WMP. The Board may rescind this approval if all of the following conditions are not met to the satisfaction of the Board...*" (*emphasis added*). While the Board retains a right to rescind it, we understand the Letter to be an Approval, which, as stated in the first sentence on Page 5, directs that "*the Permittees of the LAR UR2 WMG shall begin implementation of the approved WMP immediately.*" There is no prior condition to the Approval, only a reservation that the Board may rescind it if the conditions are not met to the Board's satisfaction, and we fully anticipate that the June 12, 2015 Final WMP fully achieves the objectives of your conditions and Permit.

Petitioners Broadly Overstate Required Draft WMP Revisions

Page 14 of the Petitioners' May 28, 2015, Memorandum of Points and Authorities reiterate and rephrases six "inadequacies" that they assert were identified by Regional Board Staff in the October 27, 2014 Review letter, as shown in the leftmost column of **Table 1**. The center table column summarizes the responses made by the LAR UR2 WMA to the Regional Board staff over the three months following receipt of the review letter, while the rightmost column addresses changes instituted in subsequent WMPs to address the concerns of Board Staff, or our understanding of why staff concerns had been adequately addressed.

"Engineering Solutions to Improve the Quality of Life."

RB-AR18103

Table 1 Actions Taken by the LAR UR2 WMA in Response to Petitioner Identified WMP "Inadequacies".		
LAR UR2 WMA WMP "Inadequacies" Referenced by Petitioners ¹	LAR UR2 WMA Summary Response (Provided to Regional Board Staff During Meetings) ²	Modifications incorporated in the January 28, 2015 Revised and June 12, 2015 Approved Final LAR UR2 WMA WMP.
1) Failed to separately calculate wet and dry weather allowable pollutant loading;	Calculation of allowable pollutant loads requires a runoff volume. Permitted dry weather MS4 runoff volumes are variable and must be from authorized or conditionally exempt sources. Design storms were used to develop RAA volume and pollutant loads other than for trash.	In the Final WMP, Allowable Pollutant Loads are expressed using units from Permit Attachment O and percentages, rather than the equivalent imperial units, used in draft. The determination of RAA design storm wet weather allowable loads are revised and further clarified within Section 4.2.4 and Table 4-6 on Final WMP page 93.
2) Failed to provide any dry weather modeling	The Permit identified RAA models were intended to respond to runoff volumes and pollutant loads resulting from assumed rainfall input data. Modeling dry-weather flows and loads would assume criteria not approved in the Board issued March 25, 2014 RAA Guidelines.	Non-Stormwater (dry-weather) Discharge Control Measures are identified in Final WMP section 3.1.3 on page 39. Despite receiving runoff from over 4 square miles of the LAR UR2 WMA, and an approximately 120 square mile tributary watershed, dry-weather flows are typically absent from the Rio Hondo Reach 1
3) Failed to provide model outputs for interim WQBELs;	RAA model outputs were provided to the Board staff immediately following their request. Board staff was directed to Figures 5-1 to 5-6, which appeared to adequately address the question.	Existing Figures 5-1 to 5-6 were revised to use percentage load reductions of TMDL identified loads as shown in Tables 4-20 to 4-24, rather than the equivalent imperial units used in the June 28, 2014 first draft.
4) Failed to provide justification for 90th percentile rain years for use in model;	While the March 25, 2014 Board RAA guidelines provided our justification, other changes to the RAA resulted in the decision to significantly revise and expand Section 4 of the Final WMP.	Section 4 (Reasonable Assurance Analysis), of the Approved Final WMP, was substantially revised and supplemented with figures, discussion and subsections to better address the concerns of reviewers and increase understanding.
5) Failed to include category 2 and 3 pollutants in the RAA;	The assertion was discussed with Regional Board Staff and a consensus formed that, for RAA purposes, Category 2 and 3 pollutants were well represented by Category 1 pollutants.	Sections 2.4 and 4.2.3 were revised to better convey that Category 2 and 3 pollutants were sufficiently similar to Category 1 pollutants, to satisfy the RAA analysis. Monitoring will develop additional data for the Adaptive Management Plan.
6) Failed to calibrate the model to compare modeling results to real world data & adjust on that basis.	The lack of water quality data and small runoff contribution from LAR UR2 was discussed with Board staff. Downstream watershed calibration data was added to Section 4 of the Final WMP.	Section 4 (Reasonable Assurance Analysis), of the Approved Final WMP, was substantially revised and supplemented with figures, discussion and subsections to better address the concerns of reviewers and increase understanding.

¹ May 28, 2015 Petitioners' Memorandum of Points and Authorities beginning on Page 13, line 24. Inadequacies, referred to by the Petitioners, vary from those identified in the October 27, 2014 Board LAR UR2 WMA WMP Review Letter.

² Responses herein characterize discussions between LAR UR2 WMA representatives and Board staff during a December 3, 2014, meeting.

Regional Board Comments Referenced in Petitioner's Exhibit D Were Resolved

The Petitioners are incorrect in assuming that all of the October 27, 2014, Regional Board Review Letter comments and questions necessitated a change in the draft WMP. Contrary to the Petitioners' allegations, in some cases, such as interim TMDL compliance and time series Pollutant reductions, Regional Board staff concurred during our meeting that other sections of the WMP sufficiently addressed their original concerns. In other cases, such as recommendations to consider using TMDL and Industrial General Permit monitoring data, a cordial informative discussion and candid assessment of the available information clarified the concerns of the LAR UR2 WMA groups concern with basing long term planning commitments on information of obvious limitations and sometimes very narrow or limited applicability. However, the LAR UR2 WMA has constructed **Table 2** to further clarify our perception of the outcome of those discussions and how the Approved Final WMP incorporates or addresses the other comments. In order to reduce confusion, a response to the Regional Board conditions identified on April 28, 2015, was provided with the June 12, 2015 Approved Final LAR UR2 WMA WMP, although many of the changes in Section 4 were voluntarily initiated to improve the understanding and clarity of this admittedly very complex document. Comments attributable to the June 28, 2014 WMPs, should be moot, as most of those documents have been replaced twice and the original drafts are no longer subject to implementation by the Permittees.

The WMP and Reasonable Assurance Analysis (RAA) Conformed to the RAA Guidelines

Regional Board staff and Permittee representatives invested months in WMP development, Reasonable Assurance Analysis (RAA) Guidelines development, the RAA itself, and revisions that resulted in the Approved Final LAR UR2 WMA WMP Plan. The LAR UR2 WMA made an RAA Approach presentation to Regional Board staff on January 27, 2014 and followed that approach in developing the June 28, 2014 Draft WMP. The robustness of that analysis is apparent, in that the results from incorporating the corrected deficiencies did not change the proposed extent of regional and distributed BMPs. The Final WMP did however include an approximately 3% increase in LID and Green Streets, due to the Permittees choosing to include an equal mix of retention and less effective flow through devices to provide an implementation alternative for specific projects that could not otherwise accommodate retention BMPs. Most of the changes in the Final LAR UR2 WMA WMP relate to clarifying commitments, conforming load units, visually representing data, specifying complex analysis steps, and translating the results into easily understood planned implementation actions for the individual LAR UR2 WMA Permittees.

Conclusions

The LAR UR2 WMA urges the Regional Board to ratify the Executive Officer's April 28, 2015, decision to approve all nine WMPs, and extend the approval to include the June 2015 Final Submittals. The Executive Officers' Approval decisions should not be overturned. The Permittees, including the LAR UR2 WMA, have invested substantial time, effort, and resources, into the Draft, Revised, and Approved Final WMP Plans. The LAR UR2 WMA Permittees encourage the Regional Board members to consider the significant commitments contained in each WMP and reject the Petitioners request to overturn the Executive Officer's Approvals.

If you have any questions regarding this response or the WMP contents, or require additional information, please contact me at (714) 526-7500 Ext. 207 or ggreene@cwecorp.com.

Respectfully submitted,



Gerald E. Greene, DEnv, PE, QEP, QSD/P
CWE Director Stormwater

Table 2 Actions Taken in Response to LAR UR2 WMA WMP "Inadequacies" Identified in Petitioners' Exhibit D.		
LAR UR2 WMA WMP "Inadequacies" Referenced in Petitioners Exhibit D	LAR UR2 WMA Summary Response (Provided to Regional Board Staff During Meetings) ²	Modifications incorporated in the January 28, 2015 Revised and June 12, 2015 Approved Final LAR UR2 WMA WMP.
"The WMP did not model and pollutants in Categories 2 and 3. These pollutants or surrogates need to be included in the RAA, or supported justification for the use of the proposed limiting pollutants as surrogates for each Category 2 and Category 3 waterbody-pollutant combination."	The assertion was discussed with Regional Board Staff and a consensus formed that, for RAA purposes, Category 2 and 3 pollutants were suitably well represented by Category 1 pollutants.	Sections 2.4 and 4.2.3 of the Final WMP were revised to better convey that Category 2 and 3 pollutants were sufficiently similar to Category 1 pollutants, to satisfy RAA requirements. Monitoring will develop additional data for the AMP.
"...the WMP should utilize General Industrial Storm Water Permittee monitoring results...to assess and potentially refine estimates of pollutant loading from the identified "non-MS4" areas.	The assertion was discussed with Regional Board staff and some typical SMARTS monitoring data characterized. A consensus developed that the existing data was of insufficient quality to represent either General Industrial or other Industrial Sites.	WMP section 2.3 was modified to reiterate our prior findings and board staff acknowledgement that: 1) the majority of the SMARTS data did not meet the "defensible" standard; 2) there are insufficient land use categories in the current model to accommodate the many Industrial General Permittees; and 3) including these discharges could distort BMP designs.
"The draft WMP should consider existing TMDL modeling data, where available, when refining the source assessment.	The assertion was discussed with Regional Board staff to ascertain which TMDL models had been sufficiently characterized to allow source assessment refining, within the March 25, RAA Guidelines. None were identified.	WMP section 2.3 was expanded to explicitly state that prior findings from TMDL source assessments and models were inconclusive and overly broad for initiating actionable source assessments. One example being oversight of the impact of SB-346 on copper in the Los Angeles River Metals TMDL.
"A process and schedule for developing the required spatial information on catchment areas to major outfalls should be proposed, if this information does not already exist.	Board staff were directed to the CIMP which demonstrated that seven outfalls conveyed about 79% of the LAR UR2 WMA tributary area. Definition of remaining catchments would occur through the IC/ID and NSW Outfall Prioritization Permit programs.	This information was sufficiently developed to allow RAA and WMP development, but will be further refined through implementation of Permit IC/ID activities, CIMP Non-stormwater Prioritization, and source assessment MS4 Permit processes.
"The draft WMP does not clearly specify a strategy to comply with the interim WQBELs for the LA River metals TMDL...Further discussion of current compliance with the LA River nitrogen compounds TMDL, for which there is a final compliance deadline of 2004, is also needed..."	The BMP implementation schedules and Figures 5-1 to 5-6 were reviewed with Board Staff to clarify how they anticipated this comment. Data from the nitrogen RAA, showing that existing nitrogen loads were already below the allowable Loads, were shared with Board staff.	Section 4 of the Final WMP was completely reformatted and expanded to more clearly convey data developed for the draft RAA and WMP regarding nitrogen loads and compliance with interim WQBELs.

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"...the specific LID street projects and their locations are not identified. The draft WMP should provide as much specificity as feasible in describing the potential locations for LID streets. Additionally, the permittees that would be responsible for implementing LID street projects should be specified."	The LAR UR2 WMA asserted that WMP Table 4-19 addressed Permittee responsibilities for implementing Green and LID Streets. Board staff was advised that maintenance and reconstruction of streets is undertaken through each City's Capital Improvement Program and design modifications to include BMPs would first require the dedication of design funds by the City Council, whom are awaiting WMP approval.	Section 4 of the Final WMP was completely reformatted and expanded, including section 4.5.2 which now identifies examples of Green or LID streets currently under construction by LAR UR2 WMA Permittees. Cities with Pavement Management Plans or Systems, which guide the implementation of LID or Green Streets, were identified in WMP Sections 3.2.2 and 4.5.2.
"The WMP assumes a significant reduction in copper based on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[A]dditional structural BMPs may still be needed to reduce copper loads prior to entering receiving waters and eliminate copper exceedances of RWLs."	Recent CASQA data, indicating that automotive industry conversion to <0.5% friction pads was proceeding at a more quickly than anticipated by the RAA or WMP was shared with Regional Board Staff. An additional "sensitivity" analysis was added and is summarized in Table 4-12.	Section 4 of the Final WMP was completely reformatted and expanded, including section 4.4.3 which includes a sensitivity analysis, included as Table 4-12, demonstrating that the RAA assumed 50% reduction, by 2028, in copper loads attributable to changing brake pad formulations, was conservative. Previously included RAA assumptions, regarding Copper Water Effects Ratios already adopted by the Regional Board, were excluded from the final RAA and BMP effectiveness "accounting" on Tables 4-22 and 4-23, and provide an additional margin of safety that water quality objective will be achieved by the interim and final dates.
"Table 1-5 should be updated....The concentration-based WQBELs for metals on page 78 are incorrect...."	We understand this comment to convey that Copper Water Effects Ratios, cannot be used until the adopted Basin Plan Amendment is fully effective. The RAA was revised.	Section 4 of the Final WMP was expanded and the LAR UR2 WMA RAA and WMP no longer include the change in water quality criteria resulting from the recently adopted LAR copper and lead Site Specific Objectives Amendment.
"The differences between baseline and allowable concentrations/loads should be presented in a time series...and then as a summary of 90 th percentile of the differences between pollutant and allowable concentrations/loads for wet weather periods, in units consistent with applicable WQBELs and Receiving Water Limitations..."	Table and figures in the WMP were revised to use units consistent with Permit identified WQBELs and Receiving Water Limitations. The LAR UR2 WMA explained that a time series was adequately addressed in Figure 5-1 to 5-6.	Section 4 of the Final WMP was significantly revised and expanded to address many of the Board Staff identified comments, including the initial choice of pollutant load units and analysis periods in the draft WMP. Figures 5-1 to 5-6 were also revised to to address comments on the pollutant load units and other requested changes in the RAA.

Table 2 Actions Taken in Response to LAR UR2 WMA WMP "Inadequacies" Identified in Petitioners' Exhibit D.		
LAR UR2 WMA WMP "Inadequacies" Referenced in Petitioners Exhibit D	LAR UR2 WMA Summary Response (Provided to Regional Board Staff During Meetings) ²	Modifications incorporated in the January 28, 2015 Revised and June 12, 2015 Approved Final LAR UR2 WMA WMP.
"an explanation of the calculations used to derive target load reductions should be provided."	Concurred that additional details were warranted and then implemented as multiple changes within Section 4 and elsewhere.	Section 4 of the Final WMP was revised and expanded to better characterize the calibration and calculation steps used in the LAR UR2 WMA RAA and Approved Final WMP Plan.
"Model output should also be provided for phased BMP implementation to demonstrate that interim WQBELs for metals and bacteria will be met."	Draft and Final RAA model outputs were provided to Regional Board Staff and summarized in the draft and Approved Final WMP versions as Figures 5-1 to 5-6.	Section 4 of the Final WMP was significantly revised and expanded to address the comments. Figures 5-1 to 5-6 were further revised to address comments on pollutant load units and other requested changes in the RAA.
"The ID number for each of the 50 subwatersheds from the model input file should be provided and be shown in the simulation domain to present the geographic relationship of subwatersheds within the watershed area that are simulated in the LSPC model."	The requested information is available from the Draft and Final RAA model input and outputs data files provided to the Regional Board. Subwatershed geographic relationships are shown in Figures 3-1 to 3.3, but it was agreed that including 50 numeric identifiers in these figures was unnecessary.	The requested subwatershed ID numbers were provided, along with the Draft and Final RAA model input and outputs data files, to the Regional Board Staff.
"The flow, runoff volume and water quality....time series output at the watershed outlet as well as for each modeled subbasin should be provided using the 90 th percentile critical conditions....to estimate the baseline condition. In addition, per RAA Guidelines, the model output should include stormwater runoff volume and pollutant concentration/load at the outlet and for each modeled subbasin for each BMP scenario..."	The requested information is available from the Draft and Final RAA model input and outputs data files provided to the Regional Board. Providing printouts of this of data within the WMP was discussed with Regional Board staff and determined to be unnecessary.	The subject subwatershed time series, flow, volume, and pollutant data were provided, as part of the Draft and Final RAA model input and outputs data files, to the Regional Board Staff.
"identification of the 90 th percentile years in Table 4-2 needs to be supported with hydrological data to demonstrate the selected critical period will capture the variability of rainfall/storm sizes/conditions."	Concurred with Regional Board Staff Comment	Section 4 of the Final WMP was significantly revised and expanded to address several of the Regional Board and Petitioner comments. Table 4-1 and Figures 4-15 and 4-16 in particular address this comment.

Table 2 Actions Taken in Response to LAR UR2 WMA WMP "Inadequacies" Identified in Petitioners' Exhibit D.		
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"Model simulation for copper, lead, zinc, nitrogen, and bacteria under the dry weather condition was not included in the Report and needs to be addressed."	The Permit identified RAA models were intended to respond to runoff volumes and pollutant loads resulting from assumed rainfall input data. Modeling dry-weather flows and loads would assume criteria not approved in the Board issued March 25, 2014 RAA Guidelines.	Non-Stormwater (dry-weather) Discharge Control Measures are identified in Final WMP section 3.1.3 on page 39. Despite receiving runoff from over 4 square miles of the LAR UR2 WMA, and an approximately 120 square mile tributary watershed, dry-weather flows are typically absent from the Rio Hondo Reach 1.

¹ Exhibit D accompanying May 28, 2015 Petition for Review of Los Angeles Regional Water Quality Control Board Executive Officer's Action to Conditionally Approve Nine WMPs Pursuant to the L.A. County MS4 Permit.

² Responses herein characterize discussions between LAR UR2 WMA representatives and Board staff during a December 3, 2014, meeting.



LOS CERRITOS CHANNEL
WATERSHED GROUP



VIA EMAIL

July 30, 2015

Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Email: losangeles@waterboards.ca.gov
cc: Renee.Purdy@waterboards.ca.gov

Subject: **LA County MS4 Permit – Response to Petition for Review of WMP Approvals**

Dear Chair Stringer and Members of the Board:

The Los Cerritos Channel Watershed Management Program (WMP) was one of the nine WMPs conditionally approved by the Executive Officer of the Los Angeles Regional Water Quality Control Board. The Los Cerritos Channel Watershed Group (Watershed Group) voted on July 16, 2015, to respond to the Petition brought by NRDC *et al.* The Watershed Group would like to take the opportunity to emphasize that the 2012 MS4 Permit, with its emphasis on watershed-based strategies and enhanced monitoring, represents a quantum leap in stormwater quality permitting and planning. In fact, it is truly a paradigm shift. Permittees are working together to address water quality on a watershed or subwatershed basis and committing to schedules for implementing structural and non-structural control measures while diligently pursuing a stable and sustainable funding mechanism. Further, the Watershed Group believes the Petition does not have merit since conditional approval of plans and programs is an established method used by the Water Boards.

The three petitioners indicate that, collectively, they represent 28,600 members (perhaps overlapping) in Los Angeles County. The seven municipal members of the Watershed Group represent approximately 863,200 residents of Los Angeles County, including residents in other watersheds within their jurisdictions.

The Petitioners cite the 2012 MS4 Permit and argue that, unlike the 2001 Permit, it “incorporates several ‘safe harbors’ that create an alternative means to comply with the RWLs provisions in certain circumstances.” There are no “safe harbors” in the 2012 Permit. Rather, there is a process that gives Permittees time to design, finance, and construct structural control measures while pursuing non-structural measures such as source control. Permittees are expected to comply with all requirements and dates for their achievement in the approved WMPs to meet interim

Bellflower

Cerritos

Downey

Lakewood

Long Beach

Paramount

Signal Hill

Los Angeles
County Flood
Control District

RB-AR18110

milestones and must meet the final numeric water quality-based effluent limitations for the TMDLs incorporated into the Permit. This is a much more rigorous requirement than the iterative process included in the 2001 MS4 Permit. The commitments made in WMP implementation schedules have gotten the attention of elected officials at a level never before experienced in the region.

The Petitioners also assert that Permittees “can select their own control measures, best management practices, and compliance schedules to implement permit requirements, subject to minimum standards set forth in the permit.” The Watershed Group would like to point out that while Permittees can propose control measures, best management practices, and compliance schedules, these proposals are subject to approval by the Regional Water Board. Furthermore, Section 13360 of the Porter-Cologne Water Quality Control Act precludes the Regional Water Board from specifying exactly which control measures and best management practices are used by Permittees.

The Petitioners challenge the State Water Board’s statement that the WMP alternative compliance approach “is a clearly defined, implementable, and enforceable alternative to the receiving water limitations provisions.” While the Watershed Group has concerns with some Permit language, we believe it is generally well defined and implementable while being clearly enforceable. WMP Sections VI. A.13.a through VI.A.13.h. specify a range of measures by which the Permit may be enforced. Furthermore, the Group was able to successfully develop a WMP and a Coordinated Integrated Monitoring Program (CIMP) that not only address all Permit requirements, but also provide a comprehensive and quantitative roadmap to ultimately achieve water quality standards. Contrary to the Petitioners’ assertion that the revised WMPs were deficient, the fact that the Regional Board’s comments were minor, mainly seeking supplemental information and clarification, is a testament to the Regional Board staff’s recognition that the revised WMPs were compliant and substantially complete.

Developing the Los Cerritos Channel Watershed Management Program was challenging. Watershed Groups that selected the WMP option had one year to develop the WMPs, after organizing and submitting a Notice of Intent to the Regional Water Board that they were going to develop a WMP, while other watersheds had an additional year to develop Enhanced Watershed Management Programs (EWMPs). The Watershed Group chose a WMP over an EWMP because the Watershed is relatively close to the coast, is essentially built-out, has no existing regional stormwater capture/treatment facilities, and has limited opportunities for construction of multi-benefit watershed capture/treatment facilities. After reviewing the draft Los Cerritos Channel WMP, the Regional Water Board noted that, “...for the most part the draft WMP includes the elements and analysis required.” However, the Board did deem some revisions necessary. Regional Board staff made 21 separate comments on the draft WMP, and the Watershed Group modified the WMP in response to the comments and resubmitted it in January 2015. To help staff review the revised WMP, the Group provided Regional Board staff a matrix detailing the Group’s responses to staff comments and explaining actions taken in response to the comments.

On April 28, 2015, the Regional Water Board approved the WMP, with four conditions. The conditions were all either language clarifications or requests for supplemental information. One asked for a revision to a discussion of ammonia to indicate that the Watershed Group would monitor ammonia and zinc in the CIMP and re-evaluate ammonia as part of the adaptive management process. Each of these actions was already planned, but staff wanted the cross-references in the WMP. A second condition was a requested revision to a Table of Phase I milestones and associated text to remove footnotes related to adoption of trash amendments by the State Water Board, revision of the Tables to specify the last day of the quarter instead of the year and quarter, and substitution of the language, “as needed to achieve volume reduction milestones” for “subject to the availability of funding.” A third requested revision included similar language changes to a second table. Lastly, the Regional Water Board staff requested that the City of Long Beach Statement of Legal Authority, which became available after the revised WMP was submitted in January, be included in an appendix. This last request had been previously discussed with staff, which indicated the Regional Water Board would request the document in the future. The three required revisions were all minor clarifications, and the City of Long Beach Statement of Legal Authority was received by the Regional Water Board on February 28, 2015, in connection with Long Beach’s separate MS4 Permit. The revised WMP could have been approved without the clarifications requested by staff. However, the Executive Officer chose to conditionally approve the WMP in order to clarify a few items and modify some language in two tables.

On page 8 of the Memorandum of Points and Authorities, the Petitioners note that, “once a WMP is approved, Permittees must immediately begin implementing measures and actions proposed in the WMP.” The Watershed Group has always planned on such implementation. The Group members participated in two multi-watershed workshops with the Lower Los Angeles River Watershed Committee and the Lower San Gabriel Watershed Committee before the draft WMP was submitted to the Regional Water Board in June 2014. The first was a six-hour workshop focusing on the upcoming new minimum control measure (MCM) requirements. The second was another six-hour workshop focusing on WMP content and the commitments that would result from WMP approval. This workshop also included an emphasis on the Reasonable Assurance Analysis and the volumes of water capture that would be necessary if the watersheds were dependent primarily on water capture.

On July 15, 2015, a third multi-watershed workshop was held to emphasize key elements of municipal WMP implementation. This three-hour workshop was for planners, plan checkers, inspectors, and field staff supervisors, in addition to stormwater program managers. It emphasized target watershed control measures, including the draft Vacant Parcel Erosion and Sediment Control Ordinance and Manual prepared by the City of Signal Hill for the Los Cerritos Channel and Lower Los Angeles River Watersheds and prioritized industrial/commercial inspections. It also included several components of the Construction Program and the Planning and Land Development Program, as well as other new policies and written procedures, Record Keeping, and Annual Reporting.

The municipalities in the Los Cerritos Channel Watershed Group actually began implementation of the WMP when they began implementation of the Los Cerritos Channel Metals TMDL in 2009, before the 2012 Permit was adopted and before the TMDL was actually established, by forming a technical committee, developing cost share tables, looking for grant opportunities, and developing Memoranda of Understanding (MOUs) to fund implementation of the TMDL. In 2010, the MOUs were entered into for preparation of a TMDL Implementation Plan, a monitoring program, and special studies. Funding came from cities' General Funds. Also in 2010, cities in the Watershed supported adoption of SB 346 to reduce copper in brake pads by submitting support letters and helping to fund the activities of the California Stormwater Quality Association (CASQA) and Sustainable Conservation to negotiate and gain legislative support for the bill. Funds for these efforts also came from cities' General Funds. In 2010, the Group entered into a contract with a consulting firm to prepare a TMDL Implementation Plan. This effort was held in abeyance during development of the 2012 MS4 Permit and converted into a program to develop a WMP and a CIMP after the Permit was adopted. Funding for these planning programs came from payments by cities to the Gateway Watershed Management Authority (GWMA) per the 2010 MOUs and new MOUs signed in 2012.

Also in 2012, the Watershed committed \$50,000 as the local match for a \$338,000 Proposition 84 grant to fund a project entitled, "Los Cerritos Channel Watershed Segmentation and Low Impact Development (LID) Planning Project" to better understand dry-weather flows, pollutant sources, and pollutant loads to assist in targeting LID and water capture projects. The study is to be completed by December 31, 2015. The cities in the Watershed also funded a 2012 letter report entitled, "Estimate of Urban Runoff Copper Reduction in Los Angeles from Brake Pad Copper Reductions Mandated by SB 346." Funds to pay for this study came from cities' payments to GWMA per the 2010 MOUs.

The Watershed has now completed a WMP in which copper, lead, and zinc are specified as Category 1 (highest priority) pollutants. The WMP contains a multi-pronged strategy to achieve compliance with water quality standards for these metals. The associated CIMP includes a Watershed Segmentation component designed to find and address sources of the metals. In addition to source control, the strategy initially focuses on sediment control and runoff reduction. The cities within the Watershed have adopted LID Ordinances and Green Streets Policies and most have already upgraded street sweeping equipment to either vacuum or regenerative sweepers in order to better remove fine sediment particles to which metals adhere. The cities are also working with the Gateway Council of Governments on a water quality component for a Strategic Transportation Plan to help secure funding for arterial and intersection green streets projects. This effort is being funded by the cities and the Watershed.

The Watershed Group has now developed Action Plans for both 2015 and 2016 based on commitments in the Implementation Section of the WMP. In addition, two cities in the Watershed Group (Lakewood and Signal Hill) have each entered into Cooperative Implementation Agreements with the California Department of Transportation (Caltrans) to design and construct large water capture facilities with targeted capacities of eight acre-feet. These facilities are the first two water capture facilities specified in the Implementation Schedule

Section of the WMP. One is scheduled for completion of a concept plan by December 31, 2015, while the other is scheduled for completion of a concept plan by June 30, 2016. Both are scheduled for construction by September 30, 2019. The Group now anticipates construction of both projects several months before the scheduled completion dates.

Another major project underway is the development of a model Vacant Lot Erosion and Sediment Control Ordinance by the City of Signal Hill. This Ordinance is currently scheduled for adoption in November 2015 and implementation 180 days later. It is a model ordinance for consideration by the other cities in the Watershed. The intent is to reduce the discharge of fine sediments that transport metals and other pollutants to the receiving waters.

In addition, the Watershed is planning to move forward on concept designs for other sub-regional water capture facilities in order to seek grant funding for their construction.

In the Memorandum of Points and Authorities, the Petitioners assert that the most glaring deficiency in the WMPs is the “flawed Reasonable Assurance Analysis (RAA) in each.” The Watershed Group concedes that the RAAs are not perfect. They cannot be; they are modeling exercises that reflect current knowledge and best engineering judgment. However, the model used for the Lower Los Angeles River, the Los Cerritos Channel, and the Lower San Gabriel River was calibrated using the best available monitoring data, and it will be further refined through the adaptive management process as more data becomes available from the expanded monitoring programs. The Group’s major criticism of current models, including the one used for our RAA, the Watershed Management Modeling System (WMMS), is that they were not designed to adequately address source control. Currently, the only way to address true source control (pollution prevention) is through assumptions. The RAA tells members of the Watershed Group how much stormwater would have to be captured for designated subwatersheds to come into compliance with the requirements for limiting pollutants, which are the pollutants that professional judgment indicates will be the most difficult to address. For the Los Cerritos Channel Watershed and several other watersheds, these are zinc and bacteria (*E. coli*).

The RAA for the Lower Los Angeles River, Los Cerritos Channel, and Lower San Gabriel River divides the Los Cerritos Channel’s ten sub-basins, as defined by USEPA in the *Los Cerritos Channel Metals TMDLs*, into 44 subwatersheds and provides compliance target volumes and a pollutant reduction plan for each subwatershed. These plans allocate the total BMP volume to achieve compliance between existing distributed BMP volume, total estimated right-of-way BMP volume, estimated potential LID on public parcels volume, and remaining BMP volume (potentially regional BMPs). The initial stormwater capture projects described above will each address water capture volume for several subwatersheds. The RAA is a complicated, but important, tool that will assist the Watershed Group in focusing investments in both structural and non-structural measures in order to meet the schedule included in the WMP to improve water quality in the Watershed.

In conclusion, the Watershed Group believes the WMP process is a sound and workable, although very expensive, process to achieve water quality standards more quickly than we thought possible. As noted above, we are already implementing our WMP.

Response to Petition for Review of WMP Approvals
July 30, 2015
Page 6 of 6

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Watson". The signature is written in a cursive style with a large, prominent 'R' and 'W'.

Richard Watson, Consultant
On Behalf of Anthony C. Arevalo
Chair, Los Cerritos Channel Watershed Group

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10 STATE OF CALIFORNIA
11 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
12 LOS ANGELES REGION

13 In the Matter of Petition for Review of the Los
Angeles Regional Water Quality Control Board
14 Executive Officer's Action to Approve, with
Conditions, Nine Watershed Management
15 Programs Pursuant to the Los Angeles County
Municipal Separate Storm Sewer System (MS4)
16 Permit (Order No. R4-2012-0175; NPDES
17 Permit No. CAS004001)

**MEMORANDUM ON BEHALF OF
LOWER LOS ANGELES RIVER
WATERSHED MANAGEMENT GROUP
LEAD PERMITTEE IN OPPOSITION TO
PETITION BY NATURAL RESOURCES
DEFENSE COUNCIL AND OTHERS
CHALLENGING WATER MANAGEMENT
PROGRAM APPROVALS**



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1 **I. INTRODUCTION**

2 The City of Signal Hill (“City”) is lead Permittee for the Lower Los Angeles River (“LLAR”)
3 Watershed Management Program (“WMP”). The other cities in the LLAR WMP group are: Downey,
4 Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, and South Gate. The Los Angeles
5 County Flood Control District is also a member of the LLAR, but it may file its statement in a
6 separate coordinated filing prepared by counsel for the County of Los Angeles. The City is also a
7 member of the Los Cerritos Channel WMP group, and that group will be submitting a separate
8 comment letter as well.

9 The LLAR group coordinated a WMP that meets both the letter and the spirit of the 2012 Los
10 Angeles County MS4 NPDES Permit (“LA Permit”). The Los Angeles Regional Water Quality
11 Control Board (“Regional Board”) should *deny* the Petition of the Natural Resources Defense Council,
12 Heal the Bay, and Los Angeles Waterkeeper (collectively, “Environmental Petitioners”), who seek to
13 eviscerate the entire Permit process by requesting this Board undo years of work and declare all
14 WMPs invalid based upon a procedural technicality. The Environmental Petitioners’ substantive
15 claims against the LLAR’s finally approved WMP also lack merit.

16 This Board should eschew the invitation of the Environmental Petitioners to now revise the
17 essential structure of the LA Permit, which was more than two years in the drafting, and another two-
18 and-a-half years in the administrative review process. Rather, the Board should focus on the real
19 implementation challenges – the challenge of funding and implementing the WMPs in order to attain
20 the goals of the LA Permit and the Clean Water Act.

21 **II. THE ENVIRONMENTAL PETITIONERS’ CHALLENGE TO THE TECHNICAL**
22 **PROCEDURE IN WHICH THE EXECUTIVE OFFICER APPROVED THE**
23 **WATERSHED MANAGEMENT PLANS “WITH CONDITIONS” SHOULD BE**
24 **REJECTED AS EITHER ILL-FOUNDED OR MOOT**

25 **A. The Appropriate Standard of Review**

26 In seeking review of the action of the Executive Officer of the Los Angeles Board issued on
27 behalf of the Board, the Environmental Petitioners have conflated and confused two different
28 procedural paths involving different standards of review. The standard for the State Water Resources



1 Control Board (“State Board”) to review a factual determination of liability or other fact-based
2 determination originally issued by the Regional Board is the “substantial evidence” standard. (*In Re:*
3 *Stinnes-Western Chemical Corp.*, Order No. 86-16 (State Board 1986).) But, the standard under the
4 LA Permit for a determination of whether either the Regional Board or the Executive Officer should
5 approve or deny a final plan submitted by a watershed management group is *not* a “substantial
6 evidence” standard. Rather, any such action is a discretionary policy decision made by the appropriate
7 body (in this case, the Executive Officer) as to whether the final watershed management plan does (or
8 does not) meet the requirements of the LA Permit.

9 Contrary to the implication of the Environmental Petitioners, this is not a fact-bound decision
10 governed by the “substantial evidence” standard, and the State Board’s determination of its standard
11 for reviewing a Regional Board decision on specific facts as contained in *Stinnes-Western Chemical*
12 *Corp.* has no application to this petition.¹

13 Rather, the Respondents submit that the proper standard is whether or not the Executive
14 Officer abused his discretion in determining that the submitted final watershed management plan
15 sufficiently met the requirements of the LA Permit to merit that he “accept” the plan. This involves a
16 more limited review of whether (or not) the Executive Officer properly exercised his discretion in
17 reviewing the watershed management plan and determining that it fairly met the LA Permit
18 requirements.

19 The Respondents now demonstrate why, as to the LLAR WMP, the Executive Officer
20 exercised his discretion to approve the WMP in a reasonable fashion fully consistent with the LA
21 Permit.²

22 _____
23 ¹ The Environmental Petitioners also cite Code of Civil Procedure section 1094.5(b) as a basis for their argument that the
24 Executive Officer’s decision must be “supported by the evidence.” (Petition Memo. at p. 5, fn. 17 & 18.) But Section
25 1094.5(a) specifies that it applies when there is a judicial inquiry into a final administrative order “made as a result of a
26 proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the
determination of facts is vested in the inferior tribunal. . .” The LA Permit does not require a hearing by the Executive
Officer (or this Board) before determining whether or not to accept a final watershed management plan, nor does it require
evidence “to be taken” as part of any deliberation by the Executive Officer. Thus, Code of Civil Procedure section
1094.5’s “substantial evidence” review standard is inapplicable to this Petition process.

27 ² Respondents believe that many of the legal positions they raise are common to other watershed groups, and anticipate
28 that members of the Lower San Gabriel River group and others may join in parts or all of the legal arguments contained in
this Memorandum.



1 Each of the “conditions” that follow are directives to make minor changed to the WMP that are
2 clerical in nature. For example, one directive said to: “Revise ‘Submit LRS to Regional Board’
3 deadline to April 28, 2017.” (*Id.* at 3.) Another states: “The City of Long Beach submitted its
4 Statement of Legal Authority to the Los Angeles Water Board on February 26, 2015. Include this
5 Statement of Legal Authority in the WMP appendix section containing the other Permittees’ legal
6 authority statements.” (*Ibid.*) What the approved WMP constitutes is the submitted WMP plus these
7 clerical changes (i.e., “conditions”) made by a certain date. This is further supported by the fact that
8 the approval letter goes on to state that “the Permittees of the LLAR WMG shall begin
9 implementation of the approved WMP *immediately.*” (*Id.* at 4 [emphasis added].) Therefore, the
10 approval on April 28, 2015 was a full approval of the LLAR WMP, and that approval was entirely
11 consistent with the procedures of the LA Permit.

12 The Environmental Petitioners claim that this letter constitutes an abuse of discretion by the
13 Executive Officer because the “only authority delegated to him by the Regional Board was to approve
14 or deny the WMPs.” (*EP Memo.* at 6). The Environmental Petitioners are wrong for two reasons:

15 (1) The plain words of the LA Permit allow the Executive Officer to approve a watershed
16 management plan “on behalf of the Regional Board.” This language is found on page 55 of the LA
17 Permit, Table 9. The Executive Officer therefore had express authority to sign a letter approving the
18 LLAR WMP. Thus, there is no valid question about whether the Executive Officer “exceeded his
19 authority”; he did exactly what the LA Permit allowed him to do.

20 (2) Even if the Executive Officer’s April 28, 2015 letter was construed to focus on the
21 conditions imposed as part of the overall approval, it would make no difference. This is so because
22 the LA Permit simply allows either the Regional Board or the Executive Officer on behalf of the
23 Board to issue an “approval or denial” of a final plan. The LA Permit is not a straight jacket that
24 requires that the approval (or denial) be “unconditional.”

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1 Table 9 of the LA Permit at page 55 simply states in pertinent part:

Part	Provision	Due Date
VI.C.4.c.	Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board	3 months after submittal of final plan

8 The LA Permit in Table 9 references Part VI.C.4.c, but that section only provides requirements
9 for those Permittees that “elect to develop a [regional] Watershed Management Program.” It does not
10 contain any requirement that constrains this Board (or its Executive Officer) on how it can review and
11 issue any “approval or denial” of a final plan. (LA Permit at 57, Part VI.C.4.c).

12 Thus, the plain language in Table 9 does not require that the LA Board issue an “approval or
13 denial *without any conditions*”, and the LA Permit does not elsewhere contain such language with
14 respect to the approval process for WMPs. NPDES permits, such as the LA Permit, are to be
15 construed based upon their plain language. In this case, the plain language of the permit does not
16 require an unconditional approval (or denial), and that plain language should stand. (*See Alaska*
17 *Community Action on Toxics v. Aurora Energy Serv., LLC*, 765 F.3d 1169, 1172 (9th Cir. 2014)
18 [NPDES permit to be interpreted like a regulation, which “should be construed to give effect to the
19 natural and plain meaning of its words.”].)

20 **D. Even if the LA Permit’s Approval Language Was Deemed “Ambiguous”, the**
21 **Permit’s Structure and Extrinsic Evidence Support the Executive Officer’s**
22 **Approval with Conditions of the LLAR WMP**

23 Even if, for argument’s sake, there was some ambiguity in Table 9 to the LA Permit on the
24 scope of an “approval” and whether that word meant to exclude an “approval with conditions”, then
25 this Board should consider the structure of the LA Permit and extrinsic evidence in order to interpret
26 the ambiguity. (*See NRDC v. County of Los Angeles*, 725 F.3d 1194, 1205 (9th Cir. 2013) [“If,
27 however, the permit’s language is ambiguous, we may turn to extrinsic evidence to interpret its
28 terms.”].)



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1. The Text and Structure of Part VI.C. of the LA Permit Does Not Support Imposing any Artificial Requirement of an Approval “Without Conditions”

The text and structure of Part VI.C. of the LA Permit is designed to impose conditions upon the Permittees who elect to proceed with a WMP (or EWMP). Part VI.C. emphasizes the flexibility inherent in this process:

C. Watershed Management Programs

1. General

- a. The purpose of this Part VI.C. is to allow Permittees the *flexibility* to develop Watershed Management Programs to implement the requirements of this Order on a watershed scale through *customized* strategies, control measures, and BMPs. (LA Permit at 47-48 [emphasis added].)

Throughout the rest of Part VI.C., the language continues to describe the flexible nature of the watershed management program process. Part VI.C.1.f.iv., for example, requires that those participating in a WMP “modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data. . . .” Part VI.C.2.b. in turn provides that a Permittee’s “full compliance with all requirements and dates for their achievement in an approved Watershed Management Program. . . shall constitute a Permittee’s compliance with the receiving water limitations provisions in Part V.A. of this Order. . . .” (LA Permit at 53.)

Thus, the structure of Part VI.C. seeks to impose conditions and a timetable on the Permittees who elect to proceed with a WMP or EWMP. There is absolutely nothing in the structure or language of Part VI.C. that suggests that it was intended to limit the discretion of this Board (or its Executive Officer acting on its behalf) in the precise manner of “approving” a WMP.

The State Board, in its Final Order resolving the 37 petitions filed after adoption of the LA Permit in 2012, references Table 9 in part as support for the State Board’s conclusion that: “First, as documents to be approved by either the Los Angeles Water Board or its Executive Officer, the WMPs/EWMPs are subject to a public review and comment period.” (Order WQ 2015-0075 at 37, fn. 111.) The State Board’s conclusion, that the process for review of a WMP included public comment, is borne out in this case. The Environmental Petitioners commented on the LLAR group’s revised



1 WMP by letter dated March 25, 2015. There was nothing in that comment letter, however, that
2 interpreted the “approval” process as one requiring an unconditional approval.

3 **2. This Board (and its Staff’s) Long-Standing Policy and Practice of Approval**
4 **of Submitted Documents with Conditions**

5 The Board knows and can recognize that both it and Regional Board staff approve numerous
6 work plans, technical reports, and other submittals with conditions. This type of “approval with
7 conditions” is often practiced with respect to other provisions in the LA Permit.

8 To take recent examples of the long-standing Board policy of approvals with conditions, we
9 request that the Board take official notice of the following five documents and one undisputed fact:⁴

- 10 1) June 19, 2015 letter of Executive Officer to Upper San Gabriel River watershed group
11 approving with conditions the Coordinated Integrated Monitoring Program;
- 12 2) June 24, 2015 letter of Executive Officer to Alamitos Bay/Los Cerritos Channel watershed
13 group approving with conditions the Coordinated Integrated Monitoring Program;
- 14 3) June 18, 2015 letter of Executive Officer to Lower Los Angeles River watershed group
15 approving with conditions the Coordinated Integrated Monitoring Program;
- 16 4) June 4, 2015 letter of Executive Officer to Upper Santa Clarita watershed group approving
17 with conditions the Coordinated Integrated Monitoring Program;
- 18 5) July 10, 2015 letter of Executive Officer to Santa Monica Bay Jurisdictional Group 2 & 3
19 EWMP group approving with conditions the Coordinated Integrated Monitoring Program.⁵
- 20 6) Undisputed fact: The Respondents request that the Board take judicial notice of the fact
21 that the LA Regional Board has issued over the past 20 years countless letters approving
22 work plans, technical reports, and other documents with “conditions.”

23 ///

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25 _____
26 ⁴ Respondents are filing concurrently with this memorandum a formal Request for Official Notice of the five referenced
27 documents. This request is made pursuant to Government Code section 11515, Evidence Code sections 452
and 453, and section 648.2 of Title 23 of the California Code of Regulations.

28 ⁵ On June 19, 2015, the Executive Officer sent a letter approving the Lower San Gabriel River watershed group’s
coordinated integrated monitoring program without any conditions.



1 This Board should consider the vast amount of extrinsic evidence of how its staff has for years
2 conditioned approval letters, and must conclude that the language in Table 9 is fully consistent with
3 the long-standing policy and practice of an “approval with conditions.”

4 **3. This Board Should Construe Its Own Permit to Allow for Conditional**
5 **Approvals in Implementing a Very Complicated Permit**

6 As a public policy, this Board has the opportunity to construe even an arguably ambiguous
7 provision of the LA Permit in a common sense manner. In this instance, the Board should adopt a
8 common sense reading of the term “approval” as stated in Table 9 of the LA Permit to provide the
9 flexibility of an approval with conditions.

10 The U.S. Court of Appeals for the Second Circuit applied a similar common sense
11 interpretation to a statutory provision of the Clean Air Act requiring that EPA “approve or deny” a
12 state submittal under that Act. The language at issue in the Clean Air Act is remarkably similar to the
13 language in the LA Permit:

14 Section 7401(a)(2) provides that the Administrator of EPA “shall within four months
15 after the date required for a submission of a plan [by the State] approve or disapprove
16 (the) plan, or any portion thereof.” (*Connecticut Fund for the Environment, Inc. v.*
EPA, 672 F.2d 998, 1002 (2d Cir. 1982), cert. denied, 459 U.S. 1035 (1982)
(Connecticut Fund).)

17 Notwithstanding the “approve or disapprove” language contained in a Congressional mandate,
18 the EPA conditionally approved a State Implementation Plan (“SIP”) submitted by the State of
19 Connecticut. An environmental group petitioned the Court of Appeals to review the approval arguing
20 that: “the literal ‘approve or disapprove’ language of [section] 7410(a)(2) and the absence of any
21 mention of conditional approvals in the Clean Air Act preclude EPA’s conditional approval.”
22 (*Connecticut Fund, supra*, 672 F.2d at 1006.)

23 The Second Circuit rejected this argument concluding that such a narrow interpretation of the
24 term “approve” would frustrate the overall purpose of the statutory scheme. As Circuit Judge
25 Newman wrote for the Court of Appeal:

26 But this Court has held that an agency’s power to approve conditionally is inherent in
27 the power to approve or disapprove.

28 “[T]he power to condition. . . approval on the incorporation of certain amendments is
necessary for flexible administrative action and is inherent in the power to approve or



1 disapprove. We would be sacrificing substance to form is we held invalid any
2 conditional approval but affirmed an unqualified rejection accompanied by an opinion
3 which explicitly stated that approval would be forthcoming if modifications were
4 made.” (*Connecticut Fund, supra*, 672 F.2d at 1006 [quoting *McManus v. CAB*, 86
5 F.2d 414, 419 (2d Cir.), cert. denied, 366 U.S. 928 (1961)].)

6 This Board should adopt the same position of the Second Circuit Court of Appeals and
7 construe the language contained in the LA Permit concerning the power to approve or reject a WMP
8 (or an EWMP) in a common sense fashion and allow for the inherent power to conditionally approve
9 such a plan submittal.

10 **E. Alternatively, the Board Should Rule that the Environmental Petitioners’**
11 **Complaint Is Moot in Light of a Subsequent Development—The Filing on June**
12 **12, 2015 of a Revised WMP Responding to All Conditions and the Issuance on**
13 **July 22, 2015 of a “Final Approval” Letter**

14 Alternatively, the Environmental Petitioners’ claim as to the “procedural impropriety” of the
15 Executive Officer’s determination is now moot. The Executive Officer issued his letter on April 28,
16 2015 and gave the LLAR group until June 12, 2015 to address the conditions contained in the letter.
17 The LLAR group timely submitted a revised final WMP on June 12, 2015. A copy of that final WMP
18 is part of the materials posted on the Board’s website for this hearing.

19 More critically, on July 21, 2015, the Executive Officer, on behalf of this Board, issued a final
20 approval letter of the LLAR WMP. A copy of that letter is part of the separate Request for Official
21 Notice, item No. 1, Exhibit “A”.⁶ Therefore, the LLAR group has addressed each of the conditions
22 listed in the conditional approval letter of April 28, 2015. Thus, the Environmental Petitioners’
23 argument that the approval was only “conditional” is *moot* because the Board subsequently issued a
24 final approval letter without any conditions. (*See Santa Monica Baykeeper v. City of Malibu* (2011)
25 193 Cal.App.4th 1538, 1547-48 [“An appeal should be dismissed as moot when the occurrence of
26 events renders it impossible for the appellate court to grant appellant any effective relief.”; held that
27 challenge to EIR for construction of Legacy Park in city was moot when before determination of
28 appeal the park was already completed].)

⁶ The Executive Officer, acting on behalf of the Board also issued final approval letters as to the Lower San Gabriel River watershed group. A copy of that letter is attached to Respondents’ Request for Official Notice, items No. 2, Exhibit “B”.

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1 In this particular instance, the Environmental Petitioners seek a remedy – reversal of a
2 conditional approval – when the conditions have already been met.⁷ Thus, like the plaintiff in *Santa*
3 *Monica Baykeeper*, the Board should dismiss the Petition as moot with respect to its procedural
4 argument.

5 F. **The Environmental Petitioners’ Suggestion that a Full Permit Modification Was**
6 **Required for an Approval “With Conditions” Is Erroneous**

7 Alternatively, the Environmental Petitioners suggest that the Executive Officer’s approval
8 “with conditions” constitutes an improper modification of the LA Permit. Indeed, the Environmental
9 Petitioners suggest that the Board (as the agency issuing the LA Permit) must follow requirements to
10 formally modify the LA Permit, including giving notice and issuing a new draft permit. (*EP Memo.* at
11 10). This procedural suggestion is nonsense. It assumes the conclusion – i.e., that the LA Permit
12 somewhere contains the words “approval without conditions” in Table 9 (or elsewhere). The plain
13 language of the LA Permit, its structure, and available extrinsic evidence, however, all support a
14 rejection of the Environmental Petitioners’ efforts to revise the current LA Permit and insert the
15 language “without conditions” after the word “approval” in Table 9.

16 Moreover, the “conditions” cited in the approval letter are only clerical in nature, requesting
17 that certain language be added in certain sections or that an attachment be included. Therefore, the
18 approval was an approval of the WMP with those clerical changes included as part of the approval.
19 This point is further supported by the fact that the approval letter required that the WMP group “shall
20 begin implementation of the approved WMP immediately.” (Petition, Exhibit B, LLAR WMP
21 Approval Letter at 4.) Consistent with Table 9, which states that the next step in the process after
22 approval is “begin implementation” of WMP, this demonstrates that the Executive Officer’s action
23 was an approval of the WMP, and not a permit modification.

24 ///

26 ⁷ This fact also ends the Environmental Petitioners’ concern that the so-called “conditional approvals” were left open
27 ended based upon a theoretical Board action after June 12, 2015 to impose an additional round of conditional approvals.
28 The Environmental Petitioners argued that this might allow the Executive Officer to “indefinitely extend the Permit’s
deadlines.” (*EP Memo.* at 7:19-24). Once again, the actual facts have mooted this potential concern of the Environmental
Petitioners.



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There is no need to modify the LA Permit, and the alternative suggestion by the Environmental Petitioners to the contrary should be rejected.

III. THE APPROVED WATERSHED MANAGEMENT PROGRAMS MEET ALL PERMIT REQUIREMENTS

Environmental Petitioners finally arrive at their objections to the approved WMPs. However, Environmental Petitioners' arguments are so lacking in substance or explanation that they should not be afforded any weight. The LLAR watershed group answers the claimed deficiencies in a concurrently filed comment letter, which includes a chart of the LLAR WMP group rebutting the allegations contained in the March 26, 2015 letter of the Environmental Petitioners.

For the arguments regarding the Reasonable Assurance Analysis ("RAA"), the City incorporates by reference the comments of the Lower San Gabriel River ("LSGR") watershed group because the LSGR RAA also included the LLAR and Los Cerritos Channel watershed groups. The City also highlights that the Petition argued: "the conditions included in the conditional approvals *fail to address any of the RAA inadequacies identified by RWQCB staff.*" (EP Memo. at 14:20-22 [emphasis in original].) However, the Environmental Petitioners' offer absolutely no arguments or factual bases to support that blanket allegation.

The LLAR WMP satisfied the LA Permit requirements, as demonstrated by the Executive Officer's final approval letter, and the Petition's claims otherwise lack any merit.

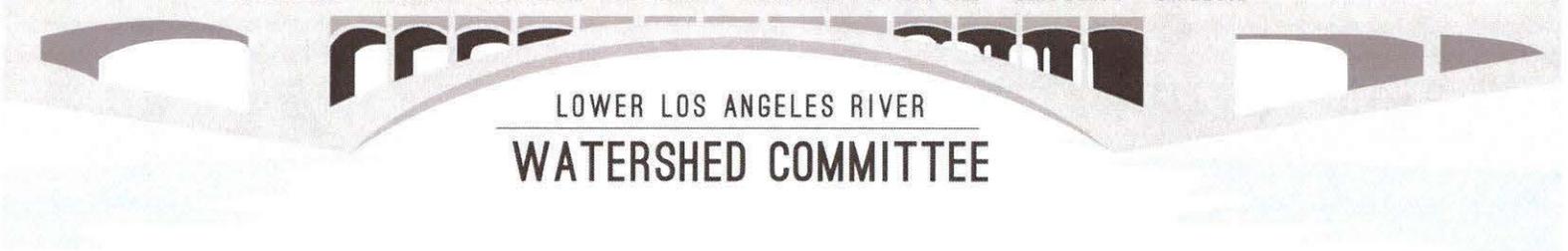
IV. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Regional Board deny the Petition in its entirety and allow the LLAR group continue with implementing its approved WMP.

DATED: August 3, 2015

ALESHIRE & WYNDER, LLP

By: 
MILES P. HOGAN
Attorneys for CITY OF SIGNAL HILL



LOWER LOS ANGELES RIVER
WATERSHED COMMITTEE

August 3, 2015

Transmitted via electronic mail: losangeles@waterboards.ca.gov

Rene Purdy, Chief, Regional Programs Section
Los Angeles Regional Water Quality Control Board
320, West 4th Street, suite 200
Los Angeles, Ca 90013
Renee.Purdy@waterboards.ca.gov

Subject:

LA County MS4 Permit – Responses to Petition of Review of WMP Approvals

Dear Ms. Purdy:

The Lower Los Angeles River Watershed Group (LLAR) appreciates the opportunity to provide comments regarding the Petition brought by NRDC *et al*¹ (Petitioners) to review the Executive Officer's Action to approve the Watershed Management Programs (WMPs). As you know, the 2012 MS4 Permit (Order No. R4-2012-0175) provided a voluntary Permit compliance path to Permittees through the preparation and implementation of WMPs. The WMP approach allows Permittees to combine resources in order to create an efficient program that focuses on water quality priorities within a watershed. The program is supported by a comprehensive quantitative analysis that provides reasonable assurance to achieve compliance milestones, as well as a process to adaptively manage the program that is guided by the monitoring data collected through the Group's Coordinated Integrated Monitoring Program². In 2013, the LLAR decided to coordinate with the Gateway Watershed Management Authority (GWMA) to prepare a WMP. This coordinated effort included collaboration with two neighboring watershed groups representing the Los Cerritos Channel and the Lower San Gabriel River.

During the development of the WMP, there were several opportunities for stakeholders to provide comments. These opportunities included: (1) the June 2013 Notice of Intent, (2) the April 2014 Stakeholder meeting held by the Group, (3) the June 2014 Draft WMP submittal, (4) the February 2015

¹ Petition dated May 28, 2015.

² Lower Los Angeles Coordinated Monitoring Program approved on 07/28/2015

submittal of the Revised WMP, and (5) October 2014 and April 2015 public meetings held by the Regional Board offices. The LLAR has made every effort to address stakeholder comments.

The Group is aware that the Petitioners specifically called out twelve of the twenty-three comments originally made by the Regional Board staff in response to the Draft LLAR WMP.³ The submittal of the Revised WMP prior to April 28, 2015, included a matrix that summarized how each of the Regional Board's comments to the Draft WMP was addressed. The intent of the matrix was to assist the Regional Board in the identification of all necessary revisions (which occur in multiple places throughout hundreds of pages) and provide clarification. Because the matrix was not posted on the Regional Board's website, and as such not available to the Petitioners, it appears that the Petitioners may have had difficulty in both identifying all revisions and understanding the reasoning behind them. These responses are reiterated on the attached matrix (Attachment 1), with additional clarification provided as needed.

The Executive Officer on behalf of the Board approved the WMP with conditions on April 28, 2015, effectively finding that the WMP as submitted met the requirements for preparation as described in the MS4 permit. The minor clarifications required as part of the approval were non-substantive and clerical in nature. The final version of the WMP with these clarifications incorporated was submitted to the Regional Board on June 12, 2015. By letter dated July 21, 2015, the Executive Officer on behalf of the Board approved the June 12, 2015 submittal without further conditions.

In light of the Petition, the Petitioner's original comments to the Draft WMP, and the Petitioner's statements at the April 12, 2015, Regional Board Public Meeting and the June 16, 2015, State Water Resources Control Board Meeting, the Group is compelled to reiterate its commitment to implement the approved WMP, which to date has cost over \$800,000 to prepare. This commitment is evidenced by the Group's recent activities, which include but are not limited to:

- Developing and adopting a five-year WMP implementation and monitoring agreement. This agreement will provide nearly \$1,000,000 in annual funding for monitoring and the continued watershed activities.
- Developing and adopting an agreement with all Permittees within the Los Angeles River watershed to implement sample collection and share data for the Dominguez Channel and Greater Harbor Toxics TMDL.
- Implementing the Proposition 84 Grant to install 43 bio-filtration systems in major transportation corridors throughout the Lower San Gabriel River, Lower Los Angeles, and Los Cerritos Channel Watersheds. As part of the grant, monitoring of the bio-filtration systems will be performed to evaluate pollutant removal effectiveness. The grant will be completed by April 2017.
- The internal development and participation of Group members in three separate workshops devoted to the implementation of the WMPs, covering 15 hours of material in total. Topics have included results of the Reasonable Assurance Analysis, new Minimum Control Measures as mandated by the MS4 Permit, and new watershed control measures incorporated into the WMP

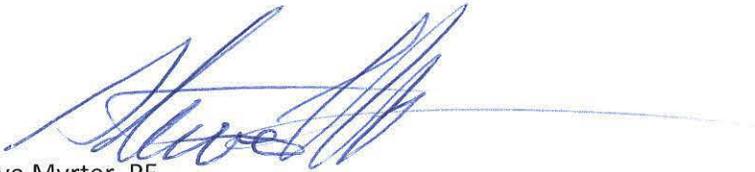
³ See Petition, Exhibit D.

such as erosion and sediment control at vacant lots. Neighboring watershed groups for the Los Cerritos Channel and the Lower San Gabriel River also participated in the workshops, covering staff from 17 cities in total. They have been well attended and engaging: the most recent workshop was conducted on July 15, 2015, and was attended by 53 staff members with key MS4 Permit responsibilities, such as directors, engineers, planners, program managers, and inspectors.

It is also important to note that the development of the WMP was a challenging endeavor. It required nine Permittees to collaborate and commit to the development of a complex program with far-reaching and extensive objectives in a six-month period. It then required joint participation in regularly scheduled technical committees to effectively develop the document in time to complete a draft (including a comprehensive watershed model simulation and a separate monitoring program) within one year. Following approval of the WMP, the Group continues to meet regularly in order to effectively commence implementation. These past and future efforts reiterate the Group's commitment to the watershed approach provided by the MS4 Permit.

Thank you again for the opportunity to comment. In summary, the Group has invested a substantial effort in the preparation of and now implementation of the WMP and request that the process not be derailed.

Sincerely

A handwritten signature in blue ink, appearing to read "Steve Myrter", with a horizontal line extending to the right.

Steve Myrter, PE

Chair

Attachment 1: Lower Los Angeles River WMP Group Comments to Petitioners' Analysis

Permit Citation	Staff Comments from October 30, 2014	Analysis of Revised WMP Responsiveness to Staff Comments	Conditional Approval Requirements	LLAR Group Response to Petitioners' Analysis
Part VI.C.5.b.iv.(4)(b)-(c)	"The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity...is needed....[T]here should at least be more specificity on actions within the current and next permit terms."	The response, and other statements throughout the document, demonstrate that no commitments to "specificity or actions" or associated timelines are made.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5 of the Revised (and Final) WMP was modified to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. The corrections to the Final WMP further refined these commitments. The Group has also addressed the inherent uncertainty as to which specific BMPs will be implemented to address the milestones in the RAA compliance tables (RAA Attachment B): Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects.
Part VI.C.5.b.iv.(4)(b)-(c)	"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The commitment language was included in the Revised (and Final) WMP in Section 5.3. Also included were modifications to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. Of particular note, WMP Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects to address the milestones in the compliance tables of the RAA, Attachment B.
Part VI.C.5.b.iv.(5)	"The RAA should clarify that sufficient sites were identified so that the remaining necessary BMP volume can be achieved by those sites that were not 'excluded for privacy.'"	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Though specific addresses were not provided in the WMP, these locations are still potential sites for regional structural BMPs and may be used as such. The complete list of potential sites in Section 3 of the WMP, including those where the address has been excluded for privacy, provide the necessary BMP volume needed as established through the RAA.
Part VI.C.5.b.iv.(5)	"The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants. If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1,2, and 3 pollutant."	No change was made in the document in response to the comment	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5.3.1 of the RAA (WMP Appendix A-4) justifies how Category 1, 2, and 3 pollutants are controlled through the limiting pollutant approach. This statement, along with a reference to the RAA for justification, is included in Section 4.1. The revised introduction to Section 5 of the WMP provides explicit statements regarding the implementation of this approach in order to achieve applicable receiving water limitations.
Part VI.C.5.b.iv.(5)	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used....An explanation for the lack of modeling is needed."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	It should be noted that the original watershed modeling (based on LSPC) supporting the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL did not include simulation of DDT, PCBs, and PAHs. Rather, modeled sediment was used as a surrogate to estimate watershed loadings. Therefore, the 90 th percentile of observed concentrations were assigned, meeting requirements set forth by RAA guidance provided by the Regional Water Quality Control Board.

Attachment 1: Lower Los Angeles River WMP Group Comments to Petitioners' Analysis

Permit Citation	Staff Comments from October 30, 2014	Analysis of Revised WMP Responsiveness to Staff Comments	Conditional Approval Requirements	LLAR Group Response to Petitioners' Analysis
Part VI.C.5.b.iv.(5)	"...the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL was [sic] appears to be completely omitted from the draft WMP."	No change was made in this section of the document and there is no inclusion of analysis of pollutant controls, as requested.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutant TMDL was addressed in the Draft (and Final) WMP (Section 3.4.1.6). The RAA concludes that the WQBELS of this TMDL are not "limiting", as defined by the limiting pollutant approach which is also justified and explained in the RAA. Zinc was predicted to be the limiting pollutant, and following the strategies and compliance schedules of the WMP (Chapters 3 and 5, respectively), targeting load reductions to achieve zinc WQBELS will simultaneously result in load reduction to achieve the WQBELS of the Toxics TMDL.
Part VI.C.5.b.iv.(5)	"Pursuant to Section VI.C.5.a., the WMP should be revised to include an evaluation of existing water quality conditions, classify them into categories, identify potential sources, and identify strategies, control measures, and BMPs as required in the permit for San Pedro Bay unless MS4 discharges from the LLAR WMA directly to San Pedro Bay are being addressed in a separate WMP."	There is only one reference in the document to San Pedro Bay, and it remains unchanged from the 2014 version of the WMP.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	MS4 discharges directly to San Pedro Bay will be addressed in the WMP developed by the City of Long Beach as required by the Long Beach MS4 NPDES Permit.
Part VI.C.5.b.iv.(4)(c)	"The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions.... [O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for [sic] interim and/or final WQBELS."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	As explained in a response table provided to the Regional Board along with the Revised WMP, a change to the document was not necessary. The RAA approach of controlling zinc, in concert with the modeled effect of copper load reductions anticipated through SB 346, anticipates that the application of the Watershed Control Measures and Compliance Schedule of Chapter 3 and 5, respectively, will reduce copper loads sufficiently to achieve compliance deadlines from interim and/or final WQBELS.
Part VI.C.5.b.iv.(5)(c)	"For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible.... [The RAA] does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame."	No response identified.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The introduction to Section 5 was modified to more clearly demonstrate that the compliance schedule is as soon as possible for pollutants not addressed by TMDLs.
Part VI.C.5.b.iv.(5)	"The WMP assumes a 10% pollutant reduction from new non-structural controls....additional support for this assumption should be provided, or as part of the adaptive management process, the Permittees should commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 4.3 was added to the Revised WMP to address the Regional Board comment. The Regional Board also states that, "as part of the adaptive management process, the Permittees should commit to evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." This commitment was also included in Section 4.3.

Attachment 1: Lower Los Angeles River WMP Group Comments to Petitioners' Analysis

Permit Citation	Staff Comments from October 30, 2014	Analysis of Revised WMP Responsiveness to Staff Comments	Conditional Approval Requirements	LLAR Group Response to Petitioners' Analysis
Part VI.C.5.b.iv.(5)	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	An additional table was added to the RAA to reflect the baseline loads. Found on page 39 as Table 5-6.
Part VI.C.5.b.iv.(5)	<p>"The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area....The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-4 through 9-7 and how these values were derived from previous tables.</p> <p>"The report needs to present the same information, if available, for non-stormwater runoff."</p>	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	<p>Regarding the required information for the modeled subbasins, Attachment B of the RAA was updated to include the requested tables, along with a sentence to provide some clarification in RAA Section 9.2.1 (third paragraph).</p> <p>Regarding non-stormwater runoff, the complete comment from the Regional Board is as follows: "The report needs to present the same information, if available, for non-stormwater runoff. <u>Alternatively</u>, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area."</p> <p>A commitment to the recalibration alternative was included in WMP Section 4.2.</p>



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Facsimile: 213.626.0078

15 Attorneys for CITY OF NORWALK
16 City of Artesia, and City of La Mirada

17 STATE OF CALIFORNIA
18 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
19 LOS ANGELES REGION

20 In the Matter of Petition for Review of the Los
Angeles Regional Water Quality Control Board
21 Executive Officer's Action to Approve, with
Conditions, Nine Watershed Management
22 Programs Pursuant to the Los Angeles County
Municipal Separate Storm Sewer System (MS4)
23 Permit (Order No. R4-2012-0175; NPDES
24 Permit No. CAS004001)

**RESPONDENTS' REQUEST FOR
OFFICIAL NOTICE IN SUPPORT OF
OPPOSITION TO PETITION BY
NATURAL RESOURCES DEFENSE
COUNCIL AND OTHERS CHALLENGING
WATER MANAGEMENT PROGRAM
APPROVALS**



1 **I. INTRODUCTION**

2 The Cities of Norwalk¹ and Signal Hill² (“Cities” or “Respondents”), in conjunction with their
3 Comments on the Petition for Review of the Los Angeles Regional Water Quality Control Board
4 Executive Officer’s Action to Approve, with Conditions, Nine Watershed Management Programs
5 Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Order
6 No. R4-2012-0175; NPDES Permit No. CAS004001) (“Petition”), hereby request that the California
7 Regional Water Quality Control Board, Los Angeles Region (“Regional Board”), take official notice
8 of the following documents described below. This request is made pursuant to Government Code
9 section 11515, Evidence Code sections 452 and 453, and section 648.2 of Title 23 of the California
10 Code of Regulations. Each of the documents that are part of this request are copies of original
11 documents produced by a State agency, specifically the Los Angeles Regional Water Quality Control
12 Board, and constitute official documents of that agency.

- 13 1. Attached as **Exhibit “A”** is a true and correct copy of a letter from Samuel Unger,
14 Executive Officer of the Los Angeles Regional Water Quality Control Board, to the
15 Permittees of the Lower Los Angeles River Watershed Management Group, Re:
16 FINAL APPROVED LOWER LOS ANGELES RIVER WATERSHED
17 MANAGEMENT PROGRAM (WMP), PURSUANT TO THE LOS ANGELES
18 COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT
19 (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND THE CITY
20 OF LONG BEACH MS4 PERMIT (NPDES PERMIT NO. CAS004003; ORDER NO.
21 R4-2014-0024), dated July 21, 2015, and available on the Regional Board’s website at
22 http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/watershed_management/los_angeles/lower_losanangeles/index.shtml (“**Lower LA River**
23 **WMP Final Approval Letter**”).
24

25 ///

27 ¹ The City of Norwalk is lead Permittee for the Lower San Gabriel River Watershed Management Program.

28 ² The City of Signal Hill is lead Permittee for the Lower Los Angeles River Watershed Management Program.



- 1 2. Attached as **Exhibit “B”** is a true and correct copy of a letter from Samuel Unger,
2 Executive Officer of the Los Angeles Regional Water Quality Control Board, to the
3 Permittees of the Lower San Gabriel River Watershed Management Group, Re:
4 FINAL APPROVED LOWER SAN GABRIEL RIVER WATERSHED
5 MANAGEMENT PROGRAM (WMP), PURSUANT TO THE LOS ANGELES
6 COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT
7 (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND THE CITY
8 OF LONG BEACH MS4 PERMIT (NPDES PERMIT NO. CAS004003; ORDER NO.
9 R4-2014-0024), dated July 21, 2015, and available on the Regional Board’s website at
10 http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/lower_sangabriel/index.shtml (“**Lower San Gabriel River WMP Final Approval Letter**”).
11
12
13 3. Attached as **Exhibit “C”** are true and correct copies of five letters from Samuel Unger,
14 Executive Office of the Los Angeles Regional Water Quality Control Board, to the
15 Permittees of the Alamitos Bay/Los Cerritos Channel, Lower Los Angeles River,
16 Upper Santa Clara River, Santa Monica Bay (EWMP Jurisdictional Groups 2-3), and
17 Upper San Gabriel River Watershed Management Groups approving with conditions
18 the submittals of their respective Coordinated Integrated Management Plans (“**CIMP Approval Letters**”).
19
20 4. Based upon the documents contained in Request No. 3, the Respondents request that
21 the Regional Board take notice of the following **undisputed fact**:
22 That it is the custom and practice of this Board (and other Regional Boards) to issue
23 approval documents which often contain conditions as part of the approval document.

24 **II. ARGUMENT**

25 Government Code section 11515 establishes that, in formal hearings for administrative
26 adjudications, State agencies may take official notice “of any fact which may be judicially noticed by
27 the courts of this State.” Section 648.2 of Title 23 of the California Code of Regulations similarly
28 provides that, for adjudicative proceedings, the Regional Board or presiding officer “may take official

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RB-AR18136



1 notice of such facts as may be judicially noticed by the courts of this state.” (*See also* Order WQ
2 2015-0075, 2015 WL 4071332 (Cal.St.Wat.Res.Bd.) at 3, fn. 14 [State Water Resources Control
3 Board discussing basis for granting requests for official notice].) Therefore, the Regional Board may
4 take official notice of facts that are properly the subject of judicial notice.

5 Evidence Code section 452(c) allows for judicial notice of the “[o]fficial acts of the legislative,
6 executive, and judicial departments of the United States and of any state of the United States.” Courts
7 have found that “official acts” under Evidence Code section 452(c) “include records, reports and
8 orders of administrative agencies.” (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518; *see also Hogen*
9 *v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125; *McGlothlen v. Department of Motor Vehicles*
10 (1977) 71 Cal.App.3d 1005, 1015; *Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 806.) The
11 attached Final Approval Letters are official acts and records of the Regional Board, an administrative
12 agency of this State. Pursuant to Evidence Code section 452(c), the Regional Board or presiding
13 officer should take official notice of these documents for the administrative hearing on the Petition
14 and include these materials in the record of decision. Each of the attached exhibits are relevant to the
15 Petition, this matter, and the hearing because they are letters from the Executive Officer of the
16 Regional Board providing notice to the Permittees of the final approval of their respective WMP.
17 These Final Approval Letters are directly relevant to the issues raised in the Petition because they
18 address the adequacy of the WMPs and the Executive Officer’s process for approval of the WMPs.
19 Thus, they will “materially aid in [the Regional Board’s] review of the issues in the proceedings.”
20 (Order WQ 2015-0075, 2015 WL 4071332 (Cal.St.Wat.Res.Bd.) at 3 [State Water Resources Control
21 Board discussing standard for evaluating requests for official notice].)

22 The conditional approval letters contained in Exhibit C demonstrate that the Board, acting
23 through its Executive Officer, commonly issues approvals of various plans or documents submitted to
24 it, including plans related to the LA Permit with “conditions” attached to the approval letter. They
25 therefore support request No. 4, for a recognition of a specific fact: That approval with conditions
26 letters are a common practice and procedure for the Los Angeles Regional Board (and for other
27 Regional Boards).

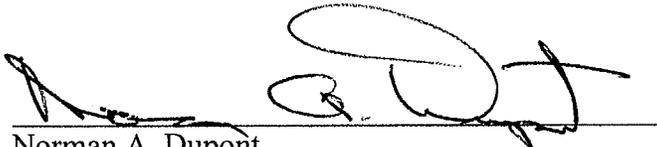
1 Moreover, Evidence Code section 453 provides that a court *shall* take judicial notice “of any
2 matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice
3 of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the
4 request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of
5 the matter.” By submitting this Request with the attached exhibits, the Cities are giving sufficient
6 notice of this request to Petitioner and to the Regional Board. Therefore, since these approval letters
7 are properly the subject of official notice pursuant to Evidence Code section 452(c), the Regional
8 Board *shall* take official notice of these approval letters and include them in its record of decision
9 pursuant to Evidence Code section 453.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Cities respectfully request that the Regional Board or the
12 administrative hearing officer take official notice of these documents for the hearing on the Petition.

14 DATED: August 3, 2015

RICHARDS WATSON GERSHON,
A Professional Corporation

17 By: 

Norman A. Dupont
Attorneys for CITY OF NORWALK

20 DATED: August 3, 2015

ALESHIRE & WYNDER, LLP

23 By: _____

MILES P. HOGAN
Attorneys for CITY OF SIGNAL HILL

1 Moreover, Evidence Code section 453 provides that a court *shall* take judicial notice “of any
2 matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice
3 of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the
4 request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of
5 the matter.” By submitting this Request with the attached exhibits, the Cities are giving sufficient
6 notice of this request to Petitioner and to the Regional Board. Therefore, since these approval letters
7 are properly the subject of official notice pursuant to Evidence Code section 452(c), the Regional
8 Board *shall* take official notice of these approval letters and include them in its record of decision
9 pursuant to Evidence Code section 453.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Cities respectfully request that the Regional Board or the
12 administrative hearing officer take official notice of these documents for the hearing on the Petition.

14 DATED: August 3, 2015

RICHARDS WATSON GERSHON,
A Professional Corporation

By: _____

Norman A. Dupont
Attorneys for CITY OF HUNTINGTON PARK

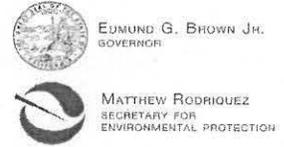
20 DATED: August 3, 2015

ALESHIRE & WYNDER, LLP

By: _____

MILES P. HOGAN
Attorneys for CITY OF SIGNAL HILL

Exhibit “A”



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

July 21, 2015

Permittees of the Lower Los Angeles River Watershed Management Group¹

FINAL APPROVED LOWER LOS ANGELES RIVER WATERSHED MANAGEMENT PROGRAM (WMP), PURSUANT TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND THE CITY OF LONG BEACH MS4 PERMIT (NPDES PERMIT NO. CAS004003; ORDER NO. R4-2014-0024)

Dear Permittees of the Lower Los Angeles River Watershed Management Group:

On November 8, 2012, the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) adopted Order No. R4-2012-0175, *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, except those Discharges Originating from the City of Long Beach MS4* (hereafter, LA County MS4 Permit). On February 6, 2014, the Board adopted Order No. R4-2014-0024, *Waste Discharge Requirements for Municipal Separate Storm Sewer System Discharges from the City of Long Beach* (hereafter, Long Beach MS4 Permit). The LA County MS4 Permit and the Long Beach MS4 Permit allow Permittees the option to develop either a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP) to implement permit requirements on a watershed scale through customized strategies, control measures, and best management practices (BMPs). Development of a WMP or EWMP is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A (Receiving Water Limitations), Part VI.E and Attachments L through R (Total Maximum Daily Load Provisions), by customizing the control measures in Parts III.A (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures), except the Planning and Land Development Program².

On April 28, 2015, on behalf of the Los Angeles Water Board, I approved, with conditions, the Lower Los Angeles River (LLAR) Group's WMP. My approval letter directed the LLAR Group to

¹ Permittees of the Lower Los Angeles River Watershed Management Group include the Los Angeles County Flood Control District; and the cities of Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, and South Gate.

² The cited permit sections are from the LA County MS4 Permit. Equivalent requirements in the Long Beach MS4 Permit are as follows: Part VI.A (Receiving Water Limitations), Part VIII (Total Maximum Daily Load Provisions), Part IV.B (Prohibitions – Non-Storm Water Discharges), and Part VII.D-VII.M (Minimum Control Measures).

July 21, 2015

submit a final WMP that satisfies all the conditions listed in the letter no later than June 12, 2015. On June 12, 2015 the LLAR Group submitted its final WMP, as directed.

After review of the final LLAR WMP submitted on June 12, 2015, I have determined that the LLAR Group's WMP satisfies all of the conditions identified in my April 28, 2015 approval letter. The WMP dated June 12, 2015 hereby constitutes the final approved WMP for the LLAR Group.

The Los Angeles Water Board appreciates the participation and cooperation of the LLAR Group in the implementation of the LA County MS4 Permit and the Long Beach MS4 Permit. If you have any questions, please contact Ivar Ridgeway, Storm Water Permitting, at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Exhibit “B”

Los Angeles Regional Water Quality Control Board

July 21, 2015

Permittees of the Lower San Gabriel River Watershed Management Group¹

FINAL APPROVED LOWER SAN GABRIEL RIVER WATERSHED MANAGEMENT PROGRAM (WMP), PURSUANT TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND THE CITY OF LONG BEACH MS4 PERMIT (NPDES PERMIT NO. CAS004003; ORDER NO. R4-2014-0024)

Dear Permittees of the Lower San Gabriel River Watershed Management Group:

On November 8, 2012, the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) adopted Order No. R4-2012-0175, *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, except those Discharges Originating from the City of Long Beach MS4* (hereafter, LA County MS4 Permit). On February 6, 2014, the Board adopted Order No. R4-2014-0024, *Waste Discharge Requirements for Municipal Separate Storm Sewer System Discharges from the City of Long Beach* (hereafter, Long Beach MS4 Permit). The LA County MS4 Permit and the Long Beach MS4 Permit allow Permittees the option to develop either a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP) to implement permit requirements on a watershed scale through customized strategies, control measures, and best management practices (BMPs). Development of a WMP or EWMP is voluntary and allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A (Receiving Water Limitations), Part VI.E and Attachments L through R (Total Maximum Daily Load Provisions), by customizing the control measures in Parts III.A (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures), except the Planning and Land Development Program².

On April 28, 2015, on behalf of the Los Angeles Water Board, I approved, with conditions, the Lower San Gabriel River (LSGR) Group's WMP. My approval letter directed the LSGR Group to

¹ Permittees of the Lower San Gabriel River Watershed Management Group include the Los Angeles County Flood Control District; and the cities of Artesia, Bellflower, Cerritos, Diamond Bar, Downey, Hawaiian Gardens, La Mirada, Lakewood, Long Beach, Norwalk, Pico Rivera, Santa Fe Springs, and Whittier.

² The cited permit sections are from the LA County MS4 Permit. Equivalent requirements in the Long Beach MS4 Permit are as follows: Part VI.A (Receiving Water Limitations), Part VIII (Total Maximum Daily Load Provisions), Part IV.B (Prohibitions – Non-Storm Water Discharges), and Part VII.D-VII.M (Minimum Control Measures).

July 21, 2015

submit a final WMP that satisfies all the conditions listed in the letter no later than June 12, 2015. On June 12, 2015 the LSGR Group submitted its final WMP, as directed.

After review of the final LSGR WMP submitted on June 12, 2015, I have determined that the LSGR Group's WMP satisfies all of the conditions identified in my April 28, 2015 approval letter. The WMP dated June 12, 2015 hereby constitutes the final approved WMP for the LSGR Group.

The Los Angeles Water Board appreciates the participation and cooperation of the LSGR Group in the implementation of the LA County MS4 Permit and the Long Beach MS4 Permit. If you have any questions, please contact Ivar Ridgeway, Storm Water Permitting, at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Exhibit “C”

Los Angeles Regional Water Quality Control Board

June 24, 2015

Ms. Gail Farber, Director
County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803

Ms. Gail Farber, Chief Engineer
Los Angeles County Flood Control District
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803

APPROVAL, WITH CONDITIONS, OF THE ALAMITOS BAY/LOS CERRITOS CHANNEL WATERSHED MANAGEMENT AREA COORDINATED INTEGRATED MONITORING PROGRAM, PURSUANT TO ATTACHMENT E, PART IV.B OF THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Ms. Farber:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the revised monitoring program submitted on February 18, 2015 by the County of Los Angeles (County) and Los Angeles County Flood Control District (LACFCD) for the Alamitos Bay/Los Cerritos Channel (AB/LCC) Watershed Management Area (WMA). This monitoring program was submitted pursuant to the provisions of NPDES Permit No. CAS004001 (Order No. R4-2012-0175), which authorizes discharges from the municipal separate storm sewer system (MS4) operated by 86 municipal Permittees within Los Angeles County (hereafter, LA County MS4 Permit). The LA County MS4 Permit allows Permittees the option to develop and implement a coordinated integrated monitoring program (CIMP) that achieves the five Primary Objectives set forth in Part II.A of Attachment E and includes the elements set forth in Part II.E of Attachment E. These programs must be approved by the Executive Officer of the Los Angeles Water Board.

The Los Angeles Water Board has reviewed the County's and LACFCD's revised CIMP and has determined that the CIMP includes the elements set forth in Part II.E of Attachment E and will achieve the Primary Objectives set forth in Part II.A of Attachment E of the LA County MS4 Permit.

Public Review and Comment

On July 3, 2014, the Board provided public notice and a 46-day period to allow for public review and comment on the County's and LACFCD's draft CIMP. A separate notice of availability regarding the draft CIMPs, including the AB/LCC WMA CIMP, was directed to State Senators and Assembly Members within the Coastal Watersheds of Los Angeles County. The Board received four comment letters that had comments applicable to the County's and LACFCD's draft CIMP. One joint letter was from the Natural Resources Defense Council (NRDC), Heal the Bay, and Los Angeles Waterkeeper and the other letters were from the Construction Industry

Coalition on Water Quality (CICWQ); Ventura Countywide Stormwater Quality Management Program and a private citizen, Joyce Dillard. During the review of the draft and revised CIMP, the Los Angeles Water Board considered those comments applicable to the County's and LACFCD's proposed CIMP.

Los Angeles Water Board Review

Concurrent with the public review, the Los Angeles Water Board, along with U.S. EPA Region IX staff, reviewed the draft CIMPs. On November 20, 2014, the Los Angeles Water Board sent a letter to the County and LACFCD detailing the Board's comments on the draft CIMP and identifying the revisions that needed to be addressed prior to the Board's approval of the County's and LACFCD's CIMP. The letter directed the County and LACFCD to submit a revised CIMP addressing the Los Angeles Water Board's comments. Prior to the County's and LACFCD's submittal of its revised CIMP, the Los Angeles Water Board staff had a meeting on January 15, 2015, teleconferences, and email exchanges with the County's representatives to discuss the Board's remaining comments and necessary revisions to the draft CIMP. The County and LACFCD submitted its revised CIMP on February 18, 2015, for Los Angeles Water Board review and approval.

Approval of CIMP, with Conditions

The Los Angeles Water Board hereby approves, subject to the following condition, the County's and LACFCD's February 18, 2015, revised CIMP for the AB/LLC. The Board may rescind this approval if the following condition is not met to the satisfaction of the Board within the timeframe provided below.

1. Revise Section 2.2 Dominguez Channel Toxics TMDL, 5th paragraph, last sentence of the CIMP to omit the strike out portion of the sentence: "Accordingly, no inference should be drawn from the submission of this CIMP or from any action or implementation taken pursuant to it that ~~the County or the LACFCD is obligated to implement the DC Toxics TMDL, including this CIMP or any of the DC Toxics TMDL's other obligations or plans, or that the County or the LACFCD have waived any rights under the Amended Consent Decree.~~"

In separate correspondence to all Permittees developing CIMPs and Integrated Monitoring Programs (IMPs), the Los Angeles Water Board will also be providing clarification of requirements for toxicity monitoring – specifically regarding additional toxicity monitoring upstream and at outfalls where toxicity is identified during a sampling event at a receiving water monitoring site.

The County and LACFCD shall submit a final CIMP to the Los Angeles Water Board that satisfies the above condition no later than **July 8, 2015**. Pursuant to Attachment E, Part IV.C.6 of the LA County MS4 Permit, the County and LACFCD must commence implementing its monitoring program within 90 days after this approval of the final CIMP (i.e. no later than September 22, 2015). Please note that the County and LACFCD are responsible for complying with all reporting provisions included in Attachment E, Part XIV – XVIII and Section F of Part XIX, "Reporting Requirements for Los Cerritos Channel WMA TMDLs," and Attachment D, Sections IV, V, and VII.A of the LA County MS4 Permit. The County and LACFCD are also responsible for complying with applicable reporting provisions included in Section C of Part XIX,

“Reporting Requirements for Dominguez Channel and Greater Harbors Waters WMA TMDLs.” Additionally, the County and LACFCD are also responsible for complying with the following requirements under Annual Reporting and Adaptive Management.

Annual Reporting

Within the reporting year, through its Annual Report per Attachment E, Part XVIII of the LA County MS4 Permit, the County and LACFCD shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

- outfall-based stormwater monitoring data,
- wet weather receiving water monitoring data,
- dry weather receiving water monitoring data, and
- non-storm water outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Please note that beginning in Year 3 after the effective date of the LA County MS4 Permit, each Permittee or group of Permittees shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Regional Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. Please note that implementation of an approved Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) per Part VI.C of the LA County MS4 Permit fulfills all requirements related to the development and implementation of the MAL Action Plan, as per Attachment G of the LA County MS4 Permit, for those pollutants addressed by the WMP or EWMP.

Adaptive Management

The Regional Water Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:

1. By request of the County of LACFCD or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
2. As deemed necessary by the Regional Water Board Executive Officer, following notice to the County and LACFCD.

As part of the adaptive management process, any modifications to the CIMP must be submitted to the Los Angeles Water Board for review and approval. The County and LACFCD must implement any modifications to the CIMP upon approval by the Los Angeles Water Board or its Executive Officer, or within 60 days of submittal of modifications if the Los Angeles Water Board or its Executive Officer expresses no objections. Note that the County’s and LACFCD’s Report

of Waste Discharge (ROWD) is due no later than July 1, 2017. To align any modifications to the CIMP proposed through the adaptive management process with permit reissuance, results of the first adaptive management cycle should be submitted in conjunction with the County's and LACFCD's ROWD.

The Regional Water Board appreciates the participation and cooperation of the County and LACFCD in the implementation of the LA County MS4 Permit. If you have any questions, please contact Ms. Rebecca Christmann of the Storm Water Permitting Unit by electronic mail at Rebecca.Christmann@waterboards.ca.gov or by phone at (213) 576-5734. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,


Samuel Unger, P.E.
Executive Officer

cc: Angela George, Los Angeles County Flood Control District
Jolene Guerrero, County of Los Angeles, Department of Public Works
William Johnson, County of Los Angeles, Department of Public Works

Los Angeles Regional Water Quality Control Board

June 18, 2015

Permittees of the Lower Los Angeles River Watershed Management Group¹
(See Distribution List)

APPROVAL, WITH CONDITIONS, OF THE LOWER LOS ANGELES RIVER WATERSHED MANAGEMENT GROUP COORDINATED INTEGRATED MONITORING PROGRAM, PURSUANT TO ATTACHMENT E, PART IV.B OF THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND ATTACHMENT E, PART IV.B OF THE CITY OF LONG BEACH MS4 PERMIT (NPDES PERMIT NO. CAS004003; ORDER NO. R4-2014-0024)

Dear Permittees of the Lower Los Angeles River Watershed Management Group:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the revised monitoring program submitted on February 23, 2015 by the Lower Los Angeles River Watershed Management Group (Group). This monitoring program was submitted pursuant to the provisions of NPDES Permit No. CAS004001 (Order No. R4-2012-0175), which authorizes discharges from the municipal separate storm sewer system (MS4) operated by 86 municipal Permittees within Los Angeles County (hereafter, LA County MS4 Permit), and NPDES Permit No. CAS004003 (Order No. R4-2014-0024), which authorizes MS4 discharges from the City of Long Beach (hereafter, Long Beach MS4 Permit). Both MS4 permits allow Permittees the option to develop and implement a coordinated integrated monitoring program (CIMP) that achieves the five Primary Objectives set forth in Part II.A of Attachment E and includes the elements set forth in Part II.E of Attachment E². These programs must be approved by the Executive Officer of the Los Angeles Water Board.

The Los Angeles Water Board has reviewed the Group's revised CIMP and has determined that the CIMP includes the elements set forth in Part II.E of Attachment E and will achieve the Primary Objectives set forth in Part II.A of Attachment E of the LA County MS4 Permit and the equivalent sections of the Long Beach MS4 Permit.

Public Review and Comment

On July 3, 2014, the Board provided public notice and a 46-day period to allow for public review and comment on the Group's draft CIMP. A separate notice of availability regarding the draft

¹ Permittees of the Lower Los Angeles River Watershed Management Group CIMP include the Los Angeles County Flood Control District; and the cities of Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, and South Gate.

² Equivalent sections in the Long Beach MS4 Permit are Attachment E, Parts II.A and II.D, respectively.

CIMPs, including the Group's CIMP, was directed to State Senators and Assembly Members within the Coastal Watersheds of Los Angeles County. The Board received three comment letters that had comments applicable to the Group's draft CIMP. One joint letter was from the Natural Resources Defense Council (NRDC), Heal the Bay, and Los Angeles Waterkeeper, and the other letters were from the Construction Industry Coalition on Water Quality (CICWQ) and Ventura Countywide Stormwater Quality Management Program. During the review of the draft and revised CIMP, the Los Angeles Water Board considered those comments applicable to the Group's proposed CIMP.

Los Angeles Water Board Review

Concurrent with the public review, the Los Angeles Water Board, along with U.S. EPA Region IX staff, reviewed the draft CIMPs. On November 25, 2015, the Los Angeles Water Board sent a letter to the Group detailing the Board's comments on the draft CIMP and identifying the revisions that needed to be addressed prior to the Board's approval of the Group's CIMP. The letter directed the Group to submit a revised CIMP addressing the Los Angeles Water Board's comments. Prior to the Group's submittal of its revised CIMP, the Los Angeles Water Board staff had a meeting on January 23, 2015 and email exchanges with the Group's representatives and consultants to discuss the Board's remaining comments and necessary revisions to the draft CIMP. The Group submitted its revised CIMP on February 23, 2015 for Los Angeles Water Board review and approval.

Los Angeles River Nitrogen Compounds and Related Effects TMDL

In March 2005, the County of Los Angeles and the Cities of Los Angeles and Calabasas submitted a Monitoring Work Plan on behalf of MS4 Permittees in the Los Angeles River watershed, which addressed the requirement for MS4 Permittees to submit a Monitoring Work Plan per the Los Angeles River Nitrogen Compounds and Related Effects TMDL (LAR Nitrogen TMDL). For MS4 discharges in the Lower Los Angeles River Watershed, the Group's revised CIMP will now address MS4 monitoring requirements for the LAR Nitrogen TMDL.

CIMP Approval

The Los Angeles Water Board hereby approves, subject to the following conditions, the Group's February 23, 2015 revised CIMP. The Board may rescind this approval if all of the following conditions are not met to the satisfaction of the Board within the timeframe provided below.

1. LA River Bacteria TMDL monitoring should be conducted monthly at the LARB1, LARB2, and LARB7 sites per the Basin Plan:
 - a. Amend Table 4-1 (page 26) and Section 8.3 (pages 54-57) to indicate that monitoring will be conducted monthly at these freshwater bacteria monitoring sites.
 - b. Include a note in Table 4-1, Table 5-1 (page 29), and Section 8.3 that bacteria monitoring frequency will increase to weekly after completion of the first segment or tributary-specific implementation phase.
2. Figure 3-3 on page 24 is entitled "HUC 12 equivalents within the LLAR," however it incorrectly shows the LAR Upper Reach 2 WMP Group and the location of its RW monitoring location. Revise the CIMP as follows:
 - a. Include a correct map of the LLAR HUC 12 equivalents;

- b. Keep the map showing the LAR Upper Reach 2 monitoring location and include a reference and description in Section 3.2; and
 - c. Correct any additional references to these figures.
3. Include a map with land uses for the entire LLAR watershed management group area. Figure 3-2 (page 23) only shows the land uses for the stormwater outfall monitoring site drainage areas.

In separate correspondence to all Permittees developing CIMPs and Integrated Monitoring Programs (IMPs), the Los Angeles Water Board will also be providing clarification of requirements for toxicity monitoring – specifically regarding additional toxicity monitoring upstream and at outfalls where toxicity is identified during a sampling event at a receiving water monitoring site.

The Group shall submit a final CIMP to the Los Angeles Water Board that satisfies all of the above conditions no later than **July 3, 2015**. Pursuant to Attachment E, Part IV.C.6 of the LA County MS4 Permit³, the Group must commence implementing its monitoring program within 90 days after this approval of the final CIMP (i.e. no later than September 16, 2015). Please note that the Group is responsible for complying with all reporting provisions included in Attachment E, Part XIV – XVIII and Section D of Part XIX, “Reporting Requirements for the Los Angeles River WMA TMDLs,” and Attachment D, Sections IV, V, and VII.A of the LA County MS4 Permit⁴. The Group is also responsible for complying with applicable reporting provisions included in Section C of Part XIX, “Reporting Requirements for Dominguez Channel and Greater Harbors Waters WMA TMDLs.”⁵ Finally, the Group is also responsible for complying with the following requirements under Annual Reporting and Adaptive Management.

Annual Reporting

Within the reporting year, through its Annual Report per Attachment E, Part XVIII of the LA County MS4 Permit⁶, the Group shall report on the status of the phased initiation of stormwater outfall monitoring established in the revised CIMP and specified below.

- Table 4-1 “Schedule for Implementation of Monitoring Activities in the Lower Los Angeles River Watershed”: The CIMP establishes a phased approach to initiate monitoring with LLAR2 and LLAR4 to be added the first year and LLAR1 and LLAR3 to be added the second year.
- Table 8-6 “Schedule for Completion of LRS Outfall Monitoring for Bacterial Loads under the Los Angeles River Bacterial TMDL”

In addition, the Annual Report shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

- o outfall-based stormwater monitoring data,

³ Equivalent requirement in the Long Beach MS4 Permit is Attachment E, Part IV.C.5

⁴ Equivalent requirements in the Long Beach MS4 Permit are: Attachment E, Parts XIV-XVIII; Attachment E, Part XIX.B, “Reporting Requirements for the Los Angeles River WMA TMDLs”; and Attachment D, Parts IV, V, and VII.A.

⁵ Equivalent requirement in the Long Beach MS4 Permit is Attachment E, Part XIX, Section A.

⁶ Equivalent requirement in the Long Beach MS4 Permit is Attachment E, Part XVIII.

- wet weather receiving water monitoring data,
- dry weather receiving water monitoring data, and
- non-storm water outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Please note that beginning in Year 3 after the effective date of the LA County MS4 Permit, each Permittee or group of Permittees shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Regional Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. Please note that implementation of an approved Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) per Part VI.C of the LA County MS4 Permit fulfills all requirements related to the development and implementation of the MAL Action Plan, as per Attachment G of the LA County MS4 Permit⁷, for those pollutants addressed by the WMP or EWMP.

Adaptive Management

The Regional Water Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:

1. By request of the Group or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
2. As deemed necessary by the Regional Water Board Executive Officer, following notice to the Group.

As part of the adaptive management process, any modifications to the CIMP must be submitted to the Los Angeles Water Board for review and approval. The Group must implement any modifications to the CIMP upon approval by the Los Angeles Water Board or its Executive Officer, or within 60 days of submittal of modifications if the Los Angeles Water Board or its Executive Officer expresses no objections. Note that the Group's Report of Waste Discharge (ROWD) is due no later than July 1, 2017⁸. To align any modifications to the CIMP proposed through the adaptive management process with permit reissuance, results of the first adaptive management cycle should be submitted in conjunction with the Group's ROWD.

⁷ Equivalent sections in the Long Beach MS4 Permit are Part VII.C and Attachment G.

⁸ The ROWD for the Long Beach MS4 Permit is due September 29, 2018.

If you have any questions, please contact Mr. Chris Lopez of the Storm Water Permitting Unit by electronic mail at Chris.Lopez@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Enclosures: Lower Los Angeles River Watershed Management Group Distribution List

Lower Los Angeles River Watershed Management Group
Distribution List (via email)

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Los Angeles Regional Water Quality Control Board

June 04, 2015

Permittees of the Upper Santa Clara River Watershed Management Group¹
(See Distribution List)

APPROVAL, WITH CONDITIONS, OF THE UPPER SANTA CLARA RIVER WATERSHED MANAGEMENT GROUP COORDINATED INTEGRATED MONITORING PROGRAM, PURSUANT TO ATTACHMENT E, PART IV.B OF THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Permittees of the Upper Santa Clara River Watershed Management Group:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the revised monitoring program submitted on April 30, 2015 by the Upper Santa Clara River Watershed Management Group (Group). This monitoring program was submitted pursuant to the provisions of NPDES Permit No. CAS004001 (Order No. R4-2012-0175), which authorizes discharges from the municipal separate storm sewer system (MS4) operated by 86 municipal Permittees within Los Angeles County (hereafter, LA County MS4 Permit). The LA County MS4 Permit allows Permittees the option to develop and implement a coordinated integrated monitoring program (CIMP) that achieves the five Primary Objectives set forth in Part II.A of Attachment E and includes the elements set forth in Part II.E of Attachment E. These programs must be approved by the Executive Officer of the Los Angeles Water Board.

The Los Angeles Water Board has reviewed the Group's revised CIMP and has determined that the CIMP includes the elements set forth in Part II.E of Attachment E and will achieve the Primary Objectives set forth in Part II.A of Attachment E of the LA County MS4 Permit.

Public Review and Comment

On July 3, 2014, the Board provided public notice and a 46-day period to allow for public review and comment on the Group's draft CIMP. A separate notice of availability regarding the draft CIMPs, including the Group's CIMP, was directed to State Senators and Assembly Members within the Coastal Watersheds of Los Angeles County. The Board received three comment letters that had comments applicable to the Group's draft CIMP. One joint letter was from the Natural Resources Defense Council (NRDC), Heal the Bay, and Los Angeles Waterkeeper, and the other letters were from the Construction Industry Coalition on Water Quality (CICWQ) and Ventura Countywide Stormwater Quality Management Program. During the review of the draft

¹ Permittees of the Upper Santa Clara River Watershed Management Group CIMP include the city of Santa Clarita, County of Los Angeles, and Los Angeles County Flood Control District.

and revised CIMP, the Los Angeles Water Board considered those comments applicable to the Group's proposed CIMP.

Los Angeles Water Board Review

Concurrent with the public review, the Los Angeles Water Board, along with U.S. EPA Region IX staff, reviewed the draft CIMPs. On January 30, 2015, the Los Angeles Water Board sent a letter to the Group detailing the Board's comments on the draft CIMP and identifying the revisions that needed to be addressed prior to the Board's approval of the Group's CIMP. The letter directed the Group to submit a revised CIMP addressing the Los Angeles Water Board's comments. Prior to the Group's submittal of its revised CIMP, the Los Angeles Water Board staff had a meeting on January 06, 2015 and email exchanges with the Group's representatives and consultants to discuss the Board's remaining comments and necessary revisions to the draft CIMP. The Group submitted its revised CIMP on April 30, 2015 for Los Angeles Water Board review and approval.

Santa Clara River Nitrogen Compounds TMDL

In March 2006, the Ventura County Watershed Protection District submitted a comprehensive monitoring plan, titled "Comprehensive Water Quality Monitoring Plan for the Santa Clara River Watershed," which addressed the requirement for MS4 Permittees to submit a work plan per the Santa Clara River Nitrogen Compounds TMDL (SCR Nitrogen TMDL). For MS4 discharges in the Upper Santa Clara River Watershed within Los Angeles County, the Group's revised CIMP will now address MS4 monitoring requirements for the SCR Nitrogen TMDL.

The Los Angeles Water Board hereby approves, subject to the following conditions, the Group's April 30, 2015 revised CIMP. The Board may rescind this approval if all of the following conditions are not met to the satisfaction of the Board within the timeframe provided below.

1. Constituents listed in Attachment C Table C-2 ("Constituents from Table E-2 That Were Not Detected in the Ten Year Dataset") of the CIMP must be added to Attachment C Table C-1 ("Constituents from Table E-2 to be Monitored During the First Year") of the CIMP, and hence monitored for, if the Method Detection Limit (MDL) of the analytical methods specified are higher than or equal to the current water quality objectives (WQOs).
2. If none of the MDLs in Attachment C Table C-2 of the CIMP are higher than or equal to WQOs, a footnote shall be added stating so.

In separate correspondence to all Permittees developing CIMPs and Integrated Monitoring Programs (IMPs), the Los Angeles Water Board will also be providing clarification of requirements for toxicity monitoring – specifically regarding additional toxicity monitoring upstream and at outfalls where toxicity is identified during a sampling event at a receiving water monitoring site.

The Group shall submit a final CIMP to the Los Angeles Water Board that satisfies all of the above conditions no later than **June 25, 2015**. Pursuant to Attachment E, Part IV.C.6 of the LA County MS4 Permit, the Group must commence implementing its monitoring program within 90 days after this approval of the final CIMP (i.e. no later than September 23, 2015). Please note that the Group is responsible for complying with all reporting provisions included in Attachment E, Part XIV – XVIII and Section A of Part XIX, "Reporting Requirements for Santa Clara River WMA TMDLs," and Attachment D, Sections IV, V, and VII.A of the LA County MS4 Permit.

Additionally, the Group is also responsible for complying with the following requirements under Annual Reporting and Adaptive Management.

Annual Reporting

Within the reporting year, through its Annual Report per Attachment E, Part XVIII of the LA County MS4 Permit, the Group shall report on the status of the phased initiation of stormwater outfall monitoring established in the revised CIMP and specified below.

- Table 18 "CIMP Implementation Schedule"
- Section 5.2 "Monitoring Schedule": The CIMP establishes a phased approach to initiating monitoring at the selected stormwater outfall monitoring sites, with two outfalls being monitored the first year, an additional two outfalls added in the second year, and finally all remaining outfalls added in the third year. The outfalls to be monitored the first year are MTD 1510 and MTD 1643, the two additional outfalls to be added during the second year are PD 0717 and PD 2443, and the three remaining outfalls to be added during the third year are PD 0494, PD 2516, and Lake Elizabeth East.

In addition, the Annual Report shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

- outfall-based stormwater monitoring data,
- wet weather receiving water monitoring data,
- dry weather receiving water monitoring data, and
- non-storm water outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Please note that beginning in Year 3 after the effective date of the LA County MS4 Permit, each Permittee or group of Permittees shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Regional Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. Please note that implementation of an approved Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) per Part VI.C of the LA County MS4 Permit fulfills all requirements related to the development and implementation of the MAL Action Plan, as per Attachment H of the LA County MS4 Permit, for those pollutants addressed by the WMP or EWMP.

Adaptive Management

The Regional Water Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:

1. By request of the Group or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or

2. As deemed necessary by the Regional Water Board Executive Officer, following notice to the Group.

As part of the adaptive management process, any modifications to the CIMP must be submitted to the Los Angeles Water Board for review and approval. The Group must implement any modifications to the CIMP upon approval by the Los Angeles Water Board or its Executive Officer, or within 60 days of submittal of modifications if the Los Angeles Water Board or its Executive Officer expresses no objections. Note that the Group's Report of Waste Discharge (ROWD) is due no later than July 1, 2017. To align any modifications to the CIMP proposed through the adaptive management process with permit reissuance, results of the first adaptive management cycle should be submitted in conjunction with the Group's ROWD.

If you have any questions, please contact Ms. Erum Razzak of the Storm Water Permitting Unit by electronic mail at Erum.Razzak@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Enclosures: Upper Santa Clara River Watershed Management Group Distribution List

Upper Santa Clara River EWMP Group

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Los Angeles Regional Water Quality Control Board

July 10, 2015

Permittees of the Santa Monica Bay Jurisdictional Group 2 and 3 EWMP Group¹
(See Distribution List)

APPROVAL, WITH CONDITIONS, OF THE SANTA MONICA BAY JURISDICTIONAL GROUP 2 AND 3 EWMP GROUP'S COORDINATED INTEGRATED MONITORING PROGRAM, PURSUANT TO ATTACHMENT E, PART IV.B OF THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Permittees of the Santa Monica Bay Jurisdictional Group 2 and 3 EWMP Group:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the revised monitoring program submitted on June 15, 2015 by the Santa Monica Bay Jurisdictional Group 2 and 3 EWMP Group (Group). This monitoring program was submitted pursuant to the provisions of NPDES Permit No. CAS004001 (Order No. R4-2012-0175), which authorizes discharges from the municipal separate storm sewer system (MS4) operated by 86 municipal Permittees within Los Angeles County (hereafter, LA County MS4 Permit). The LA County MS4 Permit allows Permittees the option to develop and implement a coordinated integrated monitoring program (CIMP) that achieves the five Primary Objectives set forth in Part II.A of Attachment E and includes the elements set forth in Part II.E of Attachment E. These programs must be approved by the Executive Officer of the Los Angeles Water Board.

The Los Angeles Water Board has reviewed the Group's revised CIMP and has determined that the CIMP includes the elements set forth in Part II.E of Attachment E and will achieve the Primary Objectives set forth in Part II.A of Attachment E of the LA County MS4 Permit.

Public Review and Comment

On July 3, 2014, the Board provided public notice and a 46-day period to allow for public review and comment on the Group's draft CIMP. A separate notice of availability regarding the draft CIMPs, including the Group's CIMP, was directed to State Senators and Assembly Members within the Coastal Watersheds of Los Angeles County. The Board received two comment letters that had comments applicable to the Group's draft CIMP. One joint letter was from the Natural Resources Defense Council (NRDC), Heal the Bay, and Los Angeles Waterkeeper, and the other letter was from the Construction Industry Coalition on Water Quality (CICWQ). During the review of the draft and revised CIMP, the Los Angeles Water Board considered those comments applicable to the Group's proposed CIMP.

¹ Permittees of the Santa Monica Bay Jurisdictional Group 2 and 3 EWMP Group include County of Los Angeles, Los Angeles County Flood Control District, and the cities of El Segundo, Los Angeles, and Santa Monica.

Los Angeles Water Board Review

Concurrent with the public review, the Los Angeles Water Board, along with U.S. EPA Region IX staff, reviewed the draft CIMPs. On March 16, 2015, the Los Angeles Water Board sent a letter to the Group detailing the Board's comments on the draft CIMP and identifying the revisions that needed to be addressed prior to the Board's approval of the Group's CIMP. The letter directed the Group to submit a revised CIMP addressing the Los Angeles Water Board's comments. The Group submitted its revised CIMP on June 15, 2015 for Los Angeles Water Board review and approval.

Santa Monica Bay Nearshore Debris TMDL

Requirements for the Santa Monica Bay Nearshore and Offshore Debris TMDL (SMB Debris TMDL) can be satisfied through the submittal of the Trash Monitoring and Reporting Plan (TMRP) and Plastic Pellet Monitoring and Reporting Plan (PMRP) or via the CIMP. Section 2.2.4 of the CIMP notes which cities have submitted a TMRP, PMRP, and/or a demonstration that a PMRP is not required. Note that the TMRP and PMRP for the City of Santa Monica were approved by the Los Angeles Water Board on March 14, 2014.

The Board approves the TMRPs for the following Permittees and directs these Permittees to begin the implementation of the TMRP immediately:

1. City of El Segundo
2. Los Angeles County Flood Control District
3. County of Los Angeles

Likewise, the Board approves the PMRP for the following Permittees and directs these Permittees to begin the implementation of the PMRP immediately:

1. County of Los Angeles
2. Los Angeles County Flood Control District.

For all approved PMRPs of the Group, please annually report any new industrial facilities that have an SIC code that corresponds to the manufacturing, handling, or transportation of plastic pellets.

The City of Los Angeles submitted a request to the Los Angeles Water Board to be exempt from the SMB Debris TMDL requirement to submit and implement a PMRP. The Board has reviewed the documentation submitted and has determined that the City of Los Angeles does not have industrial facilities or activities related to the manufacturing, handling, or transportation of plastic pellets, with the exception of one facility located in the Ballona Creek subwatershed². Therefore, with the exception of the subdrainage area within the Ballona Creek subwatershed as described in footnote 2, the City of Los Angeles is not required to monitor for plastic pellets, but will implement its spill response plan as necessary.

² In the area covered by the Santa Monica Bay Nearshore and Offshore Debris TMDL, the City of Los Angeles has identified one facility within its jurisdiction that uses plastic pellets. This facility is located within the Ballona Creek subwatershed. Therefore, the City must develop a PMRP to monitor plastic pellet discharges, to establish triggers for increased industrial facility inspections and enforcement of SWPPP requirements, and to address possible plastic pellet spills within the drainage area in which the facility is located. This requirement shall be addressed through the CIMP for the Ballona Creek Watershed Management Group.

The Los Angeles Water Board hereby approves, subject to the following conditions, the Group's June 15, 2015 revised CIMP. The Board may rescind this approval if all of the following conditions are not met to the satisfaction of the Board within the timeframe provided below.

1. Revise Appendix C Table C-3 of the CIMP to correct typographical errors in the note for footnote 3 where text in footnote 4 can be moved up to footnote 3.
2. Revise the Table of Contents of the CIMP to correct the typographical error under List of Tables "Error! Bookmark not defined."
3. Revise Section 2.2.4 to state, "Additionally ~~and if necessary~~, the DDT/PCB data from Ballona Creek with 83% urbanized area ~~can~~ will be used (by way of extrapolation) to ensure the compliance with the waste load allocation for DDT/PCB storm born sediment is accurately determined and reported." Add a corresponding table note to Table 15 acknowledging the same.
4. Submit the geodatabase files referenced in the revised CIMP Section 3.2.
5. Revise Section 5.3 of the CIMP to indicate that outfalls would be considered to have significant non-stormwater discharges if E. coli is detected in more than one screening event, rather than requiring that E. coli is detected in all three screening events.
6. Revise Section 12 of the CIMP to:
 - a. Specify at which 2 sites monitoring will start upon approval of the CIMP and at which 5 sites monitoring will be phased in to accommodate time for the permitting and installation of fixed autosamplers.
 - b. Include language that composite grab samples will be collected every 20 minutes for three hours or for the duration of the storm (if less than three hours) for all the monitoring events until the autosampler installation and permitting is completed.
7. Revise Section 2.2.4 under LACFCD of the CIMP to note that the Los Angeles County Flood Control District submitted a TMRP to the Board on September 20, 2012.
8. Submit the following with the City of El Segundo's PMRP exemption request:
 - a. A list of SIC codes for industrial facilities that manufacture, handle, or transport plastic pellets.
 - b. The City of El Segundo's Emergency Spill Response Plan with the inclusion of plastic pellets.
9. The City of Los Angeles' TMRP must address how the MFAC implementation will be assessed to ensure compliance by including protocols for trash assessment immediately after each collection event.
10. Along with the PMRP exemption request submitted by the City of Los Angeles, submit an Emergency Spill Response Plan.

In separate correspondence to all Permittees developing CIMPs and Integrated Monitoring Programs (IMPs), the Los Angeles Water Board will also be providing clarification of requirements for toxicity monitoring – specifically regarding additional toxicity monitoring upstream and at outfalls where toxicity is identified during a sampling event at a receiving water monitoring site.

The Group shall submit a final CIMP to the Los Angeles Water Board that satisfies all of the above conditions no later than **August 10, 2015**. Pursuant to Attachment E, Part IV.C.6 of the LA County MS4 Permit, the Group must commence implementing its monitoring program within 90 days after this approval of the final CIMP (i.e. no later than October 8, 2015). Please note that the Group is responsible for complying with all reporting provisions included in Attachment E, Part XIV – XVIII and Section B of Part XIX, "Reporting Requirements for Santa Monica Bay WMA TMDLs," and Attachment D, Sections IV, V, and VII.A of the LA County MS4 Permit.

Additionally, the Group is also responsible for complying with the following requirements under Annual Reporting and Adaptive Management.

Annual Reporting

Within the reporting year, through its Annual Report per Attachment E, Part XVIII of the LA County MS4 Permit, the Group shall report on the status of the phased initiation of receiving water and stormwater outfall-based monitoring established in the revised CIMP and specified below.

- Section 12 "Schedule for CIMP Implementation"

In addition, the Annual Report shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

- outfall-based stormwater monitoring data,
- wet weather receiving water monitoring data,
- dry weather receiving water monitoring data, and
- non-storm water outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Please note that beginning in Year 3 after the effective date of the LA County MS4 Permit, each Permittee or group of Permittees shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Los Angeles Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. Please note that implementation of an approved Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) per Part VI.C of the LA County MS4 Permit fulfills all requirements related to the development and implementation of the MAL Action Plan, as per Attachment G of the LA County MS4 Permit, for those pollutants addressed by the WMP or EWMP.

Adaptive Management

The Board or its Executive Officer, consistent with 40 CFR section 122.41, may approve changes to the Monitoring and Reporting Program, after providing the opportunity for public comment, either:

1. By request of the Group or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
2. As deemed necessary by the Los Angeles Water Board Executive Officer, following notice to the Group.

As part of the adaptive management process, any modifications to the CIMP must be submitted to the Los Angeles Water Board for review and approval. The Group must implement any modifications to the CIMP upon approval by the Los Angeles Water Board or its Executive Officer, or within 60 days of submittal of modifications if the Los Angeles Water Board or its

Executive Officer expresses no objections. Note that the Group's Report of Waste Discharge (ROWD) is due no later than July 1, 2017. To align any modifications to the CIMP proposed through the adaptive management process with permit reissuance, results of the first adaptive management cycle should be submitted in conjunction with the Group's ROWD.

If you have any questions, please contact Ms. Erum Razzak of the Storm Water Permitting Unit by electronic mail at Erum.Razzak@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Enclosures: Santa Monica Bay Jurisdictional Group 2 and 3 EWMP Group Distribution List

Santa Monica Bay Jurisdiction 2 & 3 EWMP Group

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EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

June 19, 2015

Permittees of the Upper San Gabriel River Watershed Management Group¹
(See Distribution List)

APPROVAL, WITH CONDITIONS, OF THE UPPER SAN GABRIEL RIVER WATERSHED MANAGEMENT GROUP'S COORDINATED INTEGRATED MONITORING PROGRAM, PURSUANT TO ATTACHMENT E, PART IV.B OF THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Permittees of the Upper San Gabriel River Watershed Management Group:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the revised monitoring program submitted on May 06, 2015 by the Upper San Gabriel River Watershed Management Group (Group). This monitoring program was submitted pursuant to the provisions of NPDES Permit No. CAS004001 (Order No. R4-2012-0175), which authorizes discharges from the municipal separate storm sewer system (MS4) operated by 86 municipal Permittees within Los Angeles County (hereafter, LA County MS4 Permit). The LA County MS4 Permit allows Permittees the option to develop and implement a coordinated integrated monitoring program (CIMP) that achieves the five Primary Objectives set forth in Part II.A of Attachment E and includes the elements set forth in Part II.E of Attachment E. These programs must be approved by the Executive Officer of the Los Angeles Water Board.

The Los Angeles Water Board has reviewed the Group's revised CIMP and has determined that the CIMP includes the elements set forth in Part II.E of Attachment E and will achieve the Primary Objectives set forth in Part II.A of Attachment E of the LA County MS4 Permit.

Public Review and Comment

On July 3, 2014, the Board provided public notice and a 46-day period to allow for public review and comment on the Group's draft CIMP. A separate notice of availability regarding the draft CIMPs, including the Group's CIMP, was directed to State Senators and Assembly Members within the Coastal Watersheds of Los Angeles County. The Board received two comment letters that had comments applicable to the Group's draft CIMP. One joint letter was from the Natural Resources Defense Council (NRDC), Heal the Bay, and Los Angeles Waterkeeper, and the other letter was from the Construction Industry Coalition on Water Quality (CICWQ). During the

¹ Permittees of the Upper San Gabriel River Watershed Management Group CIMP include the County of Los Angeles, Los Angeles County Flood Control District, and the cities of Baldwin Park, Covina, Glendora, Industry, La Puente, South El Monte, and West Covina.

review of the draft and revised CIMP, the Los Angeles Water Board considered those comments applicable to the Group's proposed CIMP.

Los Angeles Water Board Review

Concurrent with the public review, the Los Angeles Water Board, along with U.S. EPA Region IX staff, reviewed the draft CIMPs. On February 06, 2015, the Los Angeles Water Board sent a letter to the Group detailing the Board's comments on the draft CIMP and identifying the revisions that needed to be addressed prior to the Board's approval of the Group's CIMP. The letter directed the Group to submit a revised CIMP addressing the Los Angeles Water Board's comments. Prior to the Group's submittal of its revised CIMP, the Los Angeles Water Board staff had a meeting on March 02, 2015 and email exchanges with the Group's representatives and consultants to discuss the Board's remaining comments and necessary revisions to the draft CIMP. The Group submitted its revised CIMP on May 06, 2015 for Los Angeles Water Board review and approval.

The Los Angeles Water Board hereby approves, subject to the following conditions, the Group's May 06, 2015 revised CIMP. The Board may rescind this approval if all of the following conditions are not met to the satisfaction of the Board within the timeframe provided below.

1. Revise the CIMP to include West Covina in the list of Permittees participating in the Upper San Gabriel River Watershed Management Group.
2. Revise the following tables and maps to include the City of South El Monte and the City of West Covina. A footnote may be added specifying that the City of South El Monte is participating in the CIMP only.
 - a. Figure 1-1 "Water Bodies and Geographic Boundary of the USGR EWMP Group"
 - b. Table 1-1 "List of Group Members with land use summaries within jurisdictional boundaries": Information in Table G-1 in Attachment G of the CIMP can be incorporated into this table with a footnote specifying that the numbers reflect only the land use of South El Monte within the San Gabriel River Watershed.
 - c. Table 1-2 "List of Group Members with land use summaries within MS4 service area"
 - d. Figure 2-1 "Overview of Receiving Water Monitoring Sites"
 - e. Figure 4-1 "Stormwater Outfall Monitoring Sites"
 - f. Attachment B "Monitoring Location Fact Sheets".
3. Revise the following Attachments of the CIMP to include West Covina:
 - a. Attachment E "Stormwater Outfall Selection" to include one stormwater outfall monitoring site.
 - b. Attachment F "Stormwater Outfall Sites (Including Potential Alternates)" if alternate stormwater outfall locations are proposed.
4. Revise Section 1.2, 3rd paragraph, last sentence of the CIMP to omit the strike out portion of the sentence: "Accordingly, no inference should be drawn from the submission of this CIMP or from any action or implementation taken pursuant to it that the Group Members are obligated to implement the Harbors Toxics TMDL, including this CIMP or any of the Harbors Toxics TMDL's other obligations or plans, or that the Group Members have waived any rights under the Amended Consent Decree."
5. Revise Section 12 and Table 12-1 of the CIMP if phasing is proposed for the stormwater outfall site in West Covina.

In separate correspondence to all Permittees developing CIMPs and Integrated Monitoring Programs (IMPs), the Los Angeles Water Board will also be providing clarification of

requirements for toxicity monitoring – specifically regarding additional toxicity monitoring upstream and at outfalls where toxicity is identified during a sampling event at a receiving water monitoring site.

The Group shall submit a final CIMP to the Los Angeles Water Board that satisfies all of the above conditions no later than **August 31, 2015**. Pursuant to Attachment E, Part IV.C.6 of the LA County MS4 Permit, the Group must commence implementing its monitoring program within 90 days after this approval of the final CIMP (i.e., no later than September 17, 2015). Please note that the Group is responsible for complying with all reporting provisions included in Attachment E, Part XIV – XVIII and Section E of Part XIX, "Reporting Requirements for San Gabriel River WMA TMDLs," and Attachment D, Part IV, V, and VII.A of the LA County MS4 Permit. The Group is also responsible for complying with applicable reporting provisions included in Section C of Part XIX, "Reporting Requirements for Dominguez Channel and Greater Harbors Waters WMA TMDLs." Finally, the Group is also responsible for complying with the following requirements under Annual Reporting and Adaptive Management.

Annual Reporting

Within the reporting year, through its Annual Report per Attachment E, Part XVIII of the LA County MS4 Permit, the Group shall report on the status of the phased initiation of receiving water and stormwater outfall monitoring established in the revised CIMP and specified below.

- Section 12 "Schedule for CIMP Implementation"
- Table 12-1 "Receiving Water and Outfall Phasing". Fiscal year 2015-2016 includes monitoring of 4 receiving water sites: San Gabriel River Reach 4, Walnut Creek Wash, San Jose Creek, and Puddingstone Reservoir. Stormwater outfall monitoring will start in fiscal year 2016-2017 (County of Los Angeles, and cities of Covina and Industry) and fiscal year 2017-2018 (cities of Baldwin Park, Glendora, and La Puente).

In addition, the Annual Report shall provide an Integrated Monitoring Report that summarizes all identified exceedances of:

- outfall-based stormwater monitoring data,
- wet weather receiving water monitoring data,
- dry weather receiving water monitoring data, and
- non-storm water outfall monitoring data

against all applicable receiving water limitations, water quality-based effluent limitations, non-storm water action levels, and aquatic toxicity thresholds as defined in Sections XII.F and G of this MRP. All sample results that exceeded one or more applicable thresholds shall be readily identified.

The Annual Report shall also include a Municipal Action Level (MAL) Assessment Report, which shall present the stormwater outfall monitoring data in comparison to the applicable MALs, and identify those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in discharges of stormwater from the MS4. Please note that beginning in Year 3 after the effective date of the LA County MS4 Permit, each Permittee or group of Permittees shall submit a MAL Action Plan with the Annual Report (first MAL Action Plan due with December 15, 2015 Annual Report) to the Regional Water Board Executive Officer, for those subwatersheds with a running average of twenty percent or greater of exceedances of the MALs in any discharge of storm water from the MS4. Please note that implementation of an approved Watershed Management Program (WMP) or Enhanced Watershed Management Program (EWMP) per Part VI.C of the LA County MS4 Permit fulfills all requirements related to the development and implementation of the MAL Action Plan, as per

Attachment G of the LA County MS4 Permit, for those pollutants addressed by the WMP or EWMP.

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1. By request of the Group or by an interested person after submittal of the Monitoring Report. Such request shall be in writing and filed not later than 60 days after the Monitoring Report submittal date, or
2. As deemed necessary by the Regional Water Board Executive Officer, following notice to the Group.

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If you have any questions, please contact Ms. Erum Razzak of the Storm Water Permitting Unit by electronic mail at Erum.Razzak@waterboards.ca.gov or by phone at (213) 620-2095. Alternatively, you may also contact Mr. Ivar Ridgeway, Chief of the Storm Water Permitting Unit, by electronic mail at Ivar.Ridgeway@waterboards.ca.gov or by phone at (213) 620-2150.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Enclosures: Upper San Gabriel River Watershed Management Group Distribution List

Upper San Gabriel River EWMP Group

Name	City	Email Address
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Linda Lee Miller, P.E.	LA County	LLEE@dpw.lacounty.gov
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13 Attorneys for Respondents,
14 City of Norwalk,
15 City of Artesia
16 City of La Mirada

17 **LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD**

18 NATURAL RESOURCES DEFENSE
19 COUNCIL, LOS ANGELES
20 WATERKEEPER, and HEAL THE
21 BAY,

22 Petitioners,

23 v.

24 CITIES OF ARTESIA, NORWALK,
25 LA MIRADA,

26 Respondents.

Order No. R4-2012-0175 (as amended)

**MEMORANDUM ON BEHALF OF
LOWER SAN GABRIEL RIVER
WATERSHED MANAGEMENT
GROUP CITIES IN OPPOSITION
TO PETITION CHALLENGING
APPROVAL OF NINE
WATERSHED MANAGEMENT
PLANS PURSUANT TO THE LA
MS4 (2012) PERMIT**

Date: September 10, 2015

Time: 9:00 am

Place: Metropolitan Water District of
Southern California (Board
Room)

1 **I. INTRODUCTION**

2 Three cities involved in the Lower San Gabriel River (LSGR) Watershed
3 Management Program, specifically Artesia, La Mirada, and Norwalk
4 (Respondents) jointly file this memorandum. The other cities participating in
5 the LSGR Watershed Management Group (Group) are: Bellflower, Cerritos,
6 Diamond Bar, Downey, Hawaiian Gardens, Lakewood, Long Beach, Pico
7 Rivera, Santa Fe Springs, and Whittier. The Los Angeles County Flood
8 Control District (District) is also a member of the LSGR Group, but it will
9 state its position in separate comments.

10 Respondents are part of the LSGR Group, which coordinated a
11 watershed management program that meets both the letter and the spirit of
12 the 2012 Los Angeles MS4 Permit (LA Permit). The Regional Board (Board)
13 should *deny* the petition of the NRDC, Heal the Bay and LA Waterkeeper
14 (Environmental Petitioners), who seek to eviscerate the entire Permit process
15 by seeking to have this Board undo years of work by its staff and the
16 Permittees and declare all Watershed Management Programs invalid based
17 upon a procedural technicality.¹ The Environmental Petitioners’ substantive
18 claims against the LSGR Group’s finally approved Watershed Management
19 Program also lack merit.

20 The Board should eschew the invitation of the Environmental
21 Petitioners to completely revise the essential structure of the LA Permit,
22 which was more than two years in the drafting, and another two-and-a-half
23 years in the administrative review process. Rather, the Board should focus
24 on the real implementation challenges—the challenge of implementing the
25

26 ¹ The Environmental Petitioners do indeed seek to eviscerate the LA Permit,
27 and have separately filed a petition seeking a writ of mandate to overturn the
28 LA Permit. That petition is Los Angeles Superior Court Case No. BS156962.

1 watershed management programs in order to attain the goals of the LA
2 Permit and the Clean Water Act.

3 **II. THE ENVIRONMENTAL PETITIONERS' CHALLENGE TO THE**
4 **TECHNICAL PROCEDURE IN WHICH THE EXECUTIVE OFFICER**
5 **APPROVED THE WATERSHED MANAGEMENT PROGRAMS**
6 **"WITH CONDITIONS" SHOULD BE REJECTED AS EITHER ILL-**
7 **FOUNDED OR MOOT**

8 **A. The Appropriate Standard of Review**

9 In seeking review of the action of the Los Angeles Regional Board's
10 Executive Officer issued on behalf of the Board, the Environmental
11 Petitioners have conflated and confused two different procedural paths
12 involving different standards of review. The standard for the State Water
13 Resources Control Board (State Board) to review a factual determination of
14 liability or other fact-based determination originally issued by a Regional
15 Board is the "substantial evidence" standard. *In Re: Stinnes-Western Chemical*
16 *Corp.*, Order No. 86-16 (State Board 1986).

17 Contrary to the implication of the Environmental Petitioners, this is not
18 a fact-bound adjudicative decision governed by the "substantial evidence"
19 standard, and the State Board's determination of its standard for reviewing a
20 Regional Board decision on specific facts as contained in *Stinnes-Western*
21 *Chemical Corp.* has no application to this petition.²

22 _____
23 ² The Environmental Petitioners also cite Code of Civil Procedure Section
24 1094.5(b) as a basis for their argument that the Executive Officer's decision
25 must be "supported by the evidence." (Petition Memo. at p.5, nn. 17 & 18).
26 But Section 1094.5(a) specifies that it applies when there is a judicial inquiry
27 into a final administrative order "made as a result of a proceeding in which
28 by law a hearing is required to be given, evidence is required to be taken,
and discretion in the determination of facts is vested in the inferior tribunal."
" The LA Permit does *not* require a hearing by the Executive Officer (or this
Board) before determining whether or not to accept a final watershed
management program, nor does it require evidence "to be taken" as part of
any deliberation by the Executive Officer. Thus, Code of Civil Procedure

(Continued...)

1 Rather, the Respondents submit that the proper standard is whether or
2 not the Executive Officer abused his discretion in determining that the
3 submitted final LSGR Watershed Management Program sufficiently met the
4 requirements of the LA Permit to merit that he “accept” the program. This
5 involves a more limited review of whether (or not) the Executive Officer
6 properly exercised his discretion in reviewing the LSGR Watershed
7 Management Plan and determining that the Program fairly met the LA
8 Permit requirements.

9 The Respondents now demonstrate why, as to the LSGR Watershed
10 Management Program, the Executive Officer exercised his discretion to
11 approve the Program in a reasonable fashion fully consistent with the LA
12 Permit.³

13 **B. The Red Herring Claim that the Executive Officer Acted**
14 **Beyond His Delegated Authority**

15 The Environmental Petitioners start with an initial argument that is a
16 red herring—whether the Executive Officer acted within his delegated
17 authority to “conditionally approve” the programs. The Environmental
18 Petitioners then answer their own question of whether a conditional
19 approval is proper with a resounding “No.” They explicitly argue that the
20 Executive Officer “acted outside of his legally delegated authority.” (*EP*
21 *Memo.* at 6).

22 The Environmental Petitioners’ procedural argument is flawed.

23 _____
24 (...Continued)

25 Section 1094.5’s “substantial evidence” review standard is inapplicable to
26 this Petition process.

27 ³ Respondents believe that many of the legal positions they raise are common
28 to other watershed groups, and anticipate that members of the Lower Los
Angeles River group and others may join in parts or all of the legal
arguments contained in this Memorandum.

1 Initially, the Environmental Petitioners confuse the question of “delegated
2 authority” from this Board with the question of whether anyone—this Board,
3 the State Board, or the Executive Officer had any power under the LA Permit
4 other than approve the final programs unconditionally. According to the
5 Environmental Petitioners, no one, not even the State Board, has such
6 authority. Thus, the matter is *not* whether the Executive Officer acted within
7 the scope of authority “delegated” to him by this Board. (*EP Memo.* at 6: Ins.
8 4-5).

9 Rather, in this case the Environmental Petitioners seek to obtain a
10 ruling that *no one*, even this Board, has authority to conditionally approve a
11 watershed management program. Respondents reject this claim, and turn to
12 the words of the LA Permit itself and to the long-term practice and policy of
13 this Board.

14 **C. The LA Permit’s Plain Language Does *Not* Require an**
15 **Unconditional Approval of a Watershed Management Program**

16 The Environmental Petitioners’ argument with respect to the nature of
17 the Executive Officer’s letter of April 28, 2015 to the LSGR Group starts with
18 a false premise—that the letter was something other than an “approval”
19 letter. We turn first to the actual text of the letter, which is part of Exhibit B
20 to the Petition.⁴ The letter signed by the Executive Officer states on page 3:

21
22 The Los Angeles Water Board hereby approves, subject to the
23 following conditions, the LSGR WMG’s January 28, 2015 revised
24 draft WMP. The Board may rescind this approval if all of the
25 following conditions are not met to the satisfaction of the Board
within the timeframe provided below. . . [listing of conditions].

26 ⁴ The Respondents refer only to items posted on this Board’s website with
27 respect to the Petition aside from their separate Request for Judicial Notice,
28 which is filed concurrently with this Memorandum.

1 The Environmental Petitioners claim that this letter constitutes an
 2 abuse of discretion by the Executive Officer because the “only authority
 3 delegated to him by the Regional Board was to approve or deny the WMPs.”
 4 (*EP Memo.* at p.6). But, the Environmental Petitioners are wrong for two
 5 separate reasons:

6 (1) The plain words of the LA Permit allow the Executive Officer to
 7 approve a watershed management program “*on behalf of* the Regional Board.”
 8 This language is found on page 55 of the LA Permit, Table 9. The Executive
 9 Officer therefore had express authority to sign a letter approving the LSGR
 10 Watershed Management Program. Thus, there is no valid question about
 11 whether the Executive Officer “exceeded his authority”; he did exactly what
 12 the LA Permit allowed him to do.

13 (2) Even if the Executive Officer’s April 28, 2015 letter was construed to
 14 focus on the conditions imposed as part of the overall approval, it would
 15 make no difference. This is so because the LA Permit simply allows either
 16 the Regional Water Board or the Executive Officer on behalf of the Board to
 17 issue an “approval or denial” of a final plan. The LA Permit is not a straight
 18 jacket that requires that the approval (or denial) be “unconditional.”

19 Table 9 of the LA Permit at p. 55 simply states in pertinent part:

Part	Provision	Due Date
VI.C.4.c.	Approval or denial of final plan by Regional Water Board or by the Executive Officer on behalf of the Regional Water Board.	3 months after submittal of final plan

27 ///

28 ///

1 The LA Permit in Table 9 references Part VI.C.4.c , but that section only
2 provides requirements for those Permittees that “elect to develop a [regional]
3 Watershed Management Program.” It does not contain any requirement that
4 constrains this Board (or its Executive Officer) on how it can review and
5 issue any “approval or denial” of a final plan. (LA Permit at p. 57, Part
6 VI.C.4.c).

7 Thus, the plain language in Table 9 does not require that the LA Board
8 issue an “approval or denial *without any conditions*”, and the LA Permit does
9 not elsewhere contain such language with respect to the approval process for
10 WMPs. NPDES permits, such as the LA Permit, are to be construed based
11 upon their plain language. In this case, the plain language of the LA Permit
12 does *not* require an unconditional approval (or denial), and that plain
13 language resolves the claims of the Environmental Petitioners. The Board
14 need explore no further. *See Alaska Community Action on Toxics v. Aurora*
15 *Energy Serv., LLC*, 765 F.3d 1169, 1172 (9th Cir. 2014) (NPDES permit to be
16 interpreted like a regulation, which “should be construed to give effect to the
17 natural and plain meaning of its words.”).

18 **D. Even if the LA Permit’s Approval Language Was Deemed**
19 **Ambiguous, the Permit’s Structure and Extrinsic Evidence**
20 **Support the Executive Officer’s Approval with Conditions of**
21 **the LSGR Watershed Management Program**

22 Even if for argument’s sake, there was some ambiguity in Table 9 to the
23 LA Permit on the scope of an “approval” and whether that word meant to
24 exclude an “approval with conditions”, then this Board should consider the
25 structure of the LA Permit as well as extrinsic evidence in order to interpret
26 the ambiguity. *See NRDC v. County of Los Angeles*, 725 F.3d 1194, 1205 (9th
27 Cir. 2013)(“If, however, the permit’s language is ambiguous, we may turn to
28 extrinsic evidence to interpret its terms.”).

1 1. **The Text and Structure of Part VI.C. of the LA Permit Do**
2 **Not Support Imposing any Artificial Requirement of an**
3 **Approval “Without Conditions”**

4 The text and structure of Part VI.C. of the LA Permit are designed to
5 impose conditions upon the Permittees who elect to proceed with a WMP (or
6 EWMP). Part VI.C. emphasizes the flexibility inherent in this process:

7
8 **C. Watershed Management Programs**

9 **1. General**

10 a. The purpose of this Part VI.C. is to allow Permittees *the*
11 *flexibility* to develop Watershed Management Programs to
12 implement the requirements of this Order on a watershed scale
13 through *customized* strategies, control measures, and BMPs.
14 (LA Permit, pp. 47-48, emphasis added).

15 Throughout the rest of Part VI.C., the language continues to describe
16 the flexible nature of the watershed management program process. Part
17 VI.C.1.f.iv., for example requires that those Permittees participating in a
18 WMP “modify strategies control measures, and BMPs as necessary based on
19 analysis of monitoring data. . .” Part VI.C.2.b. in turn provides that a
20 Permittee’s “full compliance with all requirements and dates for their
21 achievement in an approved Watershed Management Program. . . shall
22 constitute a Permittee’s compliance with the receiving water limitations
23 provisions in Part V.A. of this Order. . .” (LA Permit at p. 53).

24 Thus, the structure of Part VI.C. seeks to impose conditions and a
25 timetable on the Permittees who proceed with a WMP or EWMP. There is
26 absolutely *nothing* in the structure or language of Part VI.C. that suggests that
27 it was intended to limit the discretion of this Board (or its Executive Officer
28 acting on its behalf) in the precise manner of approving a WMP.

27 ///

28 ///

1 2. **This Board (and its Staff's) Long-Standing Policy and**
2 **Practice of Approval of Submitted Documents with**
3 **Conditions**

4 The Los Angeles Regional Board knows and can recognize that both it
5 and its staff approve numerous work plans, technical reports, and other
6 submittals with conditions. This type of "approval with conditions" is often
7 practiced with respect to other provisions in the LA Permit.

8 To take recent examples of the long-standing Board policy of approvals
9 with conditions, we request that the Board take judicial notice of the
10 following five documents and one undisputed fact⁵:

- 11 (1) June 19, 2015 letter of Executive Officer to Upper San Gabriel River
12 watershed management group approving with conditions the
13 Coordinated Integrated Monitoring Program;
14 (2) June 24, 2015 letter of Executive Officer to Alamitos Bay/Los Cerritos
15 Channel watershed management group approving with conditions
16 the Coordinated Integrated Monitoring Program;
17 (3) June 18, 2015 letter of Executive Officer to Lower Los Angeles River
18 watershed management group approving with conditions the
19 Coordinated Integrated Monitoring Program;
20 (4) June 4, 2015 letter of Executive Officer to Upper Santa Clarita
21 watershed management group approving with conditions the
22 Coordinated Integrated Monitoring Program;
23 (5) July 10, 2015 letter of Executive Officer to Santa Monica Bay
24 Jurisdictional Group 2 & 3 EWMP group approving with conditions

25 _____
26 ⁵ Respondents are filing concurrently with this memorandum a formal
27 Request for Official Notice of these five referenced documents along with
28 other documents. This request is made pursuant to 23 Cal. Code of
Regulations Section 648.2.

1 the Coordinated Integrated Monitoring Program.⁶

2 (6) Undisputed fact: The Respondents request that the Board take
3 judicial notice of the fact that the LA Regional Board over the past 20
4 years has issued a number of letters approving work plans, technical
5 reports, and other documents with “conditions.”

6 This Board should consider the vast amount of extrinsic evidence of
7 how its staff has for years conditioned approval letters, and must conclude
8 that the language in Table 9 is fully consistent with the long-standing policy
9 and practice of an “approval with conditions.”

10 **3. This Board Should Construe Its Own Permit to Clarify**
11 **the Process of Approval with Conditions**

12 The Environmental Petitioners have, however, presented this Board
13 with the opportunity to construe this portion of the LA Permit in a common
14 sense and straight-forward manner. It should do so as a matter of sound
15 public policy.

16 The Board should adopt a common sense reading of the term
17 “approval” as stated in Table 9 of the LA Permit to provide the flexibility of
18 an approval with conditions. The U.S. Court of Appeals for the Second
19 Circuit has applied a similar common sense interpretation to a statutory
20 provision of the Clean Air Act requiring that EPA “approve or deny” a state
21 submittal under that Act. The language at issue was found in the Clean Air
22 Act and is remarkably similar to the LA Permit’s language:

23
24 Section 7410(a)(2) provides that the Administrator of EPA “shall
25 within four months after the date required for a submission of a
plan [by the State] *approve or disapprove (the) plan*, or any portion

26 ⁶ On June 19, 2015, the Executive Officer sent a letter approving the Lower
27 San Gabriel River watershed group’s coordinated integrated monitoring
28 program without any conditions.

1 thereof.”

2 *Connecticut Fund for the Environment, Inc. v. EPA*, 672 F.2d 998,
3 1002 (2d Cir. 1982), *cert. denied*, 459 U.S. 1035 (1982) (*Connecticut*
4 *Fund*)(*emphasis added*).

5 Notwithstanding the “approve or disapprove” language contained in a
6 Congressional mandate, the EPA conditionally approved a State
7 Implementation Plan (SIP) submitted by the State of Connecticut. An
8 environmental group petitioned the Court of Appeals to review the approval
9 arguing that: “the literal ‘approve or disapprove’ language of [section]
10 7410(a)(2) and the absence of any mention of conditional approvals in the
11 Clean Air Act preclude EPA’s conditional approval.” *Connecticut Fund.*,
12 *supra*, 672 F.2d at 1006.

13 The Second Circuit rejected this argument, concluding that such a
14 narrow interpretation of the term “approve” would frustrate the overall
15 purpose of the statutory scheme. As Circuit Judge Newman wrote for the
16 Court of Appeal:

17 But this Court has held that an agency’s power to approve
18 conditionally is inherent in the power to approve or disapprove.

19 “[T]he power to condition. . . approval on the incorporation of
20 certain amendments is necessary for flexible administrative
21 action and is inherent in the power to approve or disapprove.
22 We would be sacrificing substance to form if we held invalid any
23 conditional approval but affirmed an unqualified rejection
24 accompanied by an opinion which explicitly stated that approval
25 would be forthcoming if modifications were made.”

26 *Connecticut Fund, supra*, 672 F. 2d at 1006 (quoting *McManus v. CAB*, 86
27 F.2d 414,419 (2d Cir.), *cert. denied*, 366 U.S. 928 (1961)).

28 This Second Circuit Court of Appeals reached an eminently practical
and sound construction of the words “approve or deny” in the context of the
Clean Air Act. This Board should adopt the same practical and sound
construction in construing almost identical language contained in the LA

1 Permit.

2 **E. Alternatively, the Board Should Rule that the Environmental**
3 **Petitioners’ Complaint is Moot in Light of The Filing on June**
4 **12, 2015 of a Revised Plan and the July 22, 2015 Confirmation of**
5 **Approval Letter**

6 Alternatively, the Environmental Petitioners’ challenge to the approval
7 process for the LSGR Watershed Management Program should be rejected as
8 moot. The Executive Officer issued his approval letter on April 28, 2015 and
9 gave the LSGR Group until June 12, 2015 to address the conditions contained
10 in his letter. The LSGR Group timely submitted a revised final WMP on June
11 12, 2015. A copy of that final WMP is part of the materials posted on the
12 Board’s website for this hearing.

13 On July 22, 2015, the Executive Officer, on behalf of this Board, issued a
14 confirmation of approval letter for the LSGR Watershed Management
15 Program. A copy of that letter is part of the separate Respondents’ Request
16 for Official Notice, item no. 2, and states in pertinent part:

17
18 After review of the final LSGR WMP submitted on June 12, 2015,
19 I have determined that the LSGR Group’s WMP satisfies all of the
20 conditions identified in my April 28, 2015 approval letter. The
WMP dated June 12, 2015 hereby constitutes the final approved
WMP for the LSGR Group.⁷

21 Thus, the Environmental Petitioners’ argument that the approval was
22 only “conditional” is moot because the Board subsequently issued a final
23 approval letter without any conditions. *See Santa Monica Baykeeper v. City of*
24 *Malibu*, 193 Cal.App 4th 1538, 1547-48 (2011) (“An appeal should be

25 _____
26 ⁷ The Executive Officer, acting on behalf of the Board also issued final
27 approval letters as to the Lower Los Angeles River watershed group A copy
of that letter is attached to Respondents’ Request for Official Notice, item no.
1.

1 dismissed as moot when the occurrence of events renders it impossible for
2 the appellate court to grant appellant any effective relief.”; held that
3 challenge to EIR for construction of city’s Legacy Park project was moot
4 when the park was already completed prior to the determination of the
5 matter on appeal).

6 In this particular instance, the Environmental Petitioners seek a
7 remedy – reversal of a conditional approval – when the conditions have
8 already been met and a final approval letter has been issued.⁸ Thus, as in
9 *Santa Monica Baykeeper*, the Board should dismiss the Petition as moot with
10 respect to its procedural argument.

11 **F. The Environmental Petitioners’ Suggestion that a Full Permit**
12 **Modification Was Required for an Approval “With**
13 **Conditions” Is Erroneous**

14 Alternatively, the Environmental Petitioners suggest that the Executive
15 Officer’s approval “with conditions” constitutes an improper modification of
16 the LA Permit. Indeed, the Environmental Petitioners suggest that the Board
17 (as the agency issuing the LA Permit) must follow requirements to formally
18 modify the LA Permit, including giving notice and issuing a new draft
19 permit. (*EP Memo.* at 10). This argument is nonsense. It assumes the
20 conclusion – *i.e.*, that the LA Permit somewhere contains the words
21 “approval without conditions” in Table 9 (or elsewhere). But, as previously
22 discussed, the plain language of the LA Permit, its structure, and available
23

24 ⁸ This fact also ends the Environmental Petitioners’ concern that the so-called
25 “conditional approvals” were open ended based upon a theoretical Board
26 action after June 12, 2015 to impose an additional round of conditional
27 approvals. The Environmental Petitioners argued that this might allow the
28 Executive Officer to “indefinitely extend the Permit’s deadlines.” (*EP Memo*
at 7:19-24). Once again, the actual facts have mooted this potential concern of
the Environmental Petitioners.

1 extrinsic evidence, all support a rejection of the Environmental Petitioners'
2 efforts to revise the current LA Permit and insert the language "without
3 conditions" after the word "approval" in Table 9.

4 Moreover, the "conditions" cited in the approval letter are only clerical
5 in nature, requesting for example that certain language be added in certain
6 sections or that an attachment be included. Therefore, the approval was an
7 approval of the WMP with those clerical changes included as part of the
8 approval. This point is further supported by the fact that the approval letter
9 required that the LSGR Group "shall begin implementation of the approved
10 WMP immediately." (April 28, 2015 Conditional Approval Letter at p. 4)⁹.
11 Consistent with Table 9 of the LA Permit, which states that the next step in
12 the process after approval is to "begin implementation" of WMP, this
13 demonstrates that the Executive Officer's action was an approval of the
14 WMP, and instruction to proceed with implementation.

15 There is no need to modify the LA Permit, and the alternative
16 suggestion by the Environmental Petitioners should be rejected.

17 **III. THE APPROVED WATERSHED MANAGEMENT PROGRAM**
18 **MEETS ALL PERMIT REQUIREMENTS**

19 Environmental Petitioners finally arrive at their substantive objections
20 to the approved LSGR Watershed Management Program. But, these
21 objections, like the Environmental Petitioners' procedural arguments, lack
22 merit. The Respondents respectively refer to **Exhibit A** hereto, a chart
23 discussing and rebutting the allegations in the Environmental Petitioners'

24 _____
25 ⁹ The pertinent approval letters are posted on the Board's website by
26 watershed group. In the case of the LSGR group, the April 28, 2015 letter can
27 be located at:
28 [http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/lower_sangabriel/LowerSanGabrielRiver-WMPApprovalwithConditions\(04-28-15\).pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/lower_sangabriel/LowerSanGabrielRiver-WMPApprovalwithConditions(04-28-15).pdf).

1 March 25, 2015 comment letter regarding the watershed management
2 programs. Respondents discuss in this memorandum only one specific
3 aspect of the alleged deficiencies, the Reasonable Assurance Analysis, which
4 the Environmental Petitioners designate as “[p]erhaps the most glaring
5 deficiency in the WMPs. . . ” (*EP Memo at 11*).

6 **A. The Reasonable Assurance Analysis Document and Approach**

7 It is important for this Board to understand the amount of time and
8 effort that went into preparing the LSRG Reasonable Assurance Analysis.
9 The complete copy of the Reasonable Assurance Analysis included three
10 watershed groups, the LSRG, as well as the Lower Los Angeles River, and
11 the Los Cerritos Creek groups, and was contained in Appendix A to the
12 January 2015 submittal of a revised WMP by the LSGR Group. With internal
13 appendices and exhibits, the Reasonable Assurance Analysis comes to some
14 742 pages and is available at:
15 [http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwat](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_cerritos_channel/LosCerritosChannel_WMP_Revised2.pdf)
16 [er/municipal/watershed_management/los_cerritos_channel/LosCerritosChan](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_cerritos_channel/LosCerritosChannel_WMP_Revised2.pdf)
17 [nel_WMP_Revised2.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_cerritos_channel/LosCerritosChannel_WMP_Revised2.pdf). In its text, the Reasonable Assurance Analysis
18 discusses the specific mathematical models chosen for the modeling and
19 projected long-term results within the watersheds (the LSPC model), and
20 also discusses in detail efforts to “calibrate” the model based upon observed
21 real-world data. (Reasonable Assurance Analysis, Sections 3-4). The
22 Reasonable Assurance Analysis then proceeds to discuss the actual pollutant-
23 load reductions required in order to meet the criteria projected in the
24 mathematical models as necessary to achieve receiving water limitations.
25 (Reasonable Assurance Analysis, Section 5).

26 The Reasonable Assurance Analysis then discusses which water years
27 were selected as representative of average wet weather conditions and as
28 representative of “critical” 90% wet weather conditions, in this case the water

1 years 2008 and 2003 respectively. (*Id.* at Section 5.2). The Reasonable
2 Assurance Analysis then continues to evaluate in detail the projected rainfall
3 amount for each of the three watersheds for a rainstorm reaching the 85% of
4 all expected storms in a 24-hour period and then explains in detail how these
5 calculations were utilized to arrive at projected required reductions in
6 pollutants in order to meet interim and final requirements for each
7 watershed. (*Id.* at Section 5.3).

8 The Reasonable Assurance Analysis contains myriad specific details to
9 demonstrate the factual support for its conclusions. A quick review of the
10 document shows that there are some 24 separate figures in the text
11 explaining various calculations and approximately 42 tables spread
12 throughout the text, some of them summarizing various milestones and
13 goals for the respective watershed groups. (*Id.* at Table 9-2 (planned runoff
14 reduction volumes for LSGR); Table 9-6 (pollution reduction program for
15 LSGR for interim and final goals); Table 9-10 (dry weather pollution
16 reduction program for LSGR). There are many more figures and tables in the
17 respective appendices that form part of the overall document.

18 In short, the Reasonable Assurance Analysis for the LSGR, the Los
19 Cerritos Creek and the Lower Los Angeles River groups was a detailed and
20 careful approach which expressly acknowledged and complied with this
21 Board’s guidance: “Guidelines for Conducting Reasonable Assurance
22 Analysis in a Watershed Management Program, Including an Enhanced
23 Watershed Management Program” (March 2014) (cited in Reasonable
24 Assurance Analysis at Section 1, p.6).¹⁰

25 _____
26 ¹⁰ We focus on this Reasonable Assurance Analysis for the three participating
27 watershed management groups, including the LSGR Group. But, we do not
28 mean to suggest that the separate Reasonable Assurance Analysis submitted
by other watershed groups were not equally comprehensive and detailed.

1 **B. The Environmental Petitioners’ Unfounded Criticism of the**
 2 **LSGR Reasonable Assurance Analysis (and the WMP)**

3 The Environmental Petitioners list 7 alleged “deficiencies” for the
 4 LSGR WMP’s portion of the Reasonable Assurance Analysis on page 13 of
 5 their memorandum. Respondents address each claimed deficiency in the
 6 following table and demonstrate that in each case the actual staff comments
 7 were in fact addressed in the final WMP or revised Reasonable Assurance
 8 Analysis.¹¹

9 Envir. Petition 10 Summary of 11 “Deficiency” (Listed in 12 EP Memo.)	9 Actual Regional Bd. 10 Staff Comment from 11 Oct. 30, 2014	9 Response in January 28, 10 2015 Revised RAA 11 (Appendix A to WMP)
11 1. No modeling of 12 organics (PAH, DDT, 13 PCB). 14 15 16 17 18 19 20 21 22	11 “We note that modeling 12 was not conducted for 13 organics. . . .An 14 explanation for the lack 15 of modeling is needed.” 16 17 18 19 20 21 22	11 Sec. 5.3.1 (wet-weather 12 required pollutant 13 reductions) adopts the 14 “limiting pollutant 15 approach” and notes 16 that organics for the 17 LSGR and other areas 18 are controlled through 19 reduction of sediment 20 and associated metals 21 reduction. (RAA at pp. 22 38-42).

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 24
 25
 26 ¹¹ The LSGR and the Lower Los Angeles River groups separately addressed
 27 the staff comments of October 2014 in their presentation at the April 13, 2015
 28 workshop. A copy of that powerpoint presentation is also posted on the
 Board’s website.

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Envir. Petition Summary of "Deficiency" (Listed in EP Memo.)	Actual Regional Bd. Staff Comment from Oct. 30, 2014	Response in January 28, 2015 Revised RAA (Appendix A to WMP)
<p>2. No explanation for use of zinc as limiting pollutant.</p>	<p>"The RAA identifies zinc as the limiting pollutant. . . If the Group believes that this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this. . ."</p>	<p>The RAA dated Jan. 15, 2015 specifically explains in Sec. 5.3.1 why zinc is the "limiting pollutant" for the LSGR watershed and also several other watersheds. This explanation was in response to the Board staff Oct. 2014 comments and contains explicit detail as requested by staff.</p>
<p>3. No predicted baseline presented for modeled pollutants.</p>	<p>"[T]he predicted baseline concentrations and loads for all modeled pollutants of concern. . . should be presented in summary tables for wet weather conditions."</p>	<p>Baseline pollutant loading by watershed area shown in Table 5-6 of Revised RAA (p. 40).</p>

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Envir. Petition Summary of "Deficiency" (Listed in EP Memo.)	Actual Regional Bd. Staff Comment from Oct. 30, 2014	Response in January 28, 2015 Revised RAA (Appendix A to WMP)
<p>4. No summary or time series comparisons of baseline data and applicable limits.</p>	<p>"[T]he differences between baseline concentrations/loads should be presented in time series for each pollutant under long-term continuous simulation and as a summary of the differences between pollutant concentrations/loads and allowable concentrations/loads for the critical wet weather period."</p>	<p>The RAA states on p. 39: "Plots showing the differences between the baseline loads, allowable loads, and exceedance loads are shown in Attachment F." Attachment F is described as: "Modeled Existing Versus Allowable Pollutant Loadings Plots."</p>

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Envir. Petition Summary of "Deficiency" (Listed in EP Memo.)	Actual Regional Bd. Staff Comment from Oct. 30, 2014	Response in January 28, 2015 Revised RAA (Appendix A to WMP)
<p>5. No measurable milestones for implementing BMPs in two-year intervals provided.</p>	<p>"The WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."</p>	<p>This was addressed in Section 5.3 of the Revised WMP as to structural BMPs. Section 5.2 of the Revised WMP also discussed a multi-city project involving Downey, Norwalk, Santa Fe Springs and Whittier with specific milestones for a Prop. 84 project.</p>
<p>6. No table provided existing runoff volume, required reduction and proposed reduction to achieve 85% by sub-basin.</p>	<p>"The Report presents the existing runoff volumes. . .for each major watershed area. . . The same information. . . also needs to be presented for each modeled sub-basin. . ."</p>	<p>Section 9.2.1 of the RAA and Attachment B of the RAA were updated to provide the requested sub-basin information.</p>

1 Envir. Petition 2 Summary of 3 “Deficiency” (Listed in 4 EP Memo.)	1 Actual Regional Bd. 2 Staff Comment from 3 Oct. 30, 2014	1 Response in January 28, 2 2015 Revised RAA 3 (Appendix A to WMP)
4 7. No table providing 5 existing non-stormwater 6 volume, required 7 reduction and proposed 8 reduction by sub-basin.	4 “The report needs to 5 provide the same 6 information, if available, 7 for non-stormwater 8 runoff. Alternatively, 9 the report should 10 include a commitment 11 to collect the necessary 12 data. . . so that the 13 model can be re- 14 calibrated during the 15 adaptive management 16 process. . . ”	4 Section 4.2 of the WMP 5 contains the 6 commitment to re- 7 calibration of the model 8 as requested by the 9 staff.

16 This table demonstrates (and should be reviewed in connection with
 17 **Exhibit A** to this memorandum) that the Environmental Petitioners’ claim
 18 that the Executive Officer’s approval in April of 2015 with conditions “*fail to*
 19 *address any of the RAA inadequacies identified by the RWQCB staff*” (EP Memo at
 20 p. 14) is simply incorrect.

21 Under the applicable standard for review this Board should determine
 22 whether the Executive Officer reasonably exercised his discretion in
 23 determining that the submitted Reasonable Assurance Analysis fairly met
 24 the criteria of the LA Permit. Using this criteria, there can be only one
 25 answer—it clearly did meet that LA Permit standards, and the approval of
 26 the Reasonable Assurance Analysis and the Watershed Management
 27 Program must be upheld.

1 The Environmental Petitioners also raise what they term “substantive
2 program requirements” that the watershed managements plans allegedly
3 failed to met, citing to Exhibit D in support of their Petition. (*EP Memo* at 15).
4 The Respondents respectfully refer to **Exhibit A** attached to this
5 memorandum in response to those specific points, none of which has merit.

6 **IV. CONCLUSION**

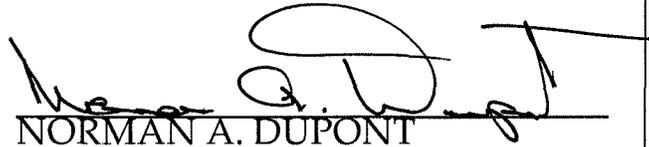
7 The Environmental Petitioners seek to eviscerate the LA Permit. They
8 ask this Board to reverse its Executive Officer’s determination and simply
9 deny all nine (9) of the watershed management programs. (*EP Memo* at p. 15).
10 The Environmental Petitioners suggest no alternative, nor do they suggest
11 how any of the cities in the nine Water Management Programs should
12 comply with the pending TMDLs and the receiving water limits required
13 under the LA Permit. Rather, they simply seek to end the LA Permit and put
14 everyone back into a pre-permit limbo.

15 This Board should instead *deny* the Petition and allow the LSGR Group
16 (and others) to continue implementing their reasonable and detailed
17 Watershed Management Programs as part of the LA Permit.

18 Dated: August 3, 2015

Respectfully submitted,

RICHARDS, WATSON & GERSHON
A Professional Corporation
NORMAN A. DUPONT
CANDICE K. LEE
NICHOLAS R. GHIRELLI

23 By: 

24 NORMAN A. DUPONT
25 Attorneys for Respondents,
26 City of Artesia
27 City of La Mirada
28 City of Norwalk

EXHIBIT "A"

RB-AR18195

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Permit Citation	Staff Comments from October 30, 2014	NRDC Analysis of Revised WMP Response to Staff Comments	NRDC Summary of Conditional Approval Requirements	Group's Response to Petitioners' Analysis
Part VI.C.5.b.iv.(4)(b)-(d)	"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."	The response implies no commitment beyond good intentions and a willingness to track progress (or its lack thereof) through the permit cycle.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The commitment language was included in the Revised (and Final) WMP in Section 5.3. Also included were modifications to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. Of particular note, WMP Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects to address the milestones in the compliance tables of the RAA, Attachment B.
Part VI.C.5.b.v.(4)(d)	"The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity...is needed....there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met..."	The response, and other statements throughout the document, make it clear that no commitments to "specificity or actions" or associated timelines are made. There is also no cross-walk between scheduled completion dates and interim compliance deadlines. Given the vague nature of nearly all of the "milestones," it's not surprising that there is no direct linkage between actions, meeting interim requirements, and the schedule.	Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5 of the Revised (and Final) WMP was modified to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. The corrections to the Final WMP further refined these commitments. The Group has also addressed the inherent uncertainty as to which specific BMPs will be implemented to address the milestones in the RAA compliance tables (RAA Attachment B): Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects.
Part VI.C.5.b.v.(5)	"The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants. If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant."	The draft WMP does not appear to have been modified in response to this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5.3.1 of the RAA justifies how Category 1, 2, and 3 pollutants are controlled through the limiting pollutant approach. This statement, along with a reference to the RAA for justification, is included in Section 4.1. The revised introduction to Section 5 provides explicit statements regarding the implementation of this approach in order to achieve applicable receiving water limitations.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Part VI.C.5.b.iv.(5)	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used....An explanation for the lack of modeling is needed."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	It should be noted that the original watershed modeling (based on LSPC) supporting the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL did not include simulation of DDT, PCBs, and PAHs. Rather, modeled sediment was used as a surrogate to estimate watershed loadings. Therefore, the 90 th percentile of observed concentrations were assigned, meeting requirements set forth by RAA guidance provided by the Regional Water Quality Control Board.
Part VI.C.5.b.iv.(4)(c)	"The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	A change to the document was not necessary as explained in a response table to the RB. The RAA approach of controlling zinc, in concert with the modeled effect of copper load reductions anticipated through SB 346, anticipates that the application of the Watershed Control Measures and Compliance Schedule of Chapter 3 and 5, respectively, will reduce copper loads sufficiently to achieve compliance deadlines from interim and/or final WQBELs.
Part VI.C.5.b.iv.(5)(c)	"For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible....[The RAA] does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be	There is no response to this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The introduction to Section 5 was modified to more clearly demonstrate that the compliance schedule is as soon as possible for pollutants not addressed by TMDLs.
Part VI.C.5.b.iv.(5)	"The draft assumes a 10% pollutant reduction from new nonstructural controls....additional support for this assumption should be provided, particularly since the group appears to be relying almost entirely on these controls for near-term pollutant reductions to achieve early interim milestones/deadlines."	There was no substantial advance over what was previously included, though the issue is acknowledged explicitly.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 4.3 was added to the Revised WMP to address the Regional Board comment. The Regional Board also states that, "as part of the adaptive management process, the Permittees should commit to evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." This commitment was also included in the in Section 4.3.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Part VI.C.5.b.iv.(5)	"Based on the results of the hydrology calibration shown in Table 4- 3, the error difference between modeled flow volumes and observed data is 19%....The higher error percentage could be due to the exclusion of contributions of flow volume from upstream. For calibration purposes, upstream volume should be included....Once model calibration has been completed, the upstream flow volume can then be excluded...."	Between the 2014 and 2015 RAA's, the % error improves from -19.0% to -3.31%.There is no text change to explain this difference, nor any difference in the graphed monthly hydrographs for observed and modeled flows.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	<p>It should be noted that the entire watershed was included in the model for calibration purposes, including areas upstream and outside of the area addressed by the RAA. As such, there was no absence of upstream flow contributing to the error difference. As stated in the Regional Board comment, once calibration was completed, upstream areas were subtracted from the model for presenting load reduction targets.</p> <p>The plots in Attachment E were updated to show the daily calibration results. The Tables in Section 4.1.1 and 4.1.2 were updated to show the modeled versus observed volume error for the daily calibration results (versus the monthly that were shown previously).</p>
Part VI.C.5.b.iv.(5)	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	No change in the RAA to address this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	An additional table was added to the RAA to reflect the baseline loads. Found on page 39 as Table 5-6.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

<p>Part VI.C.5.b.iv.5)</p>	<p>"The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area....The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-6 and 9-7 and how these values were derived from previous tables.</p> <p>"The report needs to present the same information, if available, for non-stormwater runoff."</p>	<p>The request for a series of tables by subbasin has not been met; an added sentence defines the terms used but not how the values were derived from previous tables. No new information addressing comment about non-stormwater runoff.</p>	<p>No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.</p>	<p>Regarding the required information for the modeled subbasins, Attachment B of the RAA was updated to include the requested tables, along with a sentence to provide some clarification in RAA Section 9.2.1 (third paragraph).</p> <p>Regarding non-stormwater runoff, the complete comment from the Regional Board is as follows: "The report needs to present the same information, if available, for non-stormwater runoff. <u>Alternatively</u>, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area."</p> <p>A commitment to the recalibration alternative was included in WMP Section 4.2.</p>
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Artesia
Bellflower
Cerritos
Diamond Bar
Downey
Hawaiian Gardens
La Mirada
Lakewood
Long Beach
Norwalk
Pico Rivera
Santa Fe Springs
Whittier

Lower San Gabriel River Watershed

August 3, 2015

Transmitted via electronic mail: losangeles@waterboards.ca.gov

Rene Purdy, Chief, Regional Programs Section
Los Angeles Regional Water Quality Control Board
320, West 4th Street, Suite 200
Los Angeles, CA 90013
Renee.Purdy@waterboards.ca.gov

Subject:

LA County MS4 Permit – Responses to Petition for Review of WMP Approvals

Dear Ms. Purdy:

Thank you for the opportunity to provide comments regarding the Petition brought by NRDC *et al*¹ (Petitioners) to review the Executive Officer's Action to approve the Watershed Management Programs (WMPs). This letter specifically addresses the WMP for the Lower San Gabriel River. The Lower San Gabriel River Watershed Management Group (Group) decided to prepare this WMP in 2013 as a path to comply with the 2012 MS4 Permit (Order No R4-2012-0155). The WMP is an adaptively managed program that includes compliance schedules and milestones to address water quality priorities and comply with water quality objectives through the implementation of watershed control measures. The milestones and watershed control measures were defined by the preparation of a reasonable assurance analysis using the Watershed Management Modeling System (WMMS). The adaptive management of the program will be guided by the monitoring data collected through the Group's Coordinated Integrated Monitoring Program. The Lower San Gabriel River's Coordinated Integrated Monitoring Program has already been approved.²

During the development of the WMP, there were several opportunities for stakeholders to provide comments. This included the June 2013 Notice of Intent, the April 2014 Stakeholder meeting held by the Group, the June 2014 Draft WMP submittal, the February 2015 submittal of the Revised WMP, and the October 2014 and April 2015 Regional Board meetings. The Group is aware that the Petitioners specifically identified seven comments originally made by the Regional Board staff in response to the

¹ Petition dated May 28, 2015

² The Coordinated Integrated Monitoring Program was approved by the Regional Board on 06/18/2015.

Draft WMP. The submittal of the Revised WMP included a matrix that summarized how each of the Regional Board's nineteen comments to the Draft WMP were addressed. The intent of the document was to assist the Regional Board in the identification of all necessary revisions (which occur in multiple places throughout hundreds of pages) and provide clarification. Because the matrix was not posted on the Regional Board's website, and as such not available to the Petitioners, it appears that the Petitioners may have had difficulty in both identifying all revisions and understanding the reasoning behind them. As such, the Group's response to the seven specific comments are reiterated in the attached matrix chart.

The Executive Officer on behalf of the Regional Board approved with conditions the submitted WMP on April 28, 2015, effectively finding that it meets the requirements for preparation as described in the MS4 permit. The minor clarifications contained as part of the approval letter were non-substantive and technical or clerical in nature. The final version of the WMP with these clarifications incorporated was submitted to the Regional Board on June 12, 2015. By letter dated July 21, 2015, the Executive Officer on behalf of the Board approved the June 12, 2015 submittal without further conditions.

Although the Petition challenges the approval process for the WMP (and all other WMPs), that legal challenge should be rejected. Legal counsel for several municipal members of the WMP will submit a separate memorandum to your attention that explains in detail the position of those members and all joining members of the WMP.

In light of the Petition, the Petitioner's original comments to the Draft WMP, and the Petitioner's statements at the April 12, 2015, Regional Board Public Meeting, and the June 16, 2015, State Water Resources Control Board Meeting, the Group is compelled to reiterate their commitment to implement the approved WMP, which to date has cost over \$750,000 to prepare. This commitment is evidenced by the Group's recent activities, which include but are not limited to:

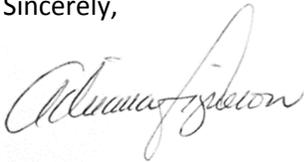
- Developing and adopting a five-year WMP implementation and monitoring agreement. This agreement will provide up to \$800,000 in funding for the continued watershed activities in 2015-16 alone.
- Developing and adopting an agreement with all Permittees within the San Gabriel River Watershed to implement sample collection and share data for the Dominguez Channel and Greater Harbor Toxics TMDL.
- The 2013 establishment of an Early Action Monitoring Station in Coyote Creek.
- The groundbreaking of the first post-WMP approval Green Street project—the installation of over 30 bio-filtration units as part of a downtown rehabilitation project in the City of Artesia.
- Implementing the Proposition 84 Grant to install 43 bio-filtration systems in major transportation corridors throughout the Lower San Gabriel River, Lower Los Angeles, and Los Cerritos Channel Watersheds. As part of the grant, monitoring of the bio-filtration systems will be performed to evaluate pollutant removal effectiveness. The grant will be completed by April 2017.
- The internal development and participation of Group members in three separate workshops devoted to the implementation of the WMPs, covering 15 hours of material in total. Topics have

included results of the Reasonable Assurance Analysis, new Minimum Control Measures as mandated by the MS4 Permit, and new watershed control measures incorporated into the WMP such as erosion and sediment control at vacant lots. Neighboring watershed groups for the Los Cerritos Channel and the Lower LA River also participated in the workshops, covering staff from 17 cities in total. They were well attended and engaging: the most recent workshop conducted on July 15, 2015, was attended by 53 staff members with key MS4 Permit responsibilities, such as directors, engineers, planners, program managers, and inspectors.

It is also important to note that the development of the WMP was a challenging endeavor. It required fourteen Permittees to collaborate and commit to the development of a complex program with far-reaching and extensive objectives in a six-month period. It then required regular joint participation in monthly technical committees to effectively develop the document in time to complete a draft (including a comprehensive watershed model simulation and a separate monitoring program) within one year. Following approval of the WMP, and recognizing that the era of the WMP has only just begun, the Group continues to meet monthly in order to effectively commence the implementation phase. These past and future efforts reiterate the Group's commitment to the watershed approach provided by the MS4 Permit.

Thank you again for the opportunity to comment. In summary, the Group has invested a substantial effort in the preparation of and now implementation of the WMP and request that the process not be derailed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adriana Figueroa".

Adriana Figueroa
Administrative Services Manager, City of Norwalk
Chair, Lower San Gabriel River Watershed

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Permit Citation	Staff Comments from October 30, 2014	NRDC Analysis of Revised WMP Response to Staff Comments	NRDC Summary of Conditional Approval Requirements	Group's Response to Petitioners' Analysis
Part VI.C.5.b.iv.(4)(b)-(d)	"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."	The response implies no commitment beyond good intentions and a willingness to track progress (or its lack thereof) through the permit cycle.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The commitment language was included in the Revised (and Final) WMP in Section 5.3. Also included were modifications to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. Of particular note, WMP Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects to address the milestones in the compliance tables of the RAA, Attachment B.
Part VI.C.5.b.iv.(4)(d)	"The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity....is needed....there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met..."	The response, and other statements throughout the document, make it clear that no commitments to "specificity or actions" or associated timelines are made. There is also no cross-walk between scheduled completion dates and interim compliance deadlines. Given the vague nature of nearly all of the "milestones," it's not surprising that there is no direct linkage between actions, meeting interim requirements, and the schedule.	Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5 of the Revised (and Final) WMP was modified to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. The corrections to the Final WMP further refined these commitments. The Group has also addressed the inherent uncertainty as to which specific BMPs will be implemented to address the milestones in the RAA compliance tables (RAA Attachment B): Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects.
Part VI.C.5.b.iv.(5)	"The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants. If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant."	The draft WMP does not appear to have been modified in response to this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 5.3.1 of the RAA justifies how Category 1, 2, and 3 pollutants are controlled through the limiting pollutant approach. This statement, along with a reference to the RAA for justification, is included in Section 4.1. The revised introduction to Section 5 provides explicit statements regarding the implementation of this approach in order to achieve applicable receiving water limitations.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Part VI.C.5.b.iv.(5)	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used....An explanation for the lack of modeling is needed."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	It should be noted that the original watershed modeling (based on LSPC) supporting the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL did not include simulation of DDT, PCBs, and PAHs. Rather, modeled sediment was used as a surrogate to estimate watershed loadings. Therefore, the 90 th percentile of observed concentrations were assigned, meeting requirements set forth by RAA guidance provided by the Regional Water Quality Control Board.
Part VI.C.5.b.iv.(4)(c)	"The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs."	No change was made in the document in response to the comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	A change to the document was not necessary as explained in a response table to the RB. The RAA approach of controlling zinc, in concert with the modeled effect of copper load reductions anticipated through SB 346, anticipates that the application of the Watershed Control Measures and Compliance Schedule of Chapter 3 and 5, respectively, will reduce copper loads sufficiently to achieve compliance deadlines from interim and/or final WQBELs.
Part VI.C.5.b.iv.(5)(c)	"For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible....[The RAA] does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be	There is no response to this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	The introduction to Section 5 was modified to more clearly demonstrate that the compliance schedule is as soon as possible for pollutants not addressed by TMDLs.
Part VI.C.5.b.iv.(5)	"The draft assumes a 10% pollutant reduction from new nonstructural controls....additional support for this assumption should be provided, particularly since the group appears to be relying almost entirely on these controls for near-term pollutant reductions to achieve early interim milestones/deadlines."	There was no substantial advance over what was previously included, though the issue is acknowledged explicitly.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	Section 4.3 was added to the Revised WMP to address the Regional Board comment. The Regional Board also states that, "as part of the adaptive management process, the Permittees should commit to evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." This commitment was also included in the in Section 4.3.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

Part VI.C.5.b.iv.(5)	"Based on the results of the hydrology calibration shown in Table 4- 3, the error difference between modeled flow volumes and observed data is 19%....The higher error percentage could be due to the exclusion of contributions of flow volume from upstream. For calibration purposes, upstream volume should be included....Once model calibration has been completed, the upstream flow volume can then be excluded...."	Between the 2014 and 2015 RAA's, the % error improves from -19.0% to -3.31%.There is no text change to explain this difference, nor any difference in the graphed monthly hydrographs for observed and modeled flows.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	<p>It should be noted that the entire watershed was included in the model for calibration purposes, including areas upstream and outside of the area addressed by the RAA. As such, there was no absence of upstream flow contributing to the error difference. As stated in the Regional Board comment, once calibration was completed, upstream areas were subtracted from the model for presenting load reduction targets.</p> <p>The plots in Attachment E were updated to show the daily calibration results. The Tables in Section 4.1.1 and 4.1.2 were updated to show the modeled versus observed volume error for the daily calibration results (versus the monthly that were shown previously).</p>
Part VI.C.5.b.iv.(5)	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	No change in the RAA to address this comment.	No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.	An additional table was added to the RAA to reflect the baseline loads. Found on page 39 as Table 5-6.

Lower San Gabriel River WMP Group Comments to Petitioners' Analysis

<p>Part VI.C.5.b.iv.(5)</p>	<p>"The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area....The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-6 and 9-7 and how these values were derived from previous tables.</p> <p>"The report needs to present the same information, if available, for non-stormwater runoff."</p>	<p>The request for a series of tables by subbasin has not been met; an added sentence defines the terms used but not how the values were derived from previous tables. No new information addressing comment about non-stormwater runoff.</p>	<p>No Requirement to address Oct. 30, 2014 Staff comment or to comply with Permit term.</p>	<p>Regarding the required information for the modeled subbasins, Attachment B of the RAA was updated to include the requested tables, along with a sentence to provide some clarification in RAA Section 9.2.1 (third paragraph).</p> <p>Regarding non-stormwater runoff, the complete comment from the Regional Board is as follows: "The report needs to present the same information, if available, for non-stormwater runoff. <u>Alternatively</u>, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area."</p> <p>A commitment to the recalibration alternative was included in WMP Section 4.2.</p>
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