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9 *SUBMITTED VIA E-MAIL:*  
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11 **CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**  
12 **STATE WATER RESOURCES CONTROL BOARD**

13  
14 In the Matter of Petition for Review of the Los  
Angeles Regional Water Quality Control Board  
Executive Officer's Action to Approve, with  
15 Conditions, Nine Watershed Management  
Programs Pursuant to the Los Angeles County  
16 Municipal Separate Storm Sewer System (MS4)  
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, INC., HEAL THE  
BAY, AND LOS ANGELES  
WATERKEEPER CHALLENGING  
WATER MANAGEMENT PROGRAM  
APPROVALS**

ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW



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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”), and it is also a member of the Los Cerritos Channel  
4 WMP group. The other cities in the LLAR WMP group are: Downey, Lakewood, Long Beach,  
5 Lynwood, Paramount, Pico Rivera, and South Gate. The Los Angeles County Flood Control District  
6 is also a member of the LLAR, but it may file its statement in a separate coordinated filing prepared  
7 by counsel for the County of Los Angeles.

8 The Natural Resources Defense Council, Inc., Heal the Bay, and Los Angeles Waterkeeper  
9 (collectively, “Petitioners”), ask this Board to overturn the Los Angeles Regional Water Quality  
10 Control Board’s (“LA Regional Board”) approval of the LLAR WMP and other WMPs. However, the  
11 LLAR group coordinated a WMP that meets both the letter and the spirit of the 2012 Los Angeles  
12 County MS4 NPDES Permit (“LA MS4 Permit”), and both the LA Regional Board and its staff  
13 evaluated the WMP and agreed it is adequate. The City strongly urges this Board to uphold the  
14 decision of the LA Regional Board and deny the Petition entirely.

15 The LA Regional Board held a hearing on the Petition and upheld the approval of the WMPs  
16 by a 6-0-1 vote. The City submitted written comments and participated in the oral proceedings at the  
17 hearing; those written and oral comments are incorporated herein. (*See* RB-AR18116 [Memorandum  
18 of Behalf of Lower Los Angeles River Watershed Management Group Lead Permittee in Opposition  
19 to Petition], RB-AR18128 [Lower Los Angeles River Watershed Group Responses to Petition of  
20 Review of WMP Approvals], RB-AR18134 [Respondents’ request for Official Notice in Support of  
21 Opposition to Petition], RB-AR18395 [Lower Los Angeles River Watershed Management Group and  
22 Lower San Gabriel River Watershed Management Group (Joint Presentation)], RB-AR18725-18734  
23 [relevant portion of Certified Transcript for September 10, 2015 Meeting].)

24 Petitioners filed an “Addendum” for the Petition on October 30, 2015. The City references its  
25 January 8, 2016 filing (together with four other cities) of a motion to reject the Petition Addendum as  
26 untimely and dismiss the Petition as moot, and incorporates those arguments herein. The City  
27 respectfully requests that this Board address that motion as a preliminary matter. In the event this  
28 Board does not grant that motion and does not reject the Petition Addendum, the City has submitted

1 substantive comments that address the arguments raised in the Petition Addendum. (See January 14,  
2 2016 Comment Letter by Mr. Steve Myrter, LLAR Chair.)

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 **A. The Petition focuses only on the action of the LA Regional Board’s Executive**  
5 **Officer of approving the WMPs.**

6 Petitioners timely filed the Petition on May 28, 2015. The Petition focuses solely on the action  
7 of the LA Regional Board’s Executive Officer, Mr. Samuel Unger, who conditionally approved nine  
8 separate WMPs. The WMPs were approved (with conditions) by Mr. Unger on April 28, 2015, which  
9 was some 90 days after submittal of revised plans in January 2015. This approval complied with the  
10 timetable set forth in Part VI.C.4.c. of the LA MS4 Permit. (RB-AR18314-18315 [slides showing  
11 Permit timeframe and actions taken by Executive Officer].)

12 The Petition seeks to have the State Board “review the Executive Officer’s action to issue  
13 those conditional approvals.” (Petition, 1:1-10.) Petitioners argue that the Executive Officer’s  
14 decision was (1) an abuse of discretion because he was not authorized to “conditionally approve”,  
15 only to approve or deny outright; (2) constituted an improper [de facto] modification of the Permit by  
16 allowing a conditional approval; and (3) imposed conditions that were inconsistent with the Permit  
17 requirements and the Clean Water Act. (See *id.* at 2:20-3:7.) The Petition closes by asking that either  
18 the State Board or the LA Regional Board issue an order that “invalidates the Executive Officer’s  
19 conditional approvals and Denies all Nine WMPs...” (See *id.* at 5:1-5 [request for specific action by  
20 Regional or State Board].)

21 In June 2015, the LLAR group submitted a final WMP that responded to the conditions in the  
22 Executive Officer’s April 28, 2015 approval letter. The Executive Officer determined in July 2015  
23 that the final WMP satisfied the conditions, and issued a final approval letter. (See RB-AR13117.)

24 **B. The Petition Addendum focuses solely on the separate action taken by the LA**  
25 **Regional Board of approving the WMPs in September 2015.**

26 Petitioners then sought to challenge the separate action taken by the LA Regional Board on  
27 September 10, 2015, which approved all nine WMPs after a full hearing. Petitioners waited until  
28 October 30, 2015 to file the Petition Addendum, which raises new arguments about the actions not of

1 the Executive Officer, but of the LA Regional Board. The Petition Addendum terms these actions  
2 “inappropriate and improper” and further argues that the separate action constitutes an “abuse of  
3 discretion.” (Petition Addendum, 2:6-8.) Petitioners candidly omit any reference to what they term  
4 the “flawed process” of conditional approval by the Executive Officer – the process that was front and  
5 center in their original Petition. (*Id.* at 1:12-14, fn. 1.)

6 **III. STANDARD OF REVIEW**

7 The Petition Addendum states that the standard of review is whether the action of the LA  
8 Regional Board is “appropriate and proper.” (Petition Addendum, at pp. 3-4). But, based upon the  
9 issues raised, the Petition and Petition Addendum require different standards of review.

10 **A. The timeliness of the Petition Addendum must be determined as a matter of law**  
11 **based upon the unambiguous words in Water Code Section 13320.**

12 The City and several others have noted that the Petition Addendum is untimely. This raises a  
13 basic jurisdictional issue that must be determined as a matter of law. As noted in the City’s separate  
14 motion to dismiss, Water Code Section 13320 is explicit – a petition for review must be raised by an  
15 aggrieved party within 30 days of any “action” by the Regional Board. (Water Code, § 12320, subd.  
16 (a).) In fact, this Board’s website states: “An action occurs when a Regional Water Board votes for  
17 the action....” (State Board website page entitled “Water Quality Petitions” [visited Jan. 14, 2016],  
18 *available at* [www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/wqpetition\\_instr.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml).)  
19 In this case, Petitioners admit that the vote and decision by the LA Regional Board took place on  
20 September 10, 2015. (Petition Addendum, 1:2-3.) However, the Petition Addendum was not filed  
21 and served until October 30, 2015, and is therefore untimely.

22 Thus, review of the Petition Addendum and its lack of timely filing must be reviewed as a  
23 matter of law in conformity with the unambiguous statutory words. (*Poole v. Orange County Fire*  
24 *Authority* (2015) 61 Cal.4th 1378, 1385 [“The plain meaning controls if there is no ambiguity in the  
25 statutory language.” (citation omitted)].)

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**B. The merits of the Petition and the Petition Addendum must be reviewed based on the record before the LA Regional Board.**

The City agrees that if this Board reaches the merits of the Petition and Petition Addendum, then its review is based upon the “appropriate and proper” standard specified in Water Code Section 13320(c). However, the City also notes that absent some additional material deemed relevant by the State Board, that its review should be confined to the “record before the regional board.” (Water Code, § 13320, subd. (b).) Petitioners have filed various exhibits to the Petition Addendum, but have not identified any documents that are outside the administrative record compiled by the LA Regional Board. The City does not identify any other documents outside the administrative record and requests that the State Board’s review be confined to those materials.

**IV. THE ENVIRONMENTAL PETITIONERS’ CHALLENGE TO THE TECHNICAL PROCEDURE IN WHICH THE EXECUTIVE OFFICER APPROVED THE WATERSHED MANAGEMENT PLANS “WITH CONDITIONS” LACKS MERIT AND IS NOW MOOT**

The Petition’s first argument is a procedural one – that the Executive Officer’s decision to approve the WMPs was an abuse of discretion because he was not authorized to “conditionally approve”, only to approve or deny the WMPs outright. (Petition, 2:20-28.) The City refers this Board to the City’s written comments submitted for the proceedings before the LA Regional Board, which thoroughly addressed this procedural argument. (See RB-AR18116 [Memorandum of Behalf of Lower Los Angeles River Watershed Management Group Lead Permittee in Opposition to Petition].)

Not only does this procedural argument lack merit, it is now irrelevant. Petitioners’ argument that the Executive Officer’s approval was only “conditional” is *moot* because the Executive Officer subsequently issued a final approval letter without any conditions. (See *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1547-48 [“An appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief.”; held that challenge to EIR for construction of Legacy Park in city was moot when before determination of appeal the park was already completed].) In this particular instance, Petitioners seek

1 a remedy – reversal of a conditional approval – when the conditions have already been met.<sup>1</sup> Thus,  
2 much like in *Santa Monica Baykeeper*, this Board should dismiss the Petition as moot with respect to  
3 its procedural argument.

4 Moreover, the LA Regional Board rejected this procedural argument *and* approved the WMPs  
5 regardless of the procedural argument. Thus, if this Board considers the Petition, it should merely  
6 address the substantive arguments of the Petition since the initial procedural argument is now moot  
7 and irrelevant.

8 **V. THE APPROVED WATERSHED MANAGEMENT PROGRAMS MEET ALL**  
9 **PERMIT REQUIREMENTS**

10 Petitioners’ second and third arguments complain that the WMPs do not satisfy the LA MS4  
11 Permit terms. (See Petition, 3:1-7.) However, Petitioners’ objections to the approved WMPs are so  
12 lacking in substance or explanation that they should not be afforded any weight. The LLAR group  
13 answered the claimed deficiencies of its WMP in a substantive comment letter and in the oral  
14 proceedings before the LA Regional Board. (See RB-AR18128 [Lower Los Angeles River Watershed  
15 Group Responses to Petition of Review of WMP Approvals], RB-AR18395 [Lower Los Angeles  
16 River Watershed Management Group and Lower San Gabriel River Watershed Management Group  
17 (Joint Presentation)], RB-AR18725-18734 [relevant portion of Certified Transcript for September 10,  
18 2015 Meeting].) The LLAR group’s comment letter includes a chart of the LLAR WMP group  
19 rebutting the allegations contained in Petitioners’ March 26, 2015 letter. (See RB-AR18128.)

20 For the arguments regarding the Reasonable Assurance Analysis (“RAA”), the City  
21 incorporates by reference the comments of the Lower San Gabriel River (“LSGR”) watershed group  
22 because the LSGR RAA also included the LLAR and Los Cerritos Channel watershed groups. The  
23 City also highlights that the Petition argued: “the conditions included in the conditional approvals *fail*  
24 *to address any of the RAA inadequacies identified by RWQCB staff.*” (Petition Memorandum, 14:20-  
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26 \_\_\_\_\_  
27 <sup>1</sup> This fact also ends Petitioners’ concern that the so-called “conditional approvals” were left open ended based upon a  
28 theoretical LA Regional Board action after June 12, 2015 to impose an additional round of conditional approvals. Petitioners argued that this might allow the Executive Officer to “indefinitely extend the Permit’s deadlines.” (Petition Memorandum, 7:19-24.) Once again, the actual facts have mooted this potential concern of the Petitioners.



1 22 [emphasis in original].) However, Petitioners' offer absolutely no arguments or factual bases to  
2 support that blanket allegation.

3 The LLAR WMP satisfied the LA MS4 Permit requirements, as demonstrated by the  
4 Executive Officer's final approval letter and the LA Regional Board's decision to uphold the WMPs,  
5 and the Petition's claims otherwise lack any merit.

6 **VI. CONCLUSION**

7 The LA Regional Board and its staff thoroughly reviewed Petitioners' claims. The LA  
8 Regional Board, after hearing from its staff, from Permittees demonstrating specific actions underway,  
9 and considering the exact terms of the LA MS4 Permit, concluded that there was substantial evidence  
10 to support the Executive Officer's decision to approve the LLAR WMP and other WMPs. Similarly,  
11 substantial evidence in the administrative record supports this Board's affirmance of the 6-0-1 vote  
12 and decision of the LA Regional Board to uphold the WMPs.

13 Furthermore, the Petition Addendum is untimely and should be rejected on that ground alone.  
14 To the extent that this Board were to consider the Petition Addendum, the arguments therein fail for  
15 both legal and factual reasons and should be rejected.

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

19 DATED: January 15, 2016

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