

**Regional Board Staff's Response to Petition for Review of the Executive Officer's approval, with conditions,
of nine Watershed Management Programs (WMPs)
pursuant to the Los Angeles County MS4 Permit (Order No. R4-2012-0175)**

Contention No.	Summary of Contention	Staff Response
1	<p>In reviewing the Executive Officer's decision, both the Regional and State Boards must exercise their independent judgment as to whether the Executive Officer's action is reasonable. (<i>See Stinnes-Western Chemical Corp.</i>, State Board WQ Order No. 86-16 (1986).) The Executive Officer's action constitutes an "[a]buse of discretion...if [he] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Cal. Civ. Proc. Code § 1094.5(b); <i>see also Zuniga v. Los Angeles County Civil Serv. Comm'n</i> (2006) 137 Cal.App.4th 1255, 1258 (applying same statutory standard).) "Where it is claimed that the findings are not supported by the evidence, . . . abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (Cal. Civ. Proc. Code § 1094.5(c).)</p>	<p>No specific standard of review applies to the Regional Board's review of the Executive Officer's action to approve, with conditions, nine WMPs. The Regional Board is not acting as an appellate body in this matter. Since the Executive Officer acted pursuant to delegated authority on behalf of the Regional Board, the Regional Board is, in essence, being asked to reconsider its own action. The Regional Board is not required to determine whether the Executive Officer's action constituted an abuse of discretion. Rather, in this instance, the Regional Board may consider whether the Executive Officer's action to approve the WMPs, with conditions, was appropriate and proper. At the conclusion of its review, the Regional Board may, for each of the nine WMPs, either: 1) ratify the Executive Officer's approval, 2) overturn the Executive Officer's approval, or 3) conduct further proceedings on the petition as determined by the Board. If, in its review, the Regional Board makes new findings of fact, they must be supported by a preponderance of the evidence as the Board would be acting as the initial trier of fact.</p> <p>Further, the standard of review cited by the Petitioners in California Code of Civil Procedure section 1094.5 does not apply to the Regional Board's consideration of the petition. That section applies when a court is reviewing a regional water board's and/or State Water Board's action from an adjudicatory proceeding.</p>
2.1	<p>The Executive Officer improperly acted outside the scope of delegated authority in "conditionally" approving the WMPs because the only authority explicitly delegated to the Executive Officer by the</p>	<p>The Executive Officer acted within the scope of his delegated authority in approving the WMPs with conditions. Pursuant to Water Code section 13223, a regional water board has the authority to delegate any of its powers and duties, with limited</p>

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	<p>Regional Board in the Permit was to approve or deny the WMPs. Such action, therefore, constitutes an abuse of discretion. (Cal. Water Code § 13223(a); <i>see also</i> California Regional Water Quality Control Board Los Angeles Region (April 11, 2014), Resolution No. R14-005 amending Resolution No. R10-009, Delegation of Authority to the Executive Officer.)</p>	<p>exceptions, to its Executive Officer. The Regional Board has done so in a resolution entitled “Delegation of Authority to Executive Officer,” which is periodically updated by the Board, most recently in 2014. (Resolution No. R14-005.) In its delegation, the Regional Board has delegated “to its Executive Officer all powers and duties to conduct and to supervise the activities of the Regional Board,” including, but not limited to, “exercising any powers and duties of the Regional Board.” The Regional Board also specifically delegated to the Executive Officer, in Part VI.C.4 (Table 9) of the Permit, the authority to “approve or deny” a final WMP on behalf of the Regional Board.</p> <p>Petitioners assert that the Executive Officer acted beyond his delegated authority because the Regional Board did not specifically authorize the Executive Officer to “conditionally approve” the WMPs. The Petitioners also appear to assert that, even if the Regional Board were to have considered approval of the WMPs itself, it also would not have had any legal authority to approve a WMP with conditions, and could have only provided an unconditional approval or denied the WMP in its entirety. Petitioners are interpreting the delegation of authority to the Executive Officer literally and narrowly, which is not supported by the terms of the Permit or the practice of this Regional Board. While the Permit says that the Regional Board, or the Executive Officer on behalf of the Regional Board, must approve or deny the final WMP by a time certain, the Permit does not dictate that any approvals must be unconditional or include any other language limiting the discretion of the Board in the specific manner of approving a WMP. Thus, the Regional Board did not limit itself, or the Executive Officer, to only strictly approving or denying a WMP.</p> <p>The Executive Officer’s action to approve, with conditions, the nine WMPs was an action within the broad scope of authority</p>

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		<p>delegated to the Executive Officer by the Regional Board in Resolution No. R14-005, as well as within specific delegated authority in the Permit. In Part VI.C of the Permit, the Regional Board provides the Executive Officer with broad authority pertaining to administering the WMP/EWMP provisions on behalf of the Board, including authority to approve or deny WMPs (Part VI.C.4.c), approve or deny requests for modifications to certain deadlines in a WMP/EWMP (Part VI.C.4.g & Part VI.C.6.a), approve or deny integrated monitoring programs and coordinated integrated monitoring programs (Part VI.C.7), require modifications and updates to a WMP/ EWMP (Part VI.C.8.b.i), and review and approve modifications to WMPs/EWMPs (Part VI.C.8.b.i). Unless specifically limited, delegated authority is broadly construed. (see <i>County of San Diego v. Bowen</i> (2008) 166 Cal.App.4th 501, 509-510 [California Legislature's broad delegation of authority to the Secretary of State to regulate voting systems includes the authority to condition approval of the use of particular voting machines on certain procedural safeguards, including postelection tallies]).</p> <p>In addition, a well-established principle of administrative law provides that an agency's authority to approve or disapprove inherently includes the authority to approve with conditions. The petitioners in <i>Connecticut Fund for the Environment, Inc. v. EPA</i> (2d Cir. 1982) 672 F.2d 998, made a very similar argument to what Petitioners assert in this matter. In that case, an environmental group asserted that USEPA could not conditionally approve a state implementation plan under the Clean Air Act because the statute required USEPA to "approve or disapprove" the plan within four months of submission. Under USEPA's conditional approval procedures, a plan that is in substantial compliance with the Act may be conditionally approved as satisfying the Act if the state provides strong</p>

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		<p>assurances that the remaining minor deficiencies will be remedied within a specified short period. (<i>id.</i> at p. 1005.) The environmental group argued that the literal “approve or disapprove” language and the absence of any mention of conditional approvals in the Clean Air Act precluded USEPA’s conditional approval. (<i>id.</i> at p. 1006.) The Court of Appeal for the Second Circuit declined to construe the Act as allowing only outright approval or disapproval of state plans. The Court held: “But this Court has held that an agency’s power to approve conditionally is inherent in the power to approve or disapprove.” (<i>ibid.</i>) The Court further held: “[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.” (<i>ibid.</i>) The Court further noted that a 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. (<i>ibid.</i> [citing <i>U.S. v. Chesapeake & Ohio Ry.</i>, 426 U.S. 500, 514 [involving the Interstate Commerce Commission’s powers under the Interstate Commerce Act]]). Lastly, the Court stated that the conditional approval mechanism, in the context of the Clean Air Act, gave USEPA the necessary flexibility to work more closely with the states and that it generally deferred to USEPA’s choice of methods to carry out its difficult and complex job as long as that choice is reasonable and consistent with the Act. (<i>ibid.</i>)</p> <p>Here, the authority to conditionally approve is a necessary and proper exercise of the Executive Officer’s power to accomplish the purpose for which the Regional Board delegated its authority</p>

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		<p>in the Permit. In addition, a permitting agency is given substantial deference by appellate bodies in interpreting its own permits. As such, it is proper and reasonable for the Regional Board to interpret the Executive Officer's delegated authority to provide the flexibility of an approval with conditions to fulfill the goals of the Permit. Using his discretion, the Executive Officer determined that denial of the WMPs on the basis of needing the types of revisions described below was not warranted and could be appropriately addressed within a specified short period through individually tailored approvals with conditions to address these items.</p> <p>USEPA also utilizes 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), USEPA specifically allows the use of conditional approvals in carrying out its review of a state's water quality standards under Clean Water Act section 303(c). This is despite any express "conditional approval" language in section 303(c).</p> <p>Moreover, the Executive Officer's action conditionally approving the WMPs is wholly consistent with a long-standing practice of this Regional Board to approve submitted documents with conditions when deemed appropriate. When appropriate, the Executive Officer regularly conditionally approves submitted documents on behalf of the Regional Board, including monitoring plans, TMDL work plans, permit workplans, and site cleanup workplans and remedial action plans. The Executive Officer's authority to approve such documents is either pursuant to the Executive Officer's general delegation or in Regional Board adopted permits or regulations. For example, TMDLs adopted by the Regional Board as Basin Plan amendments</p>

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		<p>often authorize the Executive Officer to “approve” TMDL work plans and monitoring plans on behalf of the Board. The Executive Officer has issued numerous conditional approvals of TMDL work plans and monitoring plans over at least the last decade. Like the Permit, these TMDLs do not specify that such approvals must be without conditions.</p> <p>Board staff is not aware of any prior situation where the Petitioners, or any other person/entity for that matter, has challenged the Regional Board Executive Officer's conditional approval of a document. Also, if the delegation to the Executive Officer in the Permit to “approve or deny” a WMP literally only means the Executive Officer was required to approve the WMP without any conditions or deny it in its entirety, such an interpretation could, going forward, impact other Regional Board programs.</p> <p>Other regional water boards, as well as the State Water Board, also routinely issue conditional approvals pertaining to both water quality and water rights matters. This common practice by the Water Boards recognizes that regional water boards and the State Water Board require flexibility to manage their programs efficiently and effectively.</p> <p>Lastly, it should be noted that the Executive Officer also approved, with conditions, three of the nine WMPs pursuant to the City of Long Beach MS4 Permit. This was done pursuant to the same delegation language contained in both the Los Angeles County and City of Long Beach MS4 permits. Yet, the Petitioners do not seek review of the Executive Officer's approval, with conditions, pursuant to the City of Long Beach MS4 Permit. The deadline for Petitioners to seek review has passed and those approvals, with conditions, are final. If the Executive Officer had authority to conditionally approve WMPs</p>

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		pursuant to the City of Long Beach MS4 Permit, it is unclear why Petitioners would assert that no such authority existed as to the Los Angeles County MS4 Permit.
2.2	Because the nine WMPs, as finally submitted, failed to meet the program development requirements by the designated schedule set forth in the Permit, neither the Regional Board nor the Executive Officer on its behalf could approve the final WMPs. The only course of action available to the Executive Officer pursuant to the Permit was to deny the final WMPs by the April 28, 2015 deadline.	<p>As noted above, neither the Regional Board nor its Executive Officer was limited to only approving the WMPs without conditions or denying them in their entirety. Like the Executive Officer, the Regional Board would have had similar authority to approve the WMPs, with conditions.</p> <p>As discussed below, the Executive Officer determined that the nine WMPs did meet the program development requirements by the designated schedule set forth in the Permit. As such, both the Regional Board, and the Executive Officer on behalf of the Regional Board, could have decided to approve the final WMPs.</p>
2.3	The Executive Officer's conditions were aimed at correcting the WMPs' failures to comply with the Permit requirements and clearly demonstrate that the WMPs should have been properly denied on April 28, 2015.	The Executive Officer's conditions did not generally require fundamental changes to the WMPs. Rather, the conditions largely requested revisions such as providing additional supporting or clarifying information, providing consistency within the WMP, and correcting typographical errors. Some of the conditions were related to lack of detail, particularly for actions/projects to be conducted later in WMP implementation, in future permit cycles, or due to lack of data (e.g., source assessment and model calibration), which can only be remedied with data collection. In the conditional approval letters, the Executive Officer required that Permittees refine and recalibrate the RAA as new data become available. In adopting the Permit, it was not the Board's intent to create an impossible situation whereby, due to lack of data, a WMP could not be approvable within the specified timeframe. In addition, the Permit specifies a focus on deadlines during the current term (through 2017) and next 5-year permit term, recognizing that project details would be fewer for later implementation phases. Through the adaptive

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		<p>management program and updates to the WMP, the Permittees are expected to add details to later implementation phases as those phases near.</p> <p>Using his discretion, the Executive Officer determined that denial of the WMPs on the basis of needing the types of revisions described above was not warranted and could be appropriately addressed through individually tailored approvals with conditions to address these items. This was particularly in light of the newness of the WMP permit provisions and the significant effort made by the Permittees in developing their WMPs consistent with these provisions. The development of these watershed programs is an accomplishment never before conducted by the Permittees and has required a learning process. In addition, denial of the WMPs on the basis of needing these types of revisions could have delayed timely implementation of the Permit. The Executive Officer determined that it was more beneficial to approve the WMPs with conditions and a short period to address the conditions, such that WMP implementation could begin as soon as possible.</p> <p>Moreover, most of the revised WMPs could have been approved by the Executive Officer without any conditions as the revised WMPs met the requirements of the Permit. However, the Executive Officer chose to approve the WMPs with conditions to ensure that Permittees were fully responsive to the Board's comments on the WMPs.</p> <p>Further, Petitioners assume that all of the Regional Board's comments in its review letters necessarily required a change to be made to the draft WMP or revised draft WMP. In some cases, the Regional Board's comments were addressed without further changes to the WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the</p>

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		<p>submittals of the revised WMPs themselves. Many Permittees included matrixes with their revised WMPs that summarized how each of the staff's comments on the draft WMP were addressed.</p>
2.4	<p>By conditionally approving the WMPs, the Executive Officer provided Permittees an additional 45 days to comply with the Permit's WMP development requirements and thereby improperly extended the Permit's WMP deadlines. This created yet another process and a new, unauthorized schedule that will only defer compliance with the Permit's RWLs and TMDL-limitations.</p>	<p>The Executive Officer's approvals with conditions did not extend the WMP deadlines or create a new unauthorized schedule in the Permit. The schedule in the Permit remains unchanged. For this contention, the Petitioners appear to assert that the approvals with conditions were not actually approvals at all. This is incorrect. The Executive Officer's April 28, 2015 letters approved the WMPs, conditioned on the Permittees making relatively minor revisions within a short timeframe and by a date certain, and required the Permittees to begin implementation of the approved WMP immediately as required by the Permit.</p> <p>Lastly, the method by which the Executive Officer approved the WMPs does not defer a Permittees' compliance with receiving water limitations and TMDL limitations. To the contrary, the Permittees were instructed to begin implementation of their respective WMPs immediately upon approval. By timely approving the WMPs, and providing a short but reasonable time frame for Permittees to make the relatively minor revisions, the Executive Officer's action ensured that there was no delay in implementation. In addition, additional time to address the imposed conditions does not defer compliance with TMDL or receiving water limitations compliance schedules, as TMDL schedules are not changed by WMPs or the dates by which a WMP is approved. Moreover, the Executive Officer clearly stated in his letters that, in the event that "Permittees fail to meet any requirements or date for its achievement in the approved WMP...the [Permittee] shall be subject to the baseline requirements of the LA County MS4 Permit...."</p>

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2.5	<p>The conditional approvals left the extension open-ended, specifying that “[t]he Board <i>may</i> rescind this approval if all of the following conditions are not met to the satisfaction of the Board” by June 12, 2015. Thus, the “conditional approvals” left open the possibility that the Executive Officer/Regional Board <i>may further</i> extend the 45-day deadline and issue another round of conditional approvals beyond June 12, 2015. However, the Executive Officer did not have any authority to indefinitely extend the Permit’s deadlines. Therefore, the conditional approvals’ open-ended extensions are a further abuse of discretion.</p>	<p>The conditional approvals did not leave open the possibility that the Executive Officer may further extend the 45-day deadline and issue another round of conditions. The conditional approval letters clearly stated that the Permittees must submit a final WMP addressing the conditions to the Board’s satisfaction by a specific deadline. Nowhere did the Executive Officer indicate that he would consider granting an extension or issue another round of conditional approvals.</p> <p>In addition, this contention is largely moot as the Executive Officer did not, as the Petitioners feared, extend the deadlines or issue another round of conditional approvals. Final WMPs addressing the Executive Officer’s conditions were submitted in May and June 2015. Between July 2015 and August 2015, the Executive Officer determined that the conditions had been satisfied in all nine final WMPs.</p>
3.1	<p>By conditionally approving WMPs – a procedure nowhere provided for in the 2012 MS4 Permit – the Executive Officer improperly modified the 2012 MS4 Permit in violation of the substantive and procedural requirements of state and federal law. The Executive Officer de facto amended the Permit terms, creating a new process, timeline, and set of standards by conditionally approving WMPs without circulation of a draft permit, public notice, fact sheet, or public hearing date, as required by law. (<i>See Environmental Defense Center, Inc. v. EPA</i>, 344 F.3d 832, 853 (9th Cir. 2003); 40 C.F.R. §§ 124.5-124.15; Cal. Water Code Section § 13223(a).)</p>	<p>Because the Executive Officer’s approvals of the WMPs with conditions was within the scope of delegated authority, as explained above, the Permit did not need to be modified or amended to allow the Executive Officer the authority to approve the WMPs with conditions. As such, the Executive Officer’s inclusion of conditions to the approval of the WMPs did not modify the Permit or amend any of its terms by creating a new process, timeline, or set of standards. The terms of the Permit, including procedures and deadlines pertaining to WMP review and approval, did not change. As such, the procedures noted by the Petitioners, including circulation of a draft permit, public notice, fact sheet, or public hearing, were not required prior to the Executive Officer’s action.</p> <p>Prior to the approvals with conditions of the WMPs, Board staff complied with the public review requirements of the Permit, which requires that “all documents submitted to the Regional</p>

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		<p>Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment." Beginning on July 3, 2014, the Board provided a 46-day public review and written comment period on the draft WMPs. On October 9, 2014, the Board also held a workshop at its regularly scheduled Board meeting to discuss the draft WMPs during which stakeholders and interested persons were provided an opportunity to make oral comments on the draft WMPs to the Board and Executive Officer. In addition, Board staff held a public meeting on April 13, 2015 for Permittees, stakeholders and interested persons to discuss the revised draft WMPs with the Board's Executive Officer and staff. Board members were invited to attend this meeting and several Board members did attend. Throughout the WMP review process, Board staff participated in several meetings, phone calls, and email exchanges with Permittees and interested persons, including Petitioners.</p> <p>Moreover, the WMPs underwent extensive review by Regional Board staff, USEPA Region IX staff, and the public prior to the Executive Officer's action. In conducting its review, Board staff developed a list of review and evaluation questions, which was used to ensure a comprehensive and consistent review of the draft WMPs relative to permit requirements. Each WMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. C.P. Lai. Lead staff were overseen by the MS4 Unit Chief, Mr. Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy. Additionally, Board staff teamed with USEPA Region IX staff to jointly review the draft WMPs. During the review period, Board staff and USEPA staff held conference calls on a weekly basis to discuss the draft WMPs.</p> <p>On the basis of Board staff's review, USEPA Region IX staff's review, and in consideration of written and oral comments made</p>

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		<p>by interested persons, the Board sent letters to the Permittees providing comments on the draft WMPs that identified the revisions that needed to be addressed prior to the Board's approval of the WMPs, and directed the Permittees to submit revised draft WMPs addressing the Board's comments by approximately January 28, 2015 for Board review.</p> <p>Petitioners cite <i>Environmental Defense Center, Inc. v. EPA</i> (9th Cir. 2003) 344 F.3d 832, as support for their contention that the Executive Officer's conditional approval of the WMPs amended the terms of the Permit because an approved WMP becomes substantive terms of the Permit. As described above, the Executive Officer's action did not amend the terms of the Permit. Approved WMPs implement the terms of Permit by detailing the specific actions and milestones a Permittee will abide by to achieve compliance with the terms of the Permit. An approved WMP, however, does not amend the terms of the Permit. The terms of the Permit remain unchanged, including the receiving water limitations and water-quality based effluent limitations. Moreover, <i>Environmental Defense Center</i> is not on point. In that case, environmental groups sought judicial review of a USEPA rule mandating that discharges from small MS4s and construction sites be subject to NPDES permitting requirements. Under the rule, small MS4s could seek permission to discharge by submitting an individualized set of BMPs in six specific categories, either in the form of an individual permit application or in the form of a notice of intent to comply with a Phase II general permit. USEPA did not require that permitting authorities review an NOI before a party who submitted the notice of intent was allowed to discharge. The environmental groups asserted that, by allowing permitting authorities to grant dischargers permits based on unreviewed notices of intent, the rule constituted a program of impermissible regulation and failed to provide required avenues of public</p>

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		<p>participation. (<i>Id.</i> at p. 854.) The Court of Appeal for the Ninth Circuit agreed with the environmental groups in this respect, holding that USEPA failed to require review of notices of intent assuring compliance with Clean Water Act standards and also failed to make notices of intent available to the public. (<i>id.</i> at p. 858.) The Court held: “[S]tormwater management programs that are designed by regulated parties must, in every instance be subject to meaningful review by an appropriate regulatory entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.” (<i>id.</i> at p. 856.)</p> <p>Here, as described above, the WMPs were subject to public review and comment, including at Board and staff level meetings, as well as an opportunity to submit written comments. Petitioners submitted written comments on the draft and revised WMPs. The WMPs also underwent extensive review by Regional Board staff and USEPA Region IX staff to assure compliance with the standards set forth in the Permit. Thus, the WMPs were subject to “meaningful review.”</p>
4.1	<p>The terms of the conditional approvals are inconsistent with Permit requirements and the federal Clean Water Act and therefore establish that the only available course of action for the Executive Officer was to deny the WMPs. Following submission of the initial draft WMPs, Regional Board staff identified numerous and significant failures to comply with Permit requirements and therefore directed Permittees, in writing, to submit revised plans to address the deficiencies. Unfortunately, the revised draft WMPs failed to address virtually all of the identified non-compliance issues. Rather than denying the insufficient WMPs as required by the Permit,</p>	<p>The Executive Officer determined that the nine WMPs, with the conditions imposed, met the WMP permit provisions and the federal Clean Water Act. In addition, as described above, neither the Executive Officer nor the Board itself was limited to only denying the WMPs.</p> <p>Staff disagree that the revised draft WMPs “failed to address virtually all of the identified non-compliance issues.” To the contrary, the Permittees largely addressed all of Board staff’s comments prior to the Executive Officer’s action. However, as previously mentioned, not all of the Regional Board’s comments necessarily required a change to be made to the draft WMP or revised draft WMP. In some cases, the Regional Board’s comments were addressed without further changes to the</p>

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	<p>however, the Executive Officer approved the WMPs with conditions – conditions that fail to address all of the WMP inadequacies previously cited by Regional Board staff itself. This constitutes an abuse of discretion.</p>	<p>WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the submittals of the revised WMPs themselves. Many Permittees included matrixes with their revised WMPs that summarized how each of the staff's comments on the draft WMP were addressed.</p> <p>The petition, including Exhibit D to the petition, as well as the Petitioner's March 25, 2015 comments on the revised WMPs only specifically allege substantive inadequacies of three of the nine WMPs, namely the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP. The Petitioners do not allege any specific challenges to the substantive adequacy of the remaining six WMPs, but still request that the Regional Board invalidate the Executive Officer's approvals with conditions for those six WMPs. Without specific factual allegations concerning an inadequacy of a WMP, the Petitioners have not provided the Regional Board with specific allegations to review. Board staff are thus left to speculate as to Petitioners' concerns with the remaining six WMP and cannot adequately respond to unknown allegations. The Regional Board may determine that the sufficiency of these six WMPs is not properly before the Regional Board in its consideration of the petition.</p> <p>For the Regional Board's reference pertaining to the alleged substantive inadequacies of the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP, Board staff has prepared responses to Petitioners' detailed technical comments in its Memorandum of Points and Authorities and in Exhibit D to the petition. These responses are included in a separate matrix as Attachment 1 to this document.</p> <p>For the Board's further reference, Board staff has also prepared</p>

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		<p>an assessment of the Petitioners' March 25, 2015 comments on the revised WMPs. This assessment is included as an additional matrix as Attachment 2 to this document.</p>
<p>4.2</p>	<p>Reasonable Assurance Analysis Perhaps the most glaring deficiency in the WMPs is the flawed Reasonable Assurance Analysis ("RAA") in each. The RAA is a detailed modeling exercise, intended to ensure that the WMPs implement stormwater pollution control measures of the correct type, location, and size to achieve compliance with WQSs in receiving water bodies. The RAA forms the bedrock for WMP development, and therefore for pollution control and compliance with the CWA for those Permittees that choose to develop WMPs.</p> <p>Moreover, Regional Board staff has also recognized the importance of the RAA in WMP development and implementation and thereby need for a robust analysis. As a result, Regional Board staff generated extensive comments on the RAAs that were described in the initial drafts of the WMPs.</p> <p>Despite the detailed comments from Regional Board staff, and the admonition that failure to conduct the required corrections to the RAA modeling would result in denials, the final draft WMPs for the Lower San Gabriel, Los Angeles River Upper Reach 2, and Lower Los Angeles River WMGs either failed to meaningfully address or completely ignored all of the Regional Board staff's identified comments.</p>	<p>Staff disagrees with the Petitioners' contentions that the conditionally approved WMPs "fail to address any of the RAA inadequacies identified by []staff." As previously noted, the Permittees addressed staff's comments prior to the Executive Officer's action. For specific responses to alleged inadequacies, see Attachment 1, as well as staff's assessment of Petitioners' March 25, 2015 comments on the revised WMPs in Attachment 2.</p> <p>Staff further disagrees that the terms of the conditional approvals will not ensure that the RAA will provide any assurance that WMP implementation will achieve compliance with water quality standards and the Clean Water Act. Like many Permittees, Regional Board staff recognizes that the RAAs are not perfect. At this point, they cannot be. RAAs are modeling exercises that reflect current knowledge, best engineering judgment, and available data. The models used for the RAAs were calibrated using the best available monitoring data, and they will be further refined through the adaptive management process as more data become available from the expanded integrated monitoring programs and coordinated integrated monitoring programs. As previously noted, some of the conditions imposed by the Executive Officer were due to lack of data, which can only be remedied with data collection. As the Board is aware, the Permit required new and expanded monitoring, including new outfall monitoring. As outfall monitoring is conducted, new data will be collected. In adopting the Permit, it was not the Board's intent to create an impossible situation whereby, due to lack of data, a WMP could not be approvable within the specified timeframe. In addition, the</p>

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	<p>Rather than denying the facially inadequate final WMPs as required by the Permit, the Executive Officer, on behalf of the Regional Board, approved the WMPs with conditions that <i>fail to address any of the RAA inadequacies identified by RWQCB staff</i>. Therefore, even if fully complied with, the terms of the conditional approvals will <i>not</i> ensure that the RAA – the basis for development, implementation, and evolution of the pollution control measures to be implemented via the WMPs – will provide <i>any</i> level of assurance that the WMP implementation will achieve compliance with water quality standards and the Clean Water Act, let alone the “reasonable” assurance that the Permit and the State Board require. For this reason alone, the WMPs must be denied.</p>	<p>Permit specifies a focus on deadlines during the current term (through 2017) and next 5-year permit term, recognizing that project details would be fewer for later implementation phases. Through the adaptive management program and updates to the WMP, the Permittees are expected to add details to later implementation phases as those phases near, and update their RAA when directed by the Executive Officer, and at least by June 30, 2021.</p> <p>See Attachment 1 for staff’s responses to the detailed list of RAA contentions identified by Petitioners in their Memorandum of Points and Authorities and Exhibit D to the petition.</p>
4.3	<p>For the Los Angeles River Upper Reach 2 WMP, the revised plan confirms that the model had not been calibrated and is thus an almost entirely speculative exercise.</p>	<p>Because of its small area within the larger Los Angeles River watershed and the lack of monitoring data within the Group’s watershed management area, the Los Angeles River Upper Reach 2 WMP relied upon calibration that has been conducted for the Countywide Watershed Management Modeling System (WMMS). Specifically, the Group used the Countywide calibration to summarize and compare Loading Simulation Program in C++ (LSPC) predicted and observed flows for key locations within the Los Angeles River watershed upstream and downstream of the Los Angeles River Upper Reach 2 watershed management area. The hydrology calibration at both locations was considered “very good” according to the criteria in the Regional Board staff’s RAA guidelines.</p> <p>The Group also used the calibrated Countywide LSPC model to adjust the input parameters of the Structural BMP Prioritization</p>

Contention No.	Summary of Contention	Staff Response
		<p>and Analysis Tool (SBPAT), which the Group elected to use in its RAA, to improve comparability with the County-calibrated LSPC baseline condition outputs. Board staff found this to be a reasonable approach given the limited data currently available within the Los Angeles River Upper Reach 2 watershed management area, but directed the Group to use data collected through its CIMP to refine and recalibrate its RAA through the adaptive management process.</p>
4.4	<p>Substantive Program Requirements Similar to the RAA-related deficiencies, many of the other inadequacies that Regional Board staff originally identified in their October 2015 comments were not addressed by the conditional approvals. A comprehensive list of the substantive requirements of the Permit that the conditional approvals fail to address is provided in Exhibit D to the petition. The failure of the revised WMPs to address these deficiencies should have resulted in denial of the WMPs.</p>	<p>See Attachment 1 for staff's responses to Petitioners' detailed technical comments in its Exhibit D to the petition.</p>