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December 5, 2016

VIA EMAIL ONLY

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov

Re: **Comments to A-2456 – December 6 Board Item [Own Motion Order]; Cities of Aliso Viejo, San Clemente, and San Juan Capistrano**

Dear Ms. Townsend:

The Cities of Aliso Viejo, San Clemente and San Juan Capistrano ("Petitioners") submit the following comments on the December 6, 2016 Proposed Motion Order by the State Water Resources Control Board ("State Board") regarding Petitions for Review A-2456(j), (k) and (*l*) ("Petitions"). The Petitions request the State Board review Order No. R9-2015-0100, amending Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 by the San Diego Regional Water Quality Control Board ("San Diego MS4 Order"). On November 4, 2016, the State Board issued notice that it needed additional time to review the San Diego MS4 Order and the large number of issues raised in the Petitions. The State Board also indicated that it is appropriate to complete review of the petitions on the watershed management programs under an MS4 permit issued by the Los Angeles Regional Water Quality Control Board ("LA WMP Petition") prior to addressing challenges to the San Diego MS4 Order. Pursuant to 23 C.C.R. § 2050(c), the State Board proposes to review the San Diego MS4 Order on its own motion, and thereby extend the period of time for review and action by an additional 270 days.

It should first be noted that the State Board's deadline to act on the Petitions is December 9, 2016. In case the State Board does not act on the Own Motion Order on December 6, the Petitioners have asked the Chief Counsel's office that their Petitions be placed in abeyance out of an abundance of caution as to the timing of the State Board's review and in order to preserve their legal rights.

Petitioners generally support the Own Motion Order recognizing that the State Board has many urgent matters before it. Petitioners submit these comments, however, to impress upon the State Board the importance of resolving the Petitions quickly. Petitioners have challenged the San Diego Regional Board's decision to not provide alternative compliance during the development period of the water quality improvement plans ("WQIP") as well as the jurisdiction and authority of the Regional Board to issue a region-wide permit to the Orange County Permittees. Petitioners have been governed by the San Diego MS4 Order since February 2015 and are implementing certain aspects of the MS4 permit. Petitioners have also begun developing WQIPs and meeting certain WQIP development milestones required by the San Diego MS4 Order. Petitioners believe that they should be afforded immediate compliance during WQIP development consistent with State Board Order No. 2015-075, and that further delays in reviewing the San Diego MS4 Order expose Petitioners to unwarranted challenges and regulatory uncertainty regarding their compliance with the San Diego MS4 Permit. The State Board can resolve this uncertainty by clarifying these issues in a timely fashion. Petitioners request then that the State Board not dismiss the Petitions outright on December 6 or delay adoption of the Own Motion Order and leave the Petitions in abeyance indefinitely. If more time is necessary, Petitioners request the State Board approve the Own Motion Order and act on the Petitions forthwith, either before or concurrently with the LA WMP Petition.

Petitioners provide additional comment on the possibility that the State Board may address the issues raised in the Petitions in the context of the State Board's action on the LA WMP Petition. Petitioners support the efficiencies this may provide in resolving their issues in a timely manner. We encourage the State Board to carefully consider the procedural issues of this option, however, as Petitioners have not formally participated in the LA WMP Petition proceeding and raise issues that are different from those raised by LA petitioners. It is also not clear if the State Board will take up related petitions for review on the San Diego MS4 Order – A-2254 and A-2367 – filed by the Cities of Aliso Viejo and San Clemente and other permittees governed by the Regional Board's Order.

Thank you for the opportunity to comment on the Proposed Own Motion Order.

Sincerely,

Ryan M. F. Baron
for BEST BEST & KRIEGER LLP

cc: Moy Yahya, City of Aliso Viejo
Cynthia Mallett, City of San Clemente
Hossein Ajideh, City of San Juan Capistrano