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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the matter of the Petition of:

THE CITIES OF ARCADIA, CLAREMONT AND COVINA

FOR REVIEW OF ACTION BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, IN ISSUING ORDER NO. R4-2012-0175 (NPDES NO. CAS 004001)

COMMENTS ON STATE WATER RESOURCES CONTROL BOARD DRAFT ORDER WQ 2015- XXXX IN THE MATTER OF REVIEW OF ORDER NO. R4-2012-0175, NPDES PERMIT NO. CAS0004001

[Water Code § 13320(a)]

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I. INTRODUCTION

Petitioners, the Cities of Arcadia, Claremont, and Covina ("Cities" or "Petitioners") hereby submit comments on State Water Resources Control Board ("State Board") Draft Order WQ 2015- XXXX In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS0004001 ("Draft Order"). These comments follow and support the Cities' petition requesting review of California Regional Water Quality Control Board, Los Angeles Region's ("Regional Board") Order No. R4-2012-0175 (NPDES No. CAS 004001) ("2012 Permit").

In addition to their initial petition and associated memorandum of points and authorities, the Cities have filed responses to other petitions, and responses to the State Board's July 15, 2013 request for comments. The Cities have also filed an opposition to the Natural Resources Defense Council's Motion to Strike portions of the Cities' response to the State Board's July 15, 2013 request for comments. The Cities hereby incorporate all of their prior filings in this matter by reference into these comments.

As an initial matter, the Cities would like to emphasize their support for a best management practice ("BMP") based approach to compliance. California's creeks and streams will only see water quality improvements when effective management and control techniques are implemented by all dischargers and responsible parties. Numeric limits are not effective or feasibly attainable. The Cities are informed and believe that other dischargers subject to the 2012 Permit are submitting suggested revisions to the Draft Order and the 2012 Permit. The Cities support any changes to either order that would further confirm a BMP-based approach to compliance.

Likewise, because of the funding limitations imposed by the California Constitution, cities have limited ability to raise funds for pollution control infrastructure. The requirements imposed by the 2012 Permit will take an unprecedented amount of public funds to implement. The Draft Order and the 2012 Permit need to reflect the reality that most cities do not have the resources to implement the controls necessary to attain Water Quality Standards in the short term and will need significant time and cooperation from regulatory authorities to attain Water Quality Standards. In light of this fact, the Cities submit the following comments:

II. REQUIRING STRICT COMPLIANCE WITH RWLS IS A NEW POLICY

The Draft Order claims that the State Board has required strict compliance with receiving water limitations ("RWLs") since 1999. That is not the case. The State Board's policy since 1999 has been to prohibit discharges from municipal stormwater systems that cause or contribute to exceedances of Water Quality Standards, but to allow dischargers to remain in compliance with that requirement by implementing pollution control measures through the iterative process. The Draft Order ignores State Board Order 2001-15, the State Board's most recent precedential order on the issue, and thereby avoids recognizing that the Draft Order if adopted would be a major policy change for the State. Because the Draft Order represents a policy change not mandated by federal law, the State Board must consider economic and other impacts of that change.

A. *The Draft Order Misconstrues Prior State Board Decisions and Ignores State Board Order 2001-15*

In 1991, the State Board concluded that Section 402(p)(3)(B) of the Act required that MS4 permits must contain effluent limitations based on Water Quality Standards in accordance with Section 301 of the Clean Water Act.[1] The State Board reasoned that the maximum extent practicable ("MEP") standard in Section 402(p)(3)(B) only modified the technology-based requirements of Section 301, and left in place the water quality-based requirements of Section 301, even if those requirements were more stringent than MEP. The State Board thus concluded that MS4 permits had to contain water quality-based effluent limitations pursuant to Section 301.

Subsequent State Board decisions expressly confirmed that the State Board intended the RWL language to implement the requirement of Section 301(b)(1)(C) to include more stringent effluent limitations necessary to meet Water Quality Standards.[2] Based on this misinterpretation of the Act, the State Board issued the RWL language that currently applies to all MS4 permits.[3]

[1] State Board Order No. WQ 91-03.
[2] State Board Order No. WQ 98-01.
[3] State Board Order No. 99-05.

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The confusion about whether Section 301 applied to Section 402(p)(3)(B) was understandable prior to 1999 because no precedential legal decision had yet addressed the question. In 1999, however, the 9th Circuit Court of Appeals unequivocally resolved the issue. Considering a challenge to EPA's Phase I stormwater regulations, the 9th Circuit held that the Clean Water Act does not require EPA or the State to require strict compliance with Water Quality Standards:

> 33 U.S.C. § 1342(p)(3)(B) is not merely silent regarding whether municipal discharges must comply with 33 U.S.C. § 1311. Instead, § 1342(p)(3)(B)(iii) replaces the requirements of § 1311 with the requirement that municipal storm-sewer dischargers "reduce the discharge of pollutants to the maximum extent practicable . . ." the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).
>
> (*Id*., at 1165.)

The 9th Circuit left no doubt that strict compliance with Water Quality Standards is not required and that EPA's preferred approach to municipal stormwater permits is to allow dischargers to implement BMPs designed to attain Water Quality Standards. A regulatory scheme where implementing the BMPs is compliance:

> the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards. The EPA has adopted an interim approach, which "uses best management practices (BMPs) in first-round storm water permits . . . to provide for the attainment of Water Quality Standards." The EPA applied that approach to the permits at issue here. Under 33 U.S.C. § 1342(p)(3)(B)(iii), the EPA's choice to include either management practices or numeric limitations in the permits was within its discretion.
>
> (*Id*., at 1166-67.)

An important outcome of the 9th Circuit's decision was that the legal premise that MS4 permits must contain WQBELs, upon which the State Board's RWL language was based, was wrong.

In 2001, the State Board had the opportunity to clarify its RWL language in light of the *Defenders of Wildlife v. Browner* decision in State Board Order WQ 2001-15, *In the Matter of*

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the Petitions of Building Industry Assoc. of San Diego County and Western States Petroleum Assoc. (2001). In discussing the propriety of requiring strict compliance with Water Quality Standards, and the applicability of the MEP standard, the State Board held:

> While we will continue to address Water Quality Standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvements of BMPs, is appropriate. ***We will generally not require "strict compliance" with Water Quality Standards through numeric effluent limits and we will continue to follow an iterative approach, which seeks compliance over time.*** The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced through large and medium municipal storm sewer systems.
>
> (Order 2001-15, pp. 7-8 [emphasis added].)

Following its decision in Order No. WQ 2001-15, State Board policy is, and has been, that Water Quality Standards are to be achieved over time through the iterative process. Yet, the Draft Order flatly ignores this and other aspects of Order No. 2001-15 which clarify that compliance with the iterative process is compliance with permit requirements:

> In reviewing the language in this permit, and that in Board Order WQ 99-05, we point out that ***our language, similar to U.S. EPA's permit language discussed in the Browner case, does not require strict compliance with Water Quality Standards***. Our language requires that storm water management plans be designed to achieve compliance with Water Quality Standards. ***Compliance is to be achieved over time, through an iterative approach requiring improved BMPs.***
>
> (*Id*., at 7 [emphasis added].)

Regardless of how subsequent courts have misinterpreted the State Board's orders, the State Board's intent as discussed in Order No. 2001-15 is clear:

> The difficulty with this language, however, is that it is not modified by the iterative process. To clarify that this prohibition also must be complied with through the iterative process, Receiving Water Limitation C.2 must state that it is also applicable to Discharge Prohibition A.2. The permit, in Discharge Prohibition A.5, also incorporates a list of Basin Plan prohibitions, one of which also prohibits discharges that are not in compliance with water quality objectives. (See, Attachment A, prohibition 5.) Language clarifying that the iterative approach applies to that prohibition is also necessary.

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(*Id*., at 8-9.)

The Draft Order ignores these aspects of Order No. 2001-15 and in fact only references Order 2001-15 as an afterthought in footnotes 39, 40 and 136. Instead, the Draft Order chooses to emphasize court orders that by their nature can only guess at the State Board's intent, and that have continually misconstrued State Board precedent. (*See NRDC v. County of Los Angeles* (9th Cir. 2013) 133 S.Ct. 710.) The State Board's 2001 interpretation of the RWL language remains the State Board's last precedential order on the subject.

Whether existing State Board precedent requires strict compliance with Water Quality Standards is important because the Draft Order claims that the Cities should have to do more to "earn" BMP-based compliance, when existing State Board policy already provides for it. (Draft Order pp. 12-13.) Additionally, misconstruing existing policy allows the Draft Order to avoid considering the environmental, fiscal, and political impacts associated with the policy change.

B. ***New Policy Requires New Consideration of Economic and Other Impacts***

Under the California Supreme Court's holding in *Burbank v. State Water Resource Control Board* (2005) 35 Cal.4th 613 ("*Burbank*"), the State and Regional boards must consider the factors set forth in sections 13263, 13241 and 13000 when issuing an NPDES Permit. (*Id*., at 627.) When reviewing an NPDES permit, the State Board must do the same, especially where the State Board has made changes to the underlying order. (*Id.*, Cal Water Code §§ 13320(c); 13263; 13241; 13000.)

As discussed in the Cities' original petition, the 2012 Permit includes multiple requirements that exceed the requirements of federal law and thus are subject to the analysis required by *Burbank*. The Draft Order agrees, explaining in detail the discretionary nature of the State Board's RWL requirements. (Draft Order pp. 13-14.) Moreover, the Draft Order changes the 2012 Permit's RWL permit requirements to make them more stringent and expensive for the Cities. These changes trigger the State Board's own responsibility to analyze the environmental, fiscal, and political impacts associated with the changes. (*Burbank*, at 618; Draft Order p. 76

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["IT IS HEREBY ORDERED that the Los Angeles MS4 Order is amended as described above in this order"].)

Water Code sections 13000, 13263, and 13241 require much more than an economic analysis. First and foremost, they require an analysis of whether the proposed Permit terms are "reasonable, considering all demands being made and to be made on [receiving] waters." (Cal Water Code § 13000.) They further require an analysis of whether specific permit requirements are necessary given "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, [and] other waste discharges." (Cal Water Code § 13263(a).)

This kind of analysis is important to ensure that decision makers and the public are fully apprised of the costs and benefits of a proposed action. That analysis is especially important with regard to the 2012 Permit and the Draft Order because of the unprecedented costs involved.

There has been no analysis of whether the Water Quality Standards in the Los Angeles and San Gabriel Rivers are even potentially attainable. (Water Code § 13241; California *Assn. of Sanitation Agencies v. State Water Resources Control Bd*. (2012) 208 Cal.App.4th 1438; *City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156.) There has been no assessment of the water quality conditions that can reasonably be achieved in the watersheds at issue, and no meaningful analysis of whether the economic cost of implementing the controls called for in the 2012 Permit or the Draft Order are reasonable in light of the water quality conditions that can be achieved and other demands on the limited budgets of municipalities in the permit area. The State Board needs to revise the Draft Order to include this analysis.

III. BMP-BASED COMPLIANCE IS THE ONLY FEASIBLE PATH FORWARD

The Cities recognize and appreciate that the 2012 Permit and now the Draft Order provide an alternative compliance path for dischargers such that they will not be immediately subject to strict compliance with RWLs or NELs. Because strict compliance with RWLs and NELs is not feasible, it would be an abuse of discretion to adopt a permit or precedential order that imposes such requirements on the Cities. The Cities therefore object to those portions of the 2012 Permit and the Draft Order that endorse or otherwise require a strict compliance regimen.

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A. *Strict Compliance with RWLs and NELs is Not Feasible*

The United States Congress, the EPA, and the State Board have recognized on multiple occasions that municipal stormwater discharges are different, and are best addressed through the implementation of BMPs. (*See e.g.*, 33 U.S.C. § 1342(p).)

Indeed, the EPA has repeatedly expressed a preference for regulating stormwater discharges by requiring the implementation of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations. (U.S. EPA NPDES Permit Writers' Manual (Dec. 1996) pp. 149–150; U.S. E.P.A. Interim Permitting Strategy Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 Fed. Reg. 43761 (Aug. 26, 1996); and U.S. E.P.A. Questions and Answers, 61 Fed. Reg. 57425 (Nov. 6, 1996); *see also Divers' Environmental Conservation Organization v. State Water Resources Control Board* (2006) 145 Cal.App.4th 246, 256-57 [citing *id*.].)

The courts, including the 9th Circuit Court of Appeals, recognize this policy preference. In fact, the 9th Circuit reiterated the EPA's BMP-based approach in *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999):

> the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards. ***The EPA has adopted an interim approach, which "uses best management practices (BMPs) in first-round storm water permits*** . . . to provide for the attainment of Water Quality Standards." The EPA applied that approach to the permits at issue here. Under 33 U.S.C. § 1342(p)(3)(B)(iii), the EPA's choice to include either management practices or numeric limitations in the permits was within its discretion.
>
> (*Id*., at 1166-67 [emphasis added].)

In 2006, the State Board convened a "Blue Ribbon Panel" of experts to determine whether compliance with NELs in stormwater permits was feasible. The panel found that "[m]ost all existing development rely on non-structural control measures, making it difficult, if not impossible to set NELs for these areas" and that "[i]t is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." (*Storm Water Quality Panel Recommendations to the California State Water Resources Control*

Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities, June 19, 2006, pp. 8, 12.)

No new evidence exists to indicate that NELs are now feasible or attainable. There is nothing in the Administrative Record, that gives any indication that compliance with NELs is achievable or in any way feasible, regardless of whether they are in the form of a water quality based effluent limitation ("WQBEL") or strict compliance with RWLs. In fact, the reverse is the case.

The Cities, in conjunction with other petitioners, submitted numerous comments, oral testimony, and reports indicating that compliance with RWL requirements as NELs is simply not feasible. These include the following documents in the Administrative Record:

- City of Los Angeles, Watershed Protection Division, Sanitation Department of Public Works and Stormwater Program: Comments on the Working Proposals for Minimum Control Measures and Non-Stormwater Discharges. RB-AR1508
- Joint Presentation by Association of California Water Agencies, California-Nevada Section of the American Water Works Association, and California Water Association: Community Water System Discharges & The Los Angeles County MS4 Permit. RB-AR1535
- City of Downey: Numeric Standard for Real World? RB-AR1556
- Comment Letter from BIASC and CICWQ. RB-AR5930
- Comment Letter from Building Industry Legal Defense (BILD) Foundation. RB-AR5968
- Comment Letter from Leighton Group. RB-AR5992
- Comment Letter from California Stormwater Quality Association. RB-AR5995
- October 4, 2012 Permit Group Presentation: Comments on the Development of the Greater LA County MS4 NPDES Permit NPDES No. CAS004001. RB-AR18002

As demonstrated by the above cited evidence, it is technically and economically infeasible to strictly comply with Water Quality Standards as end-of-pipe numeric limits. Imposing such requirements goes beyond "the limits of practicability" (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1162).

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B. *Imposing Infeasible Requirements is An Abuse of Discretion and Violation of Law*

Neither the State Board, nor Los Angeles Regional Board has the authority to impose requirements on the Cities that are impossible to achieve. Such action would represent an unlawful abuse of discretion that the 2012 Permit avoids only by including a reasonably attainable alternative BMP-based compliance option.

There is little question that imposing impossible or infeasible requirements is an unlawful abuse of discretion. In *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523 (11th Cir.) *cert. den.*, 519 U.S. 993 (1996), the plaintiff sued JMS Development Corporation ("JMS") for failing to obtain a storm water permit that would authorize the discharge of storm water from its construction project. The plaintiff argued JMS had no authority to discharge any quantity or type of storm water from the project, *i.e.*, a "zero discharge standard," until JMS had first obtained an NPDES permit. (*Id.*, at 1527.) JMS did not dispute that storm water was being discharged from its property and that it had not obtained an NPDES permit, but claimed it was not in violation of the Clean Water Act (even though the Act required the permit) because the Georgia Environmental Protection Division, the agency responsible for issuing the permit, was not yet prepared to issue such permits. As a result, it was impossible for JMS to comply. (*Id.*)

The Eleventh Circuit Court of Appeal held that the Clean Water Act does not require a permittee to achieve the impossible, finding that "Congress is presumed not to have intended an absurd (impossible) result." (*Id.*, at 1529.) The Court then found that:

> In this case, once JMS began the development, compliance with the zero discharge standard would have been impossible. ***Congress could not have intended a strict application of the zero discharge standard in section 1311(a) when compliance is factually impossible.*** The evidence was uncontroverted that whenever it rained in Gwinnett County some discharge was going to occur; nothing JMS could do would prevent all rain water discharge.
>
> (*Id.*, at 1530.)

The 2nd Circuit Court of Appeals addressed a similar issue in the sewage treatment setting. The case involved discharges of pollutants from a sewage treatment plant that were not

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specifically listed in the plant's NPDES permit. The 2nd Circuit held:

> it is impossible to identify and rationally limit every chemical or compound present in a discharge of pollutants . . . Compliance with such a permit would be impossible and anybody seeking to harass a permittee need only analyze that permittee's discharge until determining the presence of a substance not identified in the permit
>
> *Atl. States Legal Found., Inc. v. Eastman Kodak Co.*, 12 F.3d 353, 357 (2d Cir. 1994)

State courts likewise agree. In 2012, the First District California Court of Appeal held in *California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App.4th 1438 that where the State or Regional Board has evidence that a designated use does not exist and likely cannot be feasibly attained, it is unreasonable to require a discharger to incur control costs to protect that use. (*Id.*, at 1460.)

Neither the Clean Water Act nor Porter Cologne requires the Cities to do the impossible. Because the Cities have no choice but to obtain a municipal stormwater permit, the 2012 Permit and the Draft Order, as a matter of law, cannot impose terms that are unobtainable. (*California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App.4th 1438, 1463 ["Where, however, there is evidence that the beneficial use designated is not feasibly attainable, it is the agency's obligation to undertake the actions necessary to ascertain and designate the appropriate beneficial uses"].)

In this case, it is technically and economically infeasible to strictly comply with Water Quality Standards as end-of-pipe numeric limits, and it is technically and economically infeasible to comply with WQBELs expressed as NELs. (Storm Water Quality Panel Recommendations to the California State Water Resources Control Board – *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities,* June 19, 2006, pp. 8, 12.) Requiring the Cities to comply with these requirements at any point in time is an abuse of discretion unless and until the State Board provides evidence that compliance is feasible.

The 2012 Permit and the Draft Order therefore need to be revised to ensure that in all instances compliance with RWLs, TMDLs, and other Water Quality Standard based

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requirements is measured through the implementation of BMPs, not compliance with in stream or end-of-pipe numeric limits. The Watershed Management Plan ("WMP") and Enhanced Watershed Management Plan ("EWMP") compliance options in the 2012 Permit are a good start, but as revised by the Draft Order they will eventually require strict compliance with RWLs and numeric waste load allocations.

The WMP/EWMP compliance option needs to be preserved, but the Cities request that it be revised to ensure that compliance will be measured through implementation of BMPs until such time as the State or Regional Board can demonstrate that compliance with numeric limits is feasible.

IV. ENVIRONMENTAL PETITIONER'S PROPOSAL IS CONTRARY TO LAW AND WILL NOT WORK

Petitioners Natural Resources Defense Council, Los Angeles Water Keeper, and Heal the Bay (jointly the "Environmental Petitioners") have proposed an alternative to the RWL compliance option that was ultimately included in the 2012 Permit. The Environmental Petitioner's proposal would remove the WMP and EWMP compliance option and replace it with a requirement that would require implementation of a time schedule order or other administrative enforcement order.

A. *State and Federal Law Prohibit Imposing Infeasible Requirements*

The Cities appreciate the Environmental Petitioners' efforts to find a compromise on the 2012 Permit. However, there are several reasons why the proposal will not work. First and foremost, removing the BMP-based compliance option from the 2012 Permit will impose strict compliance with RWLs and NELs on the Cities.

As discussed at length above, complying with such requirements is not feasible at this time. Imposing impossible or infeasible requirements is an abuse of discretion and contrary to law. (*California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App.4th 1438; *Hughey v. JMS Dev. Corp.,* 78 F.3d 1523 (11th Cir. 1996); *Atl. States Legal Found., Inc. v. Eastman Kodak Co.*, 12 F.3d 353, 357 (2d Cir. 1994).)

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B. *Time Schedule Orders Have Limited Timelines and Provide Limited Protection From Third Party Suit*

Another reason the Environmental Petitioners' proposal will not work is that Time Schedule Orders and other compliance orders have limited timelines. Water Code section 13385(j)(3)(C) requires Time Schedule Orders and Cease and Desist Orders to be as short as possible but in no event longer than five years. TSO's and CDO's issued for longer periods will not exempt dischargers from mandatory minimum penalties. (*Id*.) Similarly, as described in State Board Order WQ 2007-0004 *Own Motion Review of East Bay Municipal Utility District Wet Weather Permit*, the EPA has indicated that it will not approve NPDES permits with compliance measures dependent on TSO's that exceed the permit term. (*Id*., at FN 111, 130.)

Even the Environmental Petitioners agree that immediate compliance with receiving water limitations is not achievable in many instances and that some additional time to reach compliance is warranted. (Draft Order p. 30.) The Cities and the other dischargers need more than a single permit term to implement their WMP and EWMPs. As the Draft Order aptly recognizes, attaining Water Quality Standards in the urbanized Los Angeles and San Gabriel Watersheds will take time, resources and cooperation from regulatory authorities:

> [W]e find that the MS4 Permittees that are developing and implementing a WMP /EWMP should be allowed additional time to come into compliance with receiving water limitations and interim and final TMDLs through provisions built directly into their permit, rather than through enforcement orders. Building a time schedule into the permit itself, as the Los Angeles MS4 Order does, is appropriate because it allows a more efficient regulatory structure compared to having to issue multiple enforcement orders. More importantly, it is appropriate to regulate Permittees in a manner that allows them to strive for compliance with the permit terms, provided no provision of law otherwise precludes including the schedule in the NPDES permit.
>
> (Draft Permit p. 30.)

The Cities agree that permits are "best structured so that enforcement actions are employed when a discharger shows some shortcoming in achieving a realistic, even if ambitious, permit condition and not under circumstances where even the most diligent and good faith effort will fail to achieve the required condition." (Draft Order p 31.)

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More importantly from the Cities' perspective is the current state of the law on whether administrative enforcement orders protect dischargers from third party lawsuits brought under the Clean Water Act. Some courts, including the 9th Circuit, have held that it does not. (*See Sierra Club v. Chevron USA* (9th Cir. 1987) 834 F.2d 1517 [an administrative enforcement action by the EPA is not a court action for the purposes of the Federal Clean Water Act's citizen suit provisions].)

This issue has some up again and again during the 2012 Permit petition process. The Cities do not dispute that in some instances third party lawsuits provide a very effective tool for attaining water quality improvements. However, if the administrative enforcement orders that the Environmental Petitioners propose do not provide any level of protection for the dischargers, the purpose of the offered compromise is utterly frustrated. For that reason, the Cities support the portions of the Draft Order that reject the Environmental Petitioners' alternative option and request that they remain in the final order.

V. CHANGES TO THE EWMP PROGRAM REMOVE THE PRIMARY INCENTIVE FOR INVESTING IN LARGE SCALE 85TH PERCENTILE PROJECTS

The Draft Order includes several changes to the EWMP compliance option. Under the 2012 Permit, a discharger that chooses the EWMP compliance option must among other things, develop and implement BMPs that will capture 100% of the runoff from the 85th percentile storm event within their jurisdiction. Dischargers who implement an EWMP are deemed in compliance with the 2012 Permit's final WQBELs and other TMDL-specific limitations as well as the 2012 Permit's RWL requirements. A reasonable assurance analysis ("RAA"), and additional future actions are not required. The certainty of not having to do additional RAAs or design contrast and manage additional BMPs is the primary incentive for doing an EWMP.

The Draft Order proposes to change this very important aspect of the EWMP program and require an RAA, and potential additional BMPs to ensure Water Quality Standards are being met. This change removes the primary incentive for doing an EWMP. Without this incentive, a discharger might as well do a WMP and save the time and expense necessary to attain 85th percentile retention. If dischargers abandon the EWMP process in favor of WMPs, the State

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Board will have missed an opportunity to improve water quality throughout the Los Angeles and San Gabriel Watersheds.

A. *There is Ample Evidence of the Benefits of 85th Percentile Projects in the Administrative Record*

Attaining the 85th percentile retention standard required by the EWMP process is not easy. Many dischargers cannot take advantage of the EWMP option because they lack the available open space to install BMPs and/or it is technically infeasible (because of soil or other conditions) to build the BMPs required to capture the 85th percentile storm event within the city's jurisdiction. There are many benefits to this approach, and the Administrative Record includes numerous studies and other evidence that BMPs can be used to improve water quality, and thus to attain Water Quality Standards. The following documents provide a factual basis for the 2012 Permit's BMP based approach:

- Community Conservancy International. The Green Solution Project: Identification and Quantification of Urban Runoff Water Quality Improvement Projects in Los Angeles County. Technical Report, Analysis and Mapping by Geosyntec Consultants and GreenInfo Network, March 2008. RB-AR29180.
- The Council for Watershed Health, Geosyntec Consultants, and Santa Monica Bay Restoration Commission. Stormwater Recharge Feasibility and Pilot Project Development Study: Final Report. Prepared for the Water Replenishment District of Southern California, August 20, 2012. RB-AR29263
- Design Storm. Presentation to SCCWRP Commission Technical Advisory Group.17 pp. [undated]. RB-AR29312
- Dreher, Jim Sullivan and Scott Taylor, Presentation from California Department of Transportation, Design Storm for Water Quality. Design Storm Meeting, March 20, 2006. RB-AR29329
- National Research Council. Urban Stormwater Management in the United States. Prepublication Copy. Oct. 15, 2008. RB-AR29507
- SCCWRP, Evaluation of Exceedance Frequencies and Load Reductions as a Function of BMP Size. Presentation to Project Steering Committee, June 12, 2007. RB-AR30036
- SCCWRP, Exceedance Frequency and Load Reduction Simulation: Evaluation of Three BMP Types as a Function of BMP Size and Cost. Presentation to Project Steering Committee, July 18, 2007. RB-AR30065
- SCCWRP Technical Report 520, Concept Development: Design Storm for Water Quality in the Los Angeles Region, October 2007. RB-AR30096

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B. *Additional Findings Connecting the EWMP Process to WQS Are Not Necessary*

There is no question that the State board and the Regional Boards are not required to tie municipal stormwater permits directly to Water Quality Standards. (*See Defenders of Wildlife*

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(9th Cir. 1999) 191 F.3d 1159; State Board Order No. 2001-15.) This obviates the need under federal law to find that the specific programs and BMPs required in the 2012 Permit would ultimately meet Water Quality Standards. To the extent that state law, as dictated in State Board Orders, requires a tie to Water Quality Standards, the Regional Board was only required to demonstrate that the iterative approach will improve overall water quality and reduce the likelihood that discharges from the Cities' MS4 will cause or contribute to an exceedance of Water Quality Standards.

There is ample evidence in the record to demonstrate that the EWMP process will improve water quality and eventually eliminate discharges from the Cities' MS4 that cause or contribute to an exceedance of Water Quality Standards. A specific factual analysis of whether the required BMPs will ultimately attain Water Quality Standards is not required, nor was such factual information available at the time of permit adoption. The many studies, reports, and comments in the Administrative Record are sufficient to support the EWMP compliance option. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.)

C. *At a Minimum, the State Board Should Keep the Existing EWMP Process to Gain the Benefits that 85th Percentile Projects Provide*

Because state and federal law do not require municipal stormwater permits to strictly adhere to Water Quality Standards or incorporate TMDLs as NELs, the State Board is not compelled to make the EWMP process more stringent. In fact, by making the changes proposed in the Draft Order, the State Board risks losing the other benefits of the EWMP option. Cities simply will not pursue this option if they get no real benefit from it.

Moreover, because the Draft Order will be precedential when adopted, and because it expressly includes direction to other Regional Water Quality Control Boards across the State, the policy choice the State Board would be making by revising the EWMP process could set back water quality benefits across the State. For that reason, the Cities ask that the Draft Order be revised to omit the proposed changes to the EWMP compliance option.

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VI. THE DRAFT ORDER SHOULD INCLUDE EXPRESS RECOGNITION THAT FUNDING AVAILABILITY CAN BE A REASON TO EXTEND DEADLINES FOR ALL WMP, EWMP, AND TMDL BASED REQUIREMENTS

When incorporating TMDLs and Water Quality Standards into NPDES permits, the Regional Board is required to follow Federal Regulations. (23 Cal Code Regs § 2235.2 ["Waste discharge requirements for discharge from point sources to navigable waters shall be issued and administered in accordance with the currently applicable federal regulations for the National Pollutant Discharge Elimination System (NPDES) program"].) The decision to include them in the first place is discretionary. (*Defenders of Wildlife* (9th Cir. 1999) 191 F.3d 1159.)

The Draft Order expresses a recognition that attaining Water Quality Standards will take time and resources; longer than the 2012 Permit term, and potentially a term or two after that. The Environmental Petitioners likewise do not deny that attaining Water Quality Standards will take longer than the existing permit term. (Draft Order p. 30.) The Cities appreciate the consideration that the State Board is giving to this issue. The Cities support changes to the 2012 Permit that would allow the Cities to extend timelines for their WMPs and EWMPs.

A. *The Cities May Need Extensions for WMP, EWMP and TMDL-Based Deadlines*

There are numerous reasons why EWMP deadlines might need extending: new monitoring data demonstrating the insufficiency of a planned BMP; project delays related to construction; and lack of funding. The State and Regional Board have full authority to modify the timelines for the WMP and EWMP compliance options. The Draft Order includes revisions to the 2012 Permit that expressly allow for extensions. (Draft Order p. 31-32.)

The Cities requests that the Draft Order (and therefore the 2012 Permit) be revised to expressly state that the inability to construct projects after all reasonable attempts by the discharger to obtain the necessary funding is a valid reason to extend deadlines associated with a WMP or an EWMP. Without this express acknowledgement, the Cities and other dischargers could find themselves in a position where they are required to meet deadlines in their WMP or EWMP without the means to construct the required infrastructure.

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B. *Permit-Based Extensions Should Be Allowed for TMDL-Based WQBELs*

The Cities further request that extensions to TMDL water quality based effluent limits ("WQBELs") be allowed as well. The Draft Order goes out of its way to deny extensions for TMDL-based WQBELs without explanation. (Draft Order p 35.) These portions of the Draft Order should be revised. The same reasons exist for extensions of TMDL based WQBELs as would exist for any other deadline in a WMP or EWMP. The Draft Order does not provide a rational basis for denying the extension opportunity for TMDL based WQBELs. Currently the only explanation is as follows:

> With regard to final deadlines for WQBELs and other TMDL-specific limitations, we will not amend the WMP/EWMP provisions to add flexibility for extensions. We find that the only option appropriately available to a Permittee unable to meet final deadlines that are set out in a TMDL and incorporated into the Los Angeles MS4 Order and the WMP/EWMPs, is to request a time schedule order
>
> (Draft Order p. 36.)

California law requires more than a conclusory statement when making major policy decisions. There must be findings and evidence to demonstrate the basis for the decision. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514; Cal Code Civ Pro § 1094.5.) The Draft Order does not meet this requirement. It must explain why the State Board is denying the Cities the ability to obtain "in-permit" extensions for compliance with TMDL based WQBELs and provide evidence supporting this change.

It is the Cities' position that the State Board has the discretion to allow such extensions (*Defenders of Wildlife* (9th Cir. 1999) 191 F.3d 1159; State Board Order No. 2001-15) and that a failure to allow them amounts to an abuse of discretion. For that reason, the Cities requests that the State Board revise the Draft Order to allow extensions for TMDL based WQBELs.

VII. THE DRAFT ORDER'S DECISION ON JOINT LIABILITY VIOLATES APPLICABLE LAW

The Draft Order finds that the Regional Board has full authority to impose joint liability on the Cities and the other dischargers. (Draft Permit p. 63 ["[g]iven the size and complexity of the MS4s regulated under the Los Angeles MS4 Order and the challenges inherent in designing a

monitoring program that could parse out liability for each individual Permittee, we find that a joint responsibility regimen is a reasonable approach to assigning initial liability"].)

Neither the State Board nor the Regional Board has authority to impose such liability on the Cities. (40 C.F.R. § 122.26(b)(1); *City of Modesto Redevelopment Agency v. Superior Court*, (2004) 119 Cal.App.4th 28, 44 ["The legislature did not intend the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 *et seq.*, to impose liability on those with no ownership or control over the property or the discharge, and whose involvement in a discharge was remote and passive"].)

Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." (Water Code § 13263(f).) Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." (Water Code § 13350(a).) In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. (33 U.S.C. § 1319.)

The Draft Order nevertheless finds that the joint liability regime included in the 2012 Permit is within the Regional Board's authority because it merely requires the discharger to demonstrate that discharges from its system did not cause or contribute to the violation at issue. (Draft Order pp. 62-63.)

This reversed burden of proof illicitly creates a presumption of "guilty until proven innocent." (Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).) In the event of enforcement, it is the Regional Board who has the burden of proof to establish a Clean Water Act violation. Requiring permittees to prove a negative in the case of a commingled discharge is unfair and unlawful. (*Rapanos v. United States*, 547 U.S. 715, 745 (2006); *Sacket v. E.P.A.*, 622 F.3d 1139, 1145-47 (9th Cir. 2010) ["We further interpret the CWA to require that penalties for noncompliance with a compliance order be assessed only after the EPA proves, in district court, and according to traditional rules of evidence and burdens of proof, that the defendants violated the CWA in the manner alleged in the compliance order."].)

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The Clean Water Act is not a contribution statute; neither is Porter Cologne. (*City of Modesto Redevelopment Agency v. Superior Court*, (2004) 119 Cal.App.4th 28, 44.) While it would clearly make enforcement easier for the State and Regional Board's if that were not the case, the law prohibits the compliance regime the Draft Order is attempting to create.

The portions of the 2012 Permit that create joint liability as well as the proposed revisions in the Draft Order must therefore be removed from both the Draft Order and the 2012 Permit.

VIII. DISCHARGES FROM THE MS4 ARE SUBJECT TO THE MEP STANDARD; ANY OTHER STANDARD IS IMPOSED UNDER STATE LAW AND MUST COMPLY WITH STATE LAW LIMITATIONS

Contrary to the requirements in the 2012 Permit and the analysis at pages 57-60 of the Draft Order, discharges *from* the MS4 are subject to the Maximum Extent Practicable ("MEP") standard. Section 402(p)(3)(B) of the Clean Water Act entitled "Municipal Discharge" provides, in its entirety, as follows:

> Permits for discharges from municipal storm sewers –
>
> (i) may be issued on a system– or jurisdictional– wide basis;
>
> (ii) shall include a requirement to ***effectively prohibit non-stormwater discharges into the storm sewers***; and
>
> (iii) shall require controls to reduce ***the discharge of pollutants to the maximum extent practicable***, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
>
> (33 U.S.C. § 1342(p)(3)(B) [emphasis added].)

Thus, the plain language of the CWA requires MS4 Permits to "require controls to reduce the discharge of pollutants to the maximum extent practicable. . . and such other provisions as the Administrator or the State deems appropriate." (*Id.*) There is no distinction between the discharge of "stormwater" or "non-stormwater" or the discharge of dry weather flows and wet weather flows from the MS4.

The Draft Order contends that the "effectively prohibit" requirement of Section 402(p)(3)(B)(ii) must apply to end-of-pipe discharges as well because any other reading "would

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render the effective prohibition of non-storm water in section 402(p)(3)(B)(ii) meaningless." The irony is that the reading of the statute espoused by the Regional Board and the Draft Order would likewise render the MEP standard meaningless. It also misconstrues the basic premise of section 402(p): that municipal operators will establish programs to prevent illicit discharges into the MS4, and reduce discharges from the system to the MEP.

The State Board addressed this issue in Order 2001-15, expressly stating that discharges into an MS4 are subject to a more flexible standard, holding:

> We find that the permit language is overly broad because it applies the MEP standard not only to discharges "from" MS4s, but also to discharges "into" MS4s. . . the specific language in this prohibition too broadly restricts all discharges "into" an MS4, and does not allow flexibility to use regional solutions, where they could be applied in a manner that fully protects receiving waters.
>
> (State Board Order 2001-15, at 7.)

Nothing in Section 402(p)(B)(ii) or anywhere else in the Clean Water Act authorizes a blanket prohibition of non-stormwater discharges "through" or "from" the MS4. The statements from the Federal Register cited in the Draft Order are inapposite. (Draft Order p. 58.) They refer to third party discharges into an MS4 and the need to regulate those discharges either independently, or before they enter the system. They do not justify rewriting the Clean Water Act. If they did, EPA would have clearly included the prohibition in its Phase 1 regulations. 40 C.F.R. section 122.26 includes no such prohibition.

The risk for the Cities and other dischargers is not that the Regional Board will use a non-stormwater discharge prohibition to impose WQBELs. The risk is that under the Draft Order's flawed interpretation of Section 402(p), any dry weather discharges from the MS4 could be construed as a violation of the Clean Water Act. This was not the intent of section 402(p) and any reading that would justify that outcome is contrary to law.

Nevertheless, to the extent that the State Board seeks to impose a prohibition on "non-stormwater" discharges from the MS4, it does so under state law. Pursuant to the California Supreme Court's decision in *Burbank v. State Water Resource Control Board* (2005) 35 Cal.4th 613 ("*Burbank*"), the State and Regional boards must consider the factors set forth in sections

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13263, 13241 and 13000 when issuing NPDES Permit. (*Id*., at 627.) When reviewing an NPDES permit, the State Board must do the same, especially where the State Board has made changes to the underlying order. (*Id*., Cal Water Code §§ 13320(c); 13263; 13241; 13000.)

Water Code sections 13000, 13263, and 13241 require much more than an economic analysis. First and foremost, they require an analysis of whether the proposed permit terms are "reasonable, considering all demands being made and to be made on [receiving] waters." (Cal Water Code § 13000.) They further require an analysis of whether specific Permit requirements are necessary given "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, [and] other waste discharges." *Hughey v. JMS Dev. Corp.*, (11th Cir., 1996) 78 F.3d 1523.)

As discussed above, imposing infeasible requirements is not reasonable, and is not supported by the Clean Water Act or Porter Cologne. (*See e.g. California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App.4th 1438.) Because of the nature of municipal storm sewer systems, it would be impossible to fully prevent dry weather flows from discharging from the MS4. The "non-stormwater" discharge prohibitions therefore must be removed from the 2012 Permit, and the corresponding analysis supporting the 2012 Permit removed from the Draft Order.

IX. THE CITIES SUPPORT PORTIONS OF THE DRAFT ORDER ON ANTI-BACKSLIDING AND ANTI-DEGRADATION

The Cities support the portions of the Draft Order discussing Anti-degradation and Anti-backsliding. It remains the Cities' position that including a BMP-based compliance option in the 2012 Permit does not violate the Clean Water Act or Porter Cologne. The Cities have submitted several pleadings, incorporated into these comments by reference, endorsing this approach.

X. THE DECISION TO IMPOSE STRICT COMPLIANCE WITH RWLS IS BURDEN SHIFTING

Attaining Water Quality Standards is the State's responsibility. (33 U.S.C. § 1313; 40 C.F.R. § 131.4(a).) As the permitting agency, the State has control over the full range of dischargers in a watershed; the ability to limit pollutant discharges into waters of the State; and the ability revise Water Quality Standards if they are not attainable. The Draft Order

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nonetheless views attainment of Water Quality Standards as the Cities' responsibility without regard to the appropriateness of the underlying State-adopted standards. (Draft Order p. 14 ["many water quality standards are in fact not being met by many MS4s"].)

Imposing strict compliance with RWLs on the Cities shifts the burden of ensuring that Water Quality Standards are attained from the State to the Cities. The Cities, along with the other dischargers operating under the 2012 Permit will be held liable if the Los Angeles or San Gabriel Rivers are not attaining Water Quality Standards. The Cities are thereby required to become the watershed manager in a manner that greatly exceeds their responsibilities under the Clean Water Act, and without the fiscal tools that the State has to implement water quality improvement programs.

In 1978, through Proposition 13, voters added added Article XIII A to the California Constitution. Billed as a property-taxpayer relief measure, it included "an interlocking 'package' of a real property tax rate limitation (Article XIII A, § 1), a real property assessment limitation (Article XIII A, § 2), a restriction on state taxes (Article XIII A, § 3), and a restriction on local taxes (Article XIII A, § 4)." (*Amador Valley Joint Union High Sch. Dist. v. St. Bd. of Equalization*, 22 Cal.3d. 208, 231 (1978).)

Specifically, Article XIII A, section 4 placed limitations on local agencies by establishing a two-thirds voter approval requirement for any special tax to be imposed by cities, counties, and special districts.

In 1979, the voters approved Proposition 4, which added California Constitution article XIII B ("Article XIII B"). While Proposition 13 limited State and local governments' power to increase taxes, Proposition 4 imposed a complementary limit on the rate of growth in government spending. (*San Francisco Taxpayers Ass'n v. Bd. of Supervisors*, 2 Cal. 4th 571, 574 (1992).) "Articles XIII A and XIII B work in tandem, together restricting California governments' power to both levy and to spend [taxes] for public purposes." (*City of Sacramento v. State of Calif.*, 50 Cal. 3d 51, 59 n. 1 (1990).)

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Notably, Article XIII B also included provisions intended to prevent State government attempts "to force programs on local governments without the state paying for them." (*County of Sonoma v. Comm'n on State Mandates,* 84 Cal.App.4th 1264, 1282 (2000).)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. The provision was intended to preclude the State from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. Specifically, it was designed to protect the tax revenues of local governments from State mandates that would require expenditure of such revenues. (*County of Fresno v. State of Calif*., 53 Cal.3d482, 487 (1991).)

Additional restrictions on the ability of local governments to raise revenue were implemented in 1996, when voters approved Proposition 218. The initiative amended the California Constitution by adding Article XIII C and Article XIII D. Article XIII C section 3 established voter approval requirements for general and special taxes and provided the initiative power to voters to reduce or repeal any local tax, assessment, fee or charge, and further made such power of initiative applicable to all local governments. Article XIII D established procedural requirements for levying assessments and imposing new, or increasing existing, property-related fees and charges. Additionally, it placed substantive limitations on the use of the revenue collected from such assessments and property-related fees and charges and on the amount of the assessment and fee or charge that may be imposed on each parcel.

California Courts have interpreted Proposition 218 as prohibiting municipalities from charging fees for stormwater management and control without voter approval. (*Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App. 4th 1351, 1353.) As was most recently seen in Los Angeles County, obtaining that approval can be difficult and in some cases impossible. (*L.A. County to revise proposed parcel tax to fight polluted runoff*, Los Angeles Times, March 12, 2013; available at http://articles.latimes.com/2013/mar/12/local/la-me-stormwater-20130313.)

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In light of the funding restrictions in Propositions 13 and 218, the concern that prompted the inclusion of § 6 in article XIII B was the perceived attempt by the State to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the State believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared. (*Long Beach Unified Sch. Dist. v. State of California*, (1990) 225 Cal.App.3d 155, 174-175.)

That is precisely the situation presented by the 2012 Permit, and the apparent decision by the State Board to require the Cities to attain strict compliance with receiving water limitations. It is the State's responsibility to develop Water Quality Standards; it is the State's responsibility to ensure they are being met; and it is the State who is vested with the best tools – both fiscal and regulatory – to live up to those responsibilities. The 2012 Permit and the Draft order are allowing the State Board to shift that responsibility to the Cities.

Because this burden shift, the State Board has an obligation to ensure that the Cities have the tools they need to attain compliance. This means ensuring that timeline extensions are available for all WMP and EWMP deadlines, preserving the incentives to implement an EWMP, and clarifying that compliance will be measured through implementation of BMPs until such time as the State Board has evidence that attaining numeric standards is feasible.

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XI. CONCLUSION

For the reasons set forth above, the Cities respectfully request that the State Board modify both the Draft Order and the 2012 Permit as requested herein.

Dated: January 21, 2015

BEST BEST & KRIEGER LLP

By: _____
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Attorney for Petitioners
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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is Best Best & Krieger LLP, 2000 Pennsylvania Avenue N.W., Suite 5300, Washington, D.C. 20006. On January 21, 2015, I served the following document(s):

COMMENTS ON STATE WATER RESOURCES CONTROL BOARD DRAFT ORDER WQ 2015- XXXX IN THE MATTER OF REVIEW OF ORDER NO. R4-2012-0175, NPDES PERMIT NO. CAS0004001

☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Washington, D.C.

☐ **By personal service.** At ____ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

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☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of Washington, D.C. that the above is true and correct.

Executed on January 21, 2015, at Washington, D.C.

Willette Hill

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 2
SWRCB/OCC FILE NOS. A-2236(a) through (kk)
Petitioners And Their Counsel Of Record Contact List

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Exhibit 3
MS4 Dischargers – Contact List

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Exhibit 3
MS4 Dischargers – Contact List

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c/o Hector Rodriguez, City Manager
P.O. Box 1007
Cudahy, CA 90201-6097
hrodriguez@cityofcudahy.ca.us
hrodriguez@cityofcudahyca.gov

[via U.S. mail only]
City of Culver City
c/o Damian Skinner, Manager
9770 Culver Boulevard
Culver City, CA 90232-0507

[via email only]
City of Diamond Bar
c/o David Liu, Director of Public Works
21825 East Copley Drive
Diamond Bar, CA 91765-4177
dliu@diamondbarca.gov

[via email only]
City of Downey
c/o Jason Wen, Ph.D., P.E.
Utilities Superintendent
9252 Stewart and Gray Road
Downey, CA 90241
jwen@downeyca.org

[via U.S. mail only]
City of Duarte
c/o Steve Esbenshades
Engineering Division Manager
1600 Huntington Drive
Duarte, CA 91010-2592

[via U.S. mail only]
City of El Monte
c/o James A. Enriquez
Director of Public Works
P.O. Box 6008
El Monte, CA 91731

[via email only]
City of El Segundo
c/o Stephanie Katsouleas
Public Works Director
350 Main Street
El Segundo, CA 90245-3895
skatsouleas@elsegundo.org

[via email only]
City of Gardena
c/o Ron Jackson
Building Maintenance Supervisor
P.O. Box 47003
Gardena, CA 90247-3778
jfelix@ci.gardena.ca.us

[via email only]
City of Glendale
c/o Maurice Oillataguerre
Senior Environmental Program Scientist
Eng. Section, 633 East Broadway, Rm. 209
Glendale, CA 91206-4308
moillataguerre@ci.glendale.ca.us

Exhibit 3
MS4 Dischargers – Contact List

[via email only]
City of Glendora
c/o Dave Davies
Deputy Director of Public Works
116 East Foothill Boulevard
Glendora, CA 91741
ddavies@ci.glendora.ca.us

[via email only]
City of Hawaiian Gardens
c/o Joseph Colombo
Director of Community Development
21815 Pioneer Boulevard
Hawaiian Gardens, CA 90716
jcolombo@ghcity.org
jcolombo@hgcity.org

[via email only]
City of Hawthorne
c/o Arnold Shadbehr
Chief General Service and Public Works
4455 West 126th Street
Hawthorne, CA 90250-4482
ashadbehr@cityofhawthorne.org

[via email only]
City of Hermosa Beach
c/o Homayoun Behboodi
Associate Engineer
1315 Valley Drive
Hermosa Beach, CA 90254-3884
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[via U.S. mail only]
City of Hidden Hills
c/o Kimberly Colberts
Environmental Coordinator
6165 Spring Valley Road
Hidden Hills, CA 91302

[via U.S. mail only]
City of Huntington Park
c/o Craig Melich
City Engineer and City Official
6550 Miles Avenue
Huntington Park, CA 90255

[via U.S. mail only]
City of Industry
c/o Mike Nagaoka Director of
Public Safety
P.O. Box 3366
Industry, CA 91744-3995

[via email only]
City of Inglewood
c/o Lauren Amimoto
Senor Administrative Analyst
1 W. Manchester Boulevard, 3rd Floor
Inglewood, CA 90301-1750
lamimoto@cityofinglewood.org

[via email only]
City of Irwindale
c/o Kwok Tam
Director of Public Works
5050 North Irwindale Avenue
Irwindale, CA 91706
ktam@ci.irwindale.ca.us

[via email only]
City of La Canada Flintridge
c/o Edward G. Hitti
Director of Public Works
1327 Foothill Boulevard
La Canada Flintridge, CA 91011-2137
ehitti@lcf.ca.gov

[via email only]
City of La Habra Heights
c/o Shauna Clark, City Manager
1245 North Hacienda Boulevard
La Habra Heights, CA 90631-2570
shaunac@lhhcity.org

[via email only]
City of La Mirada
c/o Gary Sanui
Public Works Manager
c/o Steve Forster
Public Works Director
13700 La Mirada Boulevard
La Mirada, CA 90638-0828
gsanui@cityoflamirada.org
sforster@cityoflamirada.org

[via email only]
City of La Puente
c/o John DiMario
Director of Development Services
15900 East Marin Street
La Puente, CA 91744-4788
jdimario@lapuente.org

Exhibit 3
MS4 Dischargers – Contact List

[via email only]
City of La Verne
c/o Daniel Keesey
Director of Public Works
3660 "D" Street
La Verne, CA 91750-3599
dkeesey@ci.la-verne.ca.us

[via email only]
City of Lakewood
c/o Konya Vivanti P.O.
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Lakewood, CA 90714-0158
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[via U.S. mail only]
City of Lawndale
c/o Marlene Miyoshi
Senior Administrative Analyst
14717 Burin Avenue
Lawndale, CA 90260

[via email only]
City of Lomita
c/o Tom A. Odom, City Administrator
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[via U.S. mail only]
City of Los Angeles
c/o Shahram Kharanghani
Program Manager
1149 S. Broadway, 10th Floor
Los Angeles, CA 90015

[via U.S. mail only]
City of Lynwood
c/o Josef Kekula
11330 Bullis Road
Lynwood, CA 90262-3693

[via email only]
City of Malibu
c/o Jennifer Brown
Environmental Program Analyst
23825 Stuart Ranch Road
Malibu, CA 90265-4861
jbrown@malibucity.org

[via U.S. mail only]
City of Manhattan Beach
c/o Brian Wright, Water Supervisor
1400 Highland Avenue
Manhattan Beach, CA 90266-4795
bwright@citymb.info

[via U.S. mail only]
City of Maywood
c/o Andre Dupret, Project Manager
4319 East Slauson Avenue
Maywood, CA 90270-2897

[via email only]
City of Monrovia
c/o Heather Maloney
415 South Ivy Avenue
Monrovia, CA 91016-2888
hmaloney@ci.monrovia.ca.gov
hmaloney@ci.monrovia.ca.us

[via email only]
City of Montebello
c/o Cory Roberts
1600 West Beverly Boulevard
Montebello, CA 90640-3970
croberts@aaeinc.com

[via email only]
City of Monterey Park
c/o Amy Ho or John Hunter, Consultant
320 West Newmark Avenue
Monterey Park, CA 91754-2896
amho@montereypark.ca.gov
jhunter@jlha.net

[via email only]
City of Norwalk
c/o Daniel R. Garcia, City Engineer
P.O. Box 1030
Norwalk, CA 90651-1030
dgarcia@norwalkca.gov

[via email only]
City of Palos Verdes Estates
c/o Allan Rigg, Director of Public Works
340 Palos Verdes Drive
West Palos Verdes Estates, CA 90274
arigg@pvestates.org

Exhibit 3
MS4 Dischargers – Contact List

[via email only]
City of Paramount
c/o Christopher S. Cash
Director of Public Works
16400 Colorado Avenue
Paramount, CA 90723-5091
ccash@paramountcity.com

[via email only]
City of Pasadena
c/o Stephen Walker
P.O. Box 7115
Pasadena, CA 91109-7215
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[via email only]
City of Pico Rivera
c/o Art Cervantes
Director of Public Works P.O.
Box 1016
Pico Rivera, CA 90660-1016
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[via email only]
City of Pomona
c/o Julie Carver
Environmental Programs Coordinator
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Pomona, CA 91769-0660
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[via email only]
City of Rancho Palos Verdes
c/o Ray Holland
Interim Public Works Director
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275
clehr@rpv.com

[via email only]
City of Redondo Beach
c/o Mike Witzansky, Public Works
Director
c/o Mike Shay, Principal Civil Engineer
415 Diamond Street
P.O. Box 270
Redondo Beach, CA 90277
Mike.Witzansky@redondo.org
mshay@redondo.org

[via email only]
City of Rolling Hills
c/o Greg Grammer
Assistant City Manager
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Rolling Hills, CA 90274-5199
ggrammer@rollinghillsestatesca.gov
GregG@ci.Rolling-Hills-Estates.ca.us

[via email only]
City of Rolling Hills Estates
c/o Greg Grammer
Assistant City Manager
4045 Palos Verdes Drive North
Rolling Hills Estates, CA 90274
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GregG@ci.Rolling-Hills-Estates.ca.us

[via U.S. mail only]
City of Rosemead
c/o Chris Marcarello
Director of Public Works
8838 East Valley Boulevard
Rosemead, CA 91770-1787
[via email only]
City of San Dimas
c/o Latoya Cyrus
Environmental Services Coordinator
245 East Bonita Avenue
San Dimas, CA 91773-3002
lcyrus@ci.san-dimas.ca.us

[via email only]
City of San Fernando
c/o Ron Ruiz
Director of Public Works
117 Macneil Street
San Fernando, CA 91340
rruiz@sfcity.org

[via U.S. mail only]
City of San Gabriel
c/o Daren T. Grilley, City Engineer
425 South Mission Drive
San Gabriel, CA 91775

[via email only]
City of San Marino
c/o Chuck Richey
Director of Parks and Public Works
2200 Huntington Drive
San Marino, CA 91108-2691
crichie@cityofsanmarino.org
pubwks@cityofsanmarino.org

Exhibit 3
MS4 Dischargers – Contact List

[via U.S. mail only]
City of Santa Clarita
c/o Travis Lange
Environmental Services Manager
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Santa Clarita, CA 91355

[via email only]
City of Santa Fe Springs
c/o Sarina Morales-Choate
Civil Engineer Assistant
P.O. Box 2120
Santa Fe Springs, CA 90670-2120
smorales-choate@santafesprings.org

[via email only]
City of Santa Monica
c/o Neal Shapiro
Urban Runoff Coordinator
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Santa Monica, CA 90401-3295
Nshapiro@smgov.net
neal.shapiro@smgov.net

[via U.S. mail only]
City of Sierra Madre
c/o James Carlson, Management Analyst
232 West Sierra Madre Boulevard
Sierra Madre, CA 91024-2312

[via email only]
City of Signal Hill
c/o John Hunter
2175 Cherry Avenue
Signal Hill, CA 90755
jhunter@jlha.net

[via U.S. mail only]
City of South El Monte
c/o Anthony Ybarra, City Manager
1415 North Santa Anita Avenue
South El Monte, CA 91733-3389

[via email only]
City of South Gate
c/o John Hunter
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[via email only]
City of South Pasadena
c/o John Hunter
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[via email only]
City of Temple City
c/o Joe Lambert or John Hunter
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[via U.S. mail only]
City of Torrance
c/o Leslie Cortez
Senior Administrative Assistant
3031 Torrance Boulevard
Torrance, CA 90503-5059

[via U.S. mail only]
City of Vernon
c/o Claudia Arellano
4305 Santa Fe Avenue
Vernon, CA 90058-1786

[via U.S. mail only]
City of Walnut
c/o Jack Yoshino
Senior Management Assistant
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Walnut, CA 91788

[via email only]
City of West Covina
c/o Samuel Gutierrez
Engineering Technician
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[via email only]
City of West Hollywood
c/o Sharon Perlstein, City Engineer
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Exhibit 3
MS4 Dischargers – Contact List

[via email only]
City of Westlake Village
c/o Joe Bellomo
Stormwater Program Manager
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[via email only]
City of Whittier
c/o David Mochizuki
Director of Public Works
13230 Penn Street
Whittier, CA 90602-1772
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[via email only]
County of Los Angeles
c/o Gary Hildebrand, Assistant Deputy
Director, Division Engineer
900 South Fremont Avenue
Alhambra, CA 91803
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[via email only]
Los Angeles County Flood Control District
c/o Gary Hildebrand, Assistant Deputy
Director, Division Engineer
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