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GOVERNOR

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Los Angeles Regional Water Quality Control Board

June 1, 2015

VIA EMAIL ONLY

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
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IN RE PETITIONS CHALLENGING 2012 LOS ANGELES MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (ORDER NO. R4-2012-0175): LOS ANGELES WATER BOARD COMMENTS ON APRIL 24, 2015 REVISED PROPOSED ORDER
SWRCB/OCC Files A-2236(a) through (kk)

Dear Ms. Townsend:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) appreciates the opportunity to provide written comments on the April 24, 2015 revised proposed order in this matter. The Los Angeles Water Board concurs with and supports the revised proposed order, which continues to generally uphold Los Angeles Water Board Order No. R4-2012-0175. The revised proposed order reflects the State Water Resources Control Board's (State Water Board) careful consideration of the written and oral comments received on the November 21, 2014 proposed order.

The Los Angeles Water Board appreciates the changes that the State Water Board has made to the proposed order based on the Los Angeles Water Board's January 21, 2015 comment letter. The changes provide factual and legal clarity and ensure that the Los Angeles Water Board and the Los Angeles County MS4 Permittees can effectively implement the Los Angeles MS4 Order as modified by the State Water Board.

The Los Angeles Water Board has four comments on the revised proposed order whereby we request minor language changes. These are as follows:

1. On page 14, the State Water Board made revisions to the first sentence of the second full paragraph noting the Water Boards' discretion concerning the imposition of requirements in MS4 permits to comply with water quality standards. As currently written, this sentence could be misinterpreted to suggest that the State Water Board is tempering its prior determinations requiring that MS4 permits include provisions to achieve compliance with water quality standards. The Los Angeles Water Board therefore requests the following change - "As stated above, both the Clean Water Act and the Porter-Cologne Act afford some discretion to not require strict compliance with

water quality standards for MS4 discharges.” This requested language change accurately represents federal and state law, as well as prior State Water Board determinations. The change is also consistent with existing language in preceding pages of the revised proposed order. (See, e.g., pages 11-12).

2. On pages 31-32, the State Water Board has proposed amendments to the Fact Sheet to clarify and supplement the Los Angeles Water Board’s findings supporting the Los Angeles MS4 Order’s consistency with federal and state antidegradation provisions. On page 32 of the revised proposed order, the State Water Board modified a sentence describing the two ways in which the Los Angeles MS4 Order requires compliance with receiving water limitations. In doing so, the State Water Board deleted the word “immediate” before “compliance” when describing the first compliance pathway. This deletion leaves the compliance pathway unclear relative to the second compliance pathway, since it is only described as “showing compliance.” The Los Angeles Water Board requests that the State Water Board distinguish in some other manner the first compliance pathway, “showing compliance,” from the second one, “by implementing Watershed Management Programs/EWMPs with a compliance schedule.” This could be done by replacing “showing compliance” with “demonstrating compliance pursuant to Part V.A and the Permittee’s monitoring and reporting program per Part VI.B.” Thus, the entire sentence would read as follows – “This Order further requires compliance with receiving water limitations to meet water quality standards in the receiving water either by showing ~~demonstrating~~ demonstrating compliance pursuant to Part V.A and the Permittee’s monitoring and reporting program pursuant to Part VI.B or by implementing Watershed Management Programs/EWMPs with a compliance schedule.”
3. On pages 41-44, the State Water Board discusses and modifies the adaptive management process contained in the Los Angeles MS4 Order that is required of Permittees that have developed and are implementing WMPs/EWMPs. In particular, the proposed order added a Watershed Management Program Six-Year Resubmittal Process. On page 44 of the revised proposed order, the State Water Board modified this resubmittal process in Part VI.C.8.b.i by deleting the six-year cycle, and replacing it with a single, specific date of June 30, 2021, which would be approximately six years after the State Water Board’s consideration of the revised proposed order. The State Water Board also deleted the provision in the proposed order allowing the Los Angeles Water Board to direct a resubmittal interval of less than every six years.

The Los Angeles Water Board’s expectation was always that Permittees would update the Reasonable Assurance Analysis (RAA), if necessary, based on a comparison of model predictions and outfall and receiving water monitoring data collected through the Coordinated Integrated Monitoring Programs (CIMPs) and Integrated Monitoring Programs (IMPs). Further, since monitoring data were limited in some WMP/EWMP areas during the initial RAA, Permittees will need to refine the calibration of the RAA for the particular subwatershed area(s) during the first or second adaptive management cycle, using monitoring data collected under the IMPs and CIMPs. Once the RAA has been adequately calibrated to subwatershed conditions, in subsequent adaptive management cycles, Permittees will need to validate the RAA with monitoring data collected through the IMPs and CIMPs. Given the need for Permittees to refine model calibration in several WMP areas, the Los Angeles Water Board requests that the State Water Board reinsert the provision allowing the Los Angeles Water Board to determine a

resubmittal deadline for an updated RAA and WMP/EWMP that is shorter than that proposed by the State Water Board in the revised proposed order.¹ The Los Angeles Water Board therefore requests that the State Water Board modify the first sentence of Part VI.C.8.b.i on page 44 of the revised proposed order as follows – “In addition to adapting the Watershed Management Program or EWMP every two years as described in Part VI.C.8.a., Permittees must submit an updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis by June 30, 2021, or sooner as directed by the Regional Water Board or as deemed necessary by Permittees through the Adaptive Management Process, for review and approval by the Regional Water Board Executive Officer.”

4. On pages 57-59, the State Water Board provides direction to the Los Angeles Water Board to report to the State Water Board on implementation of the Los Angeles MS4 Order. The Los Angeles Water Board shares the State Water Board’s perspective on the importance of oversight of Permittees’ implementation of WMPs/EWMPs, and is more than willing to report to the State Water Board on Permittees’ progress in implementing their WMPs/EWMPs, and progress in improving water quality during this and the next permit term. On page 58, the State Water Board proposes three dates for these progress reports. The Los Angeles Water Board requests changes to the first two of these dates in order to better align progress reporting to the State Water Board with key implementation dates of the Los Angeles MS4 Order, including the annual reporting deadlines of December 15, 2017 and December 15, 2019, which will include the results of the first and second adaptive management cycles for the WMPs. The Los Angeles Water Board requests that the first two dates are changed from September 30, 2017 and September 30, 2019 to February 28, 2018 and February 29, 2020, respectively, to accommodate reporting on the results of the first and second adaptive management processes. Thus, the sentence would read – “We accordingly direct the Los Angeles Water Board to report to us on progress in implementation of the WMPs/EWMPs, and progress in improving water quality during this and the next permit term by ~~September 30, 2017~~ February 28, 2018, by ~~September 30, 2019~~ February 29, 2020, and by March 31, 2022.”

Where the Los Angeles Water Board has not herein provided specific comments on a revision to the proposed order, the Los Angeles Water Board supports the revision without any further changes.²

¹ We understand that the State Water Board believes it appropriate to close the record with the adoption of the Los Angeles MS4 Order. As support for this comment requesting a change, however, the Los Angeles Water Board feels compelled to note that, in the recent letters approving, with conditions, several WMPs, the Los Angeles Water Board stated for each Watershed Management Group (WMG) that the WMG, “shall implement adaptive management strategies, including but not limited to:

- Refinement and recalibration of the Reasonable Assurance Analysis (RAA) based on data specific to the WMG WMP area that are collected through the WMG’s Coordinated Integrated Monitoring Program and other data as appropriate;...”

To be consistent with and support this direction provided to the Permittees, the Los Angeles Water Board requests that the State Water Board reinsert the provision, as suggested above, allowing the Los Angeles Water Board to determine a resubmittal deadline for an updated RAA and WMP/EWMP that is shorter than that proposed by the State Water Board in the revised proposed order.

² As follow-up to our letter dated February 27, 2015, the Los Angeles Water Board supports the State Water Board’s proposed determination concerning the Request for Official Notice submitted by petitioners Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay on January 21, 2015.

We appreciate the State Water Board's consideration of these comments and our requests for minor language changes to the revised proposed order.

Finally, the Los Angeles Water Board requests 15 minutes to provide oral comments on the revisions to the proposed order during the upcoming State Water Board meeting scheduled for June 16, 2015 at which the State Water Board will consider adoption of the revised proposed order. We currently intend to provide brief oral comments consistent with our written comments in this letter, and request that we may reserve the remainder of the time to respond to oral comments that may be made by others on the revised proposed order.

If you have any questions, please contact me at Samuel.Unger@waterboards.ca.gov, or Renee Purdy at Renee.Purdy@waterboards.ca.gov, or Jennifer Fordyce at Jennifer.Fordyce@waterboards.ca.gov.

Sincerely,



Samuel Unger, P.E.
Executive Officer