Sarah Spinuzzi Bar No. 305658
ORANGE COUNTY COASTKEEPER
INLAND EMPIRE WATERKEEPER
3151 Airway Ave. Suite F-110
Costa Mesa, CA 92626
(714) 850-1965

Daniel Cooper Bar No. 153576
Hannah Mathieson Bar No. 358967
SYCAMORE LAW, INC.
1004 O'Reilly Avenue
San Francisco, CA 94129
(415) 360-2962

Attorneys for ORANGE COUNTY COASTKEEPER,
INLAND EMPIRE WATERKEEPER

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Orange County Coastkeeper for Review of Action by the California Regional Water Quality Control Board, Santa Ana Region, in Adopting Order No. R8-2026-0034, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges of Pollutants in Runoff from the Municipal Separate Storm Sewer Systems in the County of Orange, Riverside, and San Bernardino within the Santa Ana Region, Santa Ana Regional MS4 Permit, NPDES No. CAS618000.	PETITION FOR REVIEW OF SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD ACTION ADOPTING ORDER NO. R8-2026-0034

Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the California Code of Regulations, Orange County Coastkeeper and Inland Empire Waterkeeper ("Coastkeeper" or "Petitioner") hereby petitions the State Water Resources Control Board ("State Board") to review the final decision of the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") approving the National Pollutant Discharge Elimination System ("NPDES") Permit and Waste Discharge Requirements for Discharges of Pollutants in Runoff from the Municipal Separate Storm Sewer Systems in the Counties of Orange, Riverside, and San Bernardino within the Santa Ana Region, Santa Ana Regional MS4 Permit, Order No. R8-2026-0034, NPDES No. CAS618000 (the "2026 Permit" or "Order"). The 2026 Permit regulates the discharge of stormwater runoff from the municipal separate storm sewer systems ("MS4s") and other designated stormwater discharges from municipalities and flood management agencies in the County of Orange, Riverside County, and San Bernardino County (collectively, the "Permittees").

1. **NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF THE PETITIONER**

Orange County Coastkeeper
Attn: Garry Brown, Founder and President
Sarah Spinuzzi, Legal Director
3151 Airway Ave. Suite F-110
Costa Mesa, CA 92626
(714) 850-1965
sarah@coastkeeper.org

2. **THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW, AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION**

Coastkeeper seeks review of the Regional Board's September 11, 2026, approval of the Municipal Regional Stormwater NPDES Permit, Order No. R8-2026-0034, NPDES Permit No. CAS618000.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT

The Regional Board approved the Permit at issue on September 11, 2026.

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER

In approving the 2026 Permit, the Regional Board failed to act in accordance with relevant governing law, including the Clean Water Act and State Board Order WQ 2015-0075, and acted arbitrarily and capriciously, without substantial evidence, and without adequate findings.

5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED

Petitioner Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California and comprised of approximately 9,450 members who live and/or recreate in and around the Santa Ana Region. Coastkeeper's mission is to protect swimmable, drinkable, fishable water and to promote watershed resilience throughout the region. Coastkeeper works collaboratively with diverse groups in the public and private sectors to achieve healthy, accessible, and sustainable water resources for the region. Coastkeeper implements innovative, effective programs in education, advocacy, restoration, research, enforcement, and conservation of fresh- and saltwater ecosystems. Coastkeeper's members directly benefit from the region's aquatic resources in the form of recreational swimming, fishing, surfing, photography, bird watching, boating, among other uses, each of which uses have been, are, and will continue to be adversely affected by the addition of pollutants to the region from the subject Permittees. Petitioner's members are therefore aggrieved by the Regional Board's failure to adequately control the discharge of municipal stormwater pollution, to prevent such pollution from causing or contributing to violations of water quality standards, or to support the beneficial uses of the receiving waters.

In particular, the Regional Board's failure to adequately control polluted municipal stormwater runoff through this Permit, or to ensure that the Permit's provisions meet the requirements of the Clean Water Act, the California Water Code, and implementing regulations,

has enormous consequences for the region and its residents. Receiving waters in the Santa Ana region continue to be impaired for a variety of pollutants, and monitoring data shows that stormwater discharges contribute to pollutants at levels that cause or contribute to such impairments. Pollutants in stormwater can adversely impact avian, aquatic, and plant life in receiving waters and can cause serious human health impacts.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS

Petitioner seeks an Order by the State Board that overturns the Regional Board's approval of the Municipal Regional Stormwater NPDES Permit, Order R8-2026-0034, NPDES Permit No. CAS618000, and remands the matter to the Regional Board with specific direction to remedy each of its violations of law as further described herein.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS OR THE TRANSCRIPT OF THE REGIONAL BOARD HEARING IF IT IS AVAILABLE

A. INTRODUCTION

This petition seeks review of the Regional Board's approval of the Municipal Regional Stormwater NPDES Permit, Order No. R8-2026-0034, NPDES Permit No. CAS618000, which regulates the discharge of stormwater runoff from MS4s and other designated stormwater discharges from municipalities and flood management agencies in the Counties of Orange, Riverside, San Bernardino, and parts of Los Angeles. Stormwater runoff is one of the most significant sources of water pollution in the nation. Unfortunately, the Permit approved by the Regional Board governing such pollution from municipal sources is unlawful for several reasons, including: (1) the 2026 Permit fails to include effluent limitations sufficient to meet water quality standards and is inconsistent with the requirements of 33 U.S.C. § 1311(b)(1)(C) as applied by the Supreme Court; (2) the WMP implementation schedule violates State board requirements and the Clean Water Act; (3) The 2026 Permit's Monitoring Plan is arbitrary, capricious, and not sufficient to evaluate compliance; (4) the 2026 Permit fails to conduct any compliance analysis

and fails to meet reasonable potential analysis requirements of the Clean Water Act; (5) The 2026 Permit's exemption from total maximum daily load ("TMDL") waste load allocation ("WLA") violations caused by authorized non-stormwater discharges is circular and illegal; and (6) the 2026 Permit's antidegradation analysis is arbitrary, capricious, and the 2026 Permit concedes it will result in continued degradation for a decade or more. These violations of the Clean Water Act and state law present compelling reasons for the State Board to exercise its statutory duty to correct these deficiencies to protect the waters of the Santa Ana region and public health.

B. STANDARD OF REVIEW

The State Board must exercise its independent judgment as to whether a Regional Board action is reasonable. *See Stinnes-Western Chemical Corp.*, State Board WQ Order No. 86-16 (1986). Specifically, the State Board's review is equivalent to the standard a reviewing court would apply under California Code of Civil Procedure Section 1094.5, which states that an "[a]buse of discretion is established if the respondent 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); *see also Zuniga v. San Diego County Civil Serv. Comm'n* (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).

The administrative decision must be accompanied by findings that allow the court reviewing the order or decision to "bridge the analytical gap between the raw evidence and ultimate decision or order." *Topanga Ass'n for a Scenic Cnty. v. Cnty. of San Diego* (1974) 11 Cal.3d 506, 515 ("*Topanga*"). This requirement "serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision... to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." *Id.* at 516. "Absent such road signs, a reviewing court would be forced into

unguided and resource-consuming explorations; it would have to group through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency." *Id.*

C. ARGUMENT

i. The 2026 Permit Fails to Include Effluent Limitations Sufficient to Meet Water Quality Standards.

The 2026 Permit generally requires compliance with water quality standards ("WQSs") and WLAs but provides only a vague statement of how the discharger might demonstrate compliance—and specifically does not indicate how the monitoring plan will be used to evaluate compliance. For example, the 2026 Permit includes no standards and no methodology for evaluating whether, "[t]he discharge from the Permittee's MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s)." 2026 Permit at 33. It contains no methodology for differentiating between impaired and unimpaired waters; toxic bio-accumulative or conventional pollutants; or for evaluating compliance with WLAs where TMDLs have not been adopted.

Rather than numeric effluent limitations applied end-of-pipe for each permittee, the 2026 Permit proposes generalized receiving water limitations:

> Discharges of pollutants in runoff from the Permittees' MS4 must not cause or contribute to a condition of nuisance or exceedances of water quality standards (as defined by Beneficial Uses and Water Quality Objectives for applicable surface waters contained in Chapters 3 and 4 of the Basin Plan or the California Ocean Plan, ISWEBE (Parts 1 [Trash Provisions], Part 2 [Bacteria Provisions], and Aquatic Toxicity Provisions), Sediment Quality Provisions, Water Quality Control Plan for Control of Temperature in Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan), and amendments to any of the foregoing, including amendments that move a water quality standard to a different plan; or in federal regulations, including but not

limited to 40 CFR sections 131.36 [National Toxics Rule] and 131.38 [California Toxics Rule]) for surface waters. Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.

A. Discharges of pollutants in runoff from the Permittees' MS4 must use timely iterative implementation of control measures and best management practices ("BMPs") and other actions to reduce pollutants in discharges according to the conditions and provisions of this Order...

B. Determinations that discharges are causing or contributing to exceedances of water quality standards will be based, in part, on assessments of water quality data which are performed according to scheduled cycles of monitoring, analysis, and reporting required in attached Monitoring and Reporting Program R8-2026-0034 (Attachment C).

C. Permittees that have comingled MS4 discharges are jointly responsible for meeting the requirements of this Order. However, Permittees are only responsible for discharges from the MS4 for which they are owners and/or operators.

D. Where Permittees have comingled MS4 discharges to the receiving water(s), compliance in the receiving water(s) shall be determined for all Permittees contributing to the discharge unless a Permittee or Permittees demonstrates that their discharge did not cause or contribute to the exceedance of the receiving water limitation.

E. Any individual Permittee may demonstrate compliance with receiving water limitations by demonstrating any of the following:

1. There are no exceedances of the receiving water limitation for the specific pollutant in the receiving water(s) at, or downstream of, the Permittee's discharge.

2. The Permittee's discharge did not cause or contribute to the exceedance of the receiving water limitation. A demonstration that the Permittee did not cause or

contribute to the exceedance of the receiving water limitation may be made by any of the following:

a. There was no discharge from the Permittee's MS4 into the affected receiving water(s) during the relevant period.

b. There are no exceedances of the receiving water limitation for the specific pollutant in the Permittee's MS4 discharge measured at the Permittee's outfall(s) that discharge to the receiving water.

c. The discharge from the Permittee's MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s). The Permittee must support this demonstration using monitoring, modeling, or other technical analysis.

d. There is an alternative source of the pollutant that caused the exceedance; that the pollutant is not typically associated with the MS4 discharges; and that the pollutant was not discharged from the Permittee's MS4.

e. All exceedances are the result of an authorized or exempt non-stormwater discharge specified in section IV.A.2 of this Order during a specific sampling event. The Permittee must support this demonstration with Substantial Evidence.

3. The Permittee is implementing an approved Watershed Management Plan, consistent with the actions and schedules therein, to address the applicable waterbody-pollutant combination pursuant to section XII of this Order. A Permittee that is developing a Watershed Management Plan may demonstrate compliance with Receiving Water Limitations only as stated in section XII.A.

2026 Permit at 31-33.

The Clean Water Act requires states to issue permits containing pollutant limits that create "clear and identifiable requirements" to "provide manageable and precise benchmarks for enforcement." S. Rep. No. 92-414, at 81 (1971). NPDES permits must set "effluent limitations"—

end of pipe restrictions—"on quantities, rates, and concentrations of... constituents... discharged from point sources." 33 U.S.C. § 1362(11). These effluent limitations are written as either (a) numeric pollutant restrictions (e.g., a monthly average limit of 30 mg/L of total suspended solids) or (b) narrative requirements to implement specific management practices when a numeric limit is not feasible. *See Nat. Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977) (NPDES permits "may proscribe industry practices... when numerical effluent limitations are infeasible."); 40 C.F.R. § 122.44(k)(3).

Water Quality Based Effluent Limitations ("WQBELs") ensure attainment of WQSs. The Clean Water Act requires states to develop WQS that prescribe goals for surface water conditions, consisting of two primary components: (1) a water's designated use (known in California as a beneficial use) like "recreation" and "water supply"; and (2) water quality criteria (in California, water quality objectives)—benchmarks to protect a designated use. *See Am. Paper Inst., Inc. v. EPA*, 996 F.2d 346, 349 (D.C. Cir. 1993).

WQSs do not provide targets for individual discharges to control their pollution. Instead, the Clean Water Act demands their use as the "basis for effluent limitations" in NPDES permits. *EPA v. Cal. ex rel. State Water Res. Control Bd.*, 426 U.S. 200, 205, n. 12. The EPA (or authorized state) is required to set "limitation[s]" that are "necessary to meet water quality standards..." 33 U.S.C. § 1311(b)(1)(C). The Clean Water Act further demands that NPDES permits "prescribe conditions" that "assure compliance" with a variety of the statute's requirements, including WQSs. 33 U.S.C. § 1342(a)(2).

To satisfy these mandates, EPA has issued regulations and guidance for translating WQS into specific effluent limitations—expressed either numerically or as required management practices—tailored to each individual permittee. *See generally,* 40 C.F.R. § 122.44(d)(1)(i)-(vii); NPDES Manual at Ch. 6. Neither the regulations nor EPA-issued guidance contemplate the use of any other permitting mechanism to control discharges to meet WQSs. EPA's NPDES permit writing course similarly expects that permits will exclusively use specific effluent limitations to

ensure attainment of WQSs. *See EPA, NPDES Permit Writers' Training Presentations, Sessions 1-13,* http://www.epa.gov/npdes/npdes-permit-writers-training-presentations (last updated Feb. 13, 2023).

Coastkeeper has spent considerable resources attempting to evaluate compliance with WQS and WLAs using data collected via the prior permit cycles. In the absence of numeric effluent limitations or even a methodology for evaluating compliance, a compliance evaluation is impossible.

For example, the monitoring data collected from Orange County's last five Annual Reports use sampling parameters and reporting that are inconsistent with their corresponding TMDLs. *See* Orange County Annual Reports 2019-2023. A TMDL has been established for copper in both upper and lower Newport Bay. Attachment A to Resolution No. R8-2022-212. The TMDL's mass-based allocation for dissolved copper is expressed in pounds per year. *Id.* Yet, the annual reporting data for Mass Loads of copper in Orange County is expressed in event total loading in pounds per acre foot discharged. *See* Orange County Annual Report Data 2022-2023, Mass Loads.

Further complicating the compliance evaluation, very limited sampling data is available to determine compliance with WLAs for copper in Newport Bay. Only a minimal number of storm events were sampled annually, with just one storm event sampled at each station in 2020-2021. *See* Orange County Annual Report Data 2022-2023, Mass Loads. Neither the Permit, the Annual Reports, nor the Monitoring Programs, articulate how pounds per acre-foot for a limited number of storm events can be compared to total pounds per year to evaluate WLA compliance for an individual permittee.

Similarly, the 2026 Permit does not provide any clear guidance for individual permittees to determine their compliance with TMDLs. For example, a TMDL for nutrients has been established in Newport Bay and San Diego Creek. *See generally*, 2026 Permit Appendix 2. The WQBELs for total nitrogen are expressed in pounds per day during non-storm conditions or

pounds per season. *Id.* at 101. Total phosphorus limits are expressed in pounds per year. *Id.* at 102. However, these limits are set for Newport Bay and San Diego Creek—not individual dischargers. *Id.* The 2026 Permit provides no guidance, mechanism, or standards as to how any individual permittee could use their own sampling to make compliance determinations. No method establishing how individual permittees are allocated their portion of the mass limit, nor how to calculate the mass contribution from their discharge is provided. Each TMDL—13 in total—lacks clear and identifiable requirements to allow individual permittees, the Regional Board, and the public, to make TMDL compliance determinations.

ii. <u>The 2026 Permit is Inconsistent with the Requirements of 33 U.S.C. § 1311(b)(1)(C) as Applied by the Supreme Court.</u>

In *City & Cnty. of San Francisco v. EPA,* 604 US 334 ("*SFPUC*"), the Supreme Court considered whether the receiving water limitation in the NPDES permit regulating discharges from the oceanside combined sewer system in San Francisco met the requirements of the Clean Water Act. The receiving water limitation in the SFPUC permit prohibited discharges that cause or contribute to violations of WQSs in the receiving waters, leaving the City to determine how it would meet those standards. The Supreme Court rejected the SFPUC permit's "end result" receiving water limitation, finding it to be inconsistent with Section 301(b)(1)(C) of the Clean Water Act. Section 301(b)(1)(C) requires all Clean Water Act Permits to include:

> No later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards... or any other Federal Law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

The Supreme Court applied the requirements of 301(b)(1)(C) to reject permit terms imposing the burden of determining the method of compliance on the discharger, instead requiring that the regulator determine "...what steps a permittee must take to ensure that water quality standards are met..." *SFPUC,* at 355.

Despite the clear ruling in *SFPUC*, the 2026 Permit carries over the receiving water limitation from prior MS4 Permits: "Discharges of pollutants in runoff from the Permittees' MS4s must not cause or contribute to a condition of nuisance or exceedances of water quality standards..." 2026 Permit at 31. For TMDL WLA-based WQBELs, the 2026 Permit references appendices for effluent limitations. For receiving waters without TMDLs, compliance with WQSs are to be demonstrated by the permittee by: (1) zero discharge from the MS4; (2) "monitoring, modeling, or other technical analysis;" (3) showing the pollutant is not discharged by the MS4; (4) showing the exceedance is caused by authorized non-stormwater discharge; or (5) by entering the Safe Harbor Watershed Management Program, whereby the discharger develops and implements a pollution control program, starting no sooner than 24 months after permit adoption. 2026 Permit at 33. Thus, the discharger, with oversight by the Regional Board, determines how compliance with the receiving water limitations will be achieved. *Id.*

Regional Board staff argue in the Findings of the 2026 Permit that carrying over precisely the Receiving Water Limitations rejected in the *SFPUC* decision is justified because *SFPUC* does not apply to MS4 NPDES permits. 2026 Permit at 15-16. The Regional Board asserts:

> To the extent NPDES permitting authorities impose conditions requiring discharges to meet water quality standards, either strictly or through an iterative process, they are relying on authority in Clean Water Act section 402(p)(3)(B) to include "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)(iii).) This order is not based on Clean Water Act section 301(b)(1)(C). Nothing in the U.S. Supreme Court's holding in *City and County of San Francisco* addressed section 402(p)(3)(B), and the U.S. Supreme Court grounded its decision limiting end-result requirements in Clean Water Act section 301(b)(1)(C). (City and County of San Francisco, at pp. 10-20.) *Id.* at 15.

The 2026 Permit's efforts to evade the requirements of the Clean Water Act are wrong for at least two reasons. First, the 2026 Permit is expressly based on 33 U.S.C. § 1311 as well as § 1342. As in *SFPUC*, the permit tracks the structure of § 1311(b) imposing technology-based limitations as required by § 1311(b)(1)(A). *SFPUC,* at 358; 2026 Permit at 292-94. But because the technology-based effluent limitations will not meet WQSs, the permit includes WQBELs as required by § 1311(b)(1)(C). *SFPUC* at 358; 2026 Permit at 34. The 2026 Permit cites to § 1311 in support of the enforcement authority and the anti-backsliding analysis at pp. 273-74, 292, and 392-93. All prior MS4 permits issued in California cite to § 1311 as the basis for the permit terms. Thus, permit terms, the scheme of the Clean Water Act, and the express language of § 1311(a) all make clear that the requirements of § 1311 apply to all permits issued pursuant to the Act, including specifically those issued pursuant to § 1342.

Further, the Supreme Court rejected the argument raised by staff in the 2026 Permit Findings. The Permit at issue in *SFPUC*, like the 2026 Permit, was issued pursuant to *both* § 1311 (regulating combined sewer overflows [*SFPUC*]) and § 1342(p) (regulating municipal stormwater systems [2026 Permit]). Rejecting EPA's interpretation of the CSO Policy as inconsistent with § 1311(b)(1)(C), they determined that the receiving water limitation was illegal. *SFPUC,* at 354-55. And while § 1342(p) requires WQS compliance to the Maximum Extent Practicable rather than strict compliance, *Defenders of Wildlife v. Browner,* 191 F.3d 1159 (9th Cir. 1999), the effluent limitation articulating that standard must meet the requirements of § 1311(b)(1)(C).

Next, the 2026 Permit argues that state law provides an alternative basis for retaining the receiving water limitations. 2026 Permit at 16-17. Even if true, state law cannot authorize effluent limitations that violate § 1311 of the Clean Water Act in a NPDES permit.

Further, the Receiving Water Limitations provide only a generalized statement of how compliance will be determined—asserting that compliance will be determined "in part" via the Monitoring and Reporting Program—contravening the Supreme Court's holding in *SFPUC*. 2026 Permit at 32. Enforcement of industrial stormwater permits has provided methods of compliance determination for many categories of stormwater pollutants. For example, the California Toxics

Rule ("CTR") promulgates water quality standards applicable to end-of-pipe discharges in California. *See Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California*, 65 Fed. Reg. 31701 (May 18, 2000). The addition of a pollutant to an already-impaired waterbody definitionally causes or contributes to exceedances of applicable water quality standards, such as the CTR, and thus violates the 2026 Permit. *See Santa Monica Baykeeper v. Kramer Metals, Inc.*, Case No. CV07-03849 DDP, 2009 U.S. Dist. LEXIS 136153 at *26-34. (C.D. Cal. February 27, 2009)*; see also* 2026 Permit at 31. Where waters do have assimilative capacity, contemporaneous receiving water sampling is necessary to ensure water quality standards are met. Yet the 2026 Permit provides no explanation nor mechanism as to how a Permittee's addition of pollutant to an impaired waterbody will be assessed in a compliance determination—only that permittees should at least partially rely on monitoring results.

The 2026 Permit provides no facts or analysis regarding whether numeric limitations are feasible or infeasible for any pollutant, waterbody, or WLA and leaves compliance determinations in the hands of the Permittees with little guidance, oversight, and articulable standards. As such, the 2026 Permit violates the Clean Water Act.

iii. <u>Requirements of MS4 Safe Harbor Provisions.</u>

The State Board has issued two orders defining acceptable parameters for Safe Harbor provisions in Phase 1 MS4 Permits: *Waste Discharge Requirements and National Pollutant Discharge Elimination System permit for Municipal Separate Storm Sewer System (MS4) for the Coastal Watersheds of Los Angeles and Ventura Counties*; Permit No. CAS004004, Order No. R4-2012-0175 ("State Board Order WQ 2015-0075"); and *In the Matter or Review of Approval of Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175* ("State Board Order WQ 2020-0038"). These State Board Orders are precedential and apply to reissued Phase 1 municipal stormwater permits throughout California.

Safe Habor provisions in any MS4 Permit must comply with the minimum requirements for Safe Harbor provisions for alternative compliance paths in municipal stormwater permits

provided in State Board Orders WQ 2015-0075 and WQ 2020-0038. At a minimum, Safe Harbor provisions must be *well-defined, transparent, and finite*, allowing permittees willing to pursue significant undertakings beyond the iterative process to be deemed in compliance with receiving water limitations. State Board Order WQ 2015-0075 at 76.

The State Board has expressly instructed the Regional Boards to consider the Los Angeles County MS4 Permit's Safe Harbor approach to receiving water limitations compliance for all MS4 permits issued after 2015, and provided the following principles:

3. The Phase 1 MS4 permits should incorporate an ambitious, rigorous, and transparent alternative compliance path that allows permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative.
4. The alternative compliance path should encourage watershed-based approaches, address multiple contaminants, and incorporate TMDL requirements.

Perhaps most importantly here, the State Board Order requires:

7. The alternative compliance should have rigor and accountability. Permittees should be required, through a transparent process, to show that they have analyzed the water quality issues in the watershed, prioritized those issues, and proposed appropriate solutions. Permittees should be further required, again through a transparent process, to monitor the results and return to their analysis to verify assumptions and update the solutions. Permittees should be required to conduct this type of adaptive management on their own initiative without waiting for direction from the regional water board. State Board Order WQ 2015-0075 at 51-52; *accord id.* at 77-78.

Alternatively, the Regional Board can make a specific showing that application of a given principle is not appropriate for region-specific or permit-specific reasons. *Id.* at 51; *accord id.* at 78; *see also* State Board Order WQ 2020-0038 at 163.

In 2020, the State Board reviewed the adequacy of the alternative compliance plans developed in Los Angeles County, the Watershed Management Plans and Enhanced Watershed Management Plans ("WMPs and EWMPs"). The State Board found the WMPs and EWMPs reviewed to be inadequate and set out additional requirements to meet the rigor, accountability, and transparency mandated in its prior precedential order. The State Board ordered the Regional Board to require permittees to "gather relevant, available data for use in the development of the alternative compliance plan" and "explain how that data was used or why it was not used and, conversely, what to do when pertinent data is not available." State Board Order WQ 2020-0038 at 163-64. Additionally, if an alternative compliance plan uses a limiting-pollutant approach, then permittees must appropriately justify the use of a limiting or representative pollutant. *Id.* at 164. The State Board summarized these requirements as follows:

1. An explanation for how information in the source assessment was used.
2. Identification of unavailable, needed information and the assumption(s) being made to substitute for that information with enforceable commitments to acquiring the information and deadlines for incorporating it into the WMP. This applies not just to source assessments but to the WMPs generally.
3. Identification of relevant, available data not used in the [Reasonable Assurance Analysis] and an explanation of why it was disregarded. State Board Order WQ 2015-0075 at 75.

Further, the State Board required alternative compliance plans to include "regular, clearly presented, enforceable, non-contingent milestones and deadlines not generated through reliance on the relevant permit's required analytical process." *Id*. at 164. Minimum scheduling requirements for alternative compliance plans identified by the State Board include the following:

1. Compliance deadlines occurring within the Order term for all applicable interim and/or final WQBELs and other TMDL-specific limitations contained in the Order's TMDL provisions.
2. Interim milestones and dates for their achievement within the Order term for any applicable final WQBELs and other TMDL-specific limitations in the Order where deadlines within the permit term are not otherwise specified.
3. For watershed priorities related to addressing exceedances of water limitations not otherwise addressed by the Order's TMDL provisions:
    1. Milestones based on measurable criteria or indicators, to be achieved in the receiving water and/or MS4 discharges,
    2. A schedule with dates for achieving the milestones, and
    3. A final date for achieving the receiving water limitations as soon as possible. *Id.* at 76-77.

The State Board has extensively reviewed and analyzed the provisions of the Los Angeles County MS4 Permit, as well as the implementation of that Permit. Per State Board Orders WQ 2015-0075 and WQ 2020-0038, all other Regional Boards must incorporate the lessons learned from the Los Angeles County MS4 Permit into future MS4 Permits.

iv. <u>The Safe Harbor Provision's WMP Implementation Schedule Violates State Board Requirements and the Clean Water Act.</u>

The State Board has made clear that Safe Harbor provisions in MS4 permits must:

> [H]ave rigor and accountability. Permittees should be required, through a transparent process, to show that they have analyzed the water quality issues in the watershed, prioritized those issues, and proposed appropriate solutions. Permittees should be further required, again through a transparent process, to monitor the results and return to their analysis to verify assumptions and update solutions. Permittees should be required to conduct this type of adaptive

management on their own initiative without waiting for direction from the regional water board. State Board Order WQ 2015-0075 at 51-52.

Yet the implementation schedule proposed in the 2026 Permit fails to consider existing data, is opaque and subjective, and will result in the implementation of WMPs late in, or even after, expiration of the five-year permit term.

The 2026 Permit provides for two WMP pathways—"proactive" and "reactive." 2026 Permit at 67. In the proactive process, permittees have the option to submit a Notice of Intent (NOI) to the Executive Officer within 90 days of the permit's effective date. *Id.* Once accepted by the Executive Officer (the 2026 Permit provides no deadline for completion of the Executive Officer review), the permittee has up to 24 months to submit a final WMP. *Id.* at 68. Upon receipt, the Executive Officer must approve or deny a final WMP within 3 months. *Id.* at 75. The public comment period then begins not less than 30 days prior to the anticipated approval of the final WMP. *Id*. Thus, under the schedule for proactive WMPs in the 2026 Permit, the soonest a WMP will be approved is 28 months—2 years and 4 months—after permit adoption. *Id.* The review process is entirely internal to Regional Board Staff. *Id.* When the WMP finally is approved and becomes public—at least 28 months of development, review, and approval—the public is provided 30 days to review and comment. *Id.*

Further, permittees have the option to change the final deadline for submission of their NOI and WMP. 2026 Permit at 67-69. Permittees can request modifications at least 30 days before any milestone or deadline associated with the plan's development schedule. *Id.* at 68-69. The Executive Officer then provides 14 days for public review of the change request. *Id.*

In the reactive process, permittees must submit an NOI within 90 days of receiving notice of a violation of WQSs. *Id.* at 67. The permittee then has a maximum of 24 months to finalize and submit the WMP after the NOI submission. *Id*. at 68. The Executive Officer reviews the submitted NOI and, at least 30 days prior to the anticipated acceptance, initiates the public review period. *Id.* at 74. Thus, the reactive process allows for additional delay in the development and

implementation of the WMPs. The reactive process is particularly egregious given that monitoring data from past MS4 permit cycles is available for review to determine WQS compliance by individual permittees—yet the 2026 Permit neither conducts that review now, nor explains how any WQS compliance review will be conducted in the future.

Minimum scheduling requirements for alternative compliance plans identified by the State Board include the following:

1. Compliance deadlines occurring *within the Order term* for all applicable interim and/or final WQBELs and other TMDL-specific limitations contained in the Order's TMDL provisions.
2. Interim milestones and dates for their achievement *within the Order term* for any applicable final WQBELs and other TMDL-specific limitations in the Order where deadlines within the permit term are not otherwise specified.
3. For watershed priorities related to addressing exceedances of water limitations not otherwise addressed by the Order's TMDL provisions:
    a. Milestones based on measurable criteria or indicators, to be achieved in the receiving water and/or MS4 dischargers.
    b. A schedule with dates for achieving the milestones, and
    c. A final date for achieving the receiving water limitations *as soon as possible*. State Board Order WQ 2015-0075 at 76-77 (emphasis added).

Taken together, the implementation of the schedule provisions in the 2026 Permit ensure that permittees will not even begin implementation of WMP measures until over two years after permit adoption at the soonest. Moreover, proactive Permittees are deemed in compliance with Receiving Water Limitations and Effluent Limitations while awaiting approval of WMP measures, regardless of their contribution to water quality degradation, for at least 24 months and up to 33 months. 2026 Permit at 69.

Further, this multi-year review process affords only minimal opportunity for public review and comment. The NOIs are only available for 30 days. WMPs will be made public only within 30 days of their expected approval date and after years of development. Thirty days of public review and comment on plans comprising modeling, data review, engineering, and implementation schedules is inadequate on its face.

The WMP implementation schedule, requiring no meaningful pollution controls for nearly half of the 5-year permit term, fails to meet the requirements of State Board Order WQ 2015-0075, and the Clean Water Act, and is bad public policy.

v. The 2026 Permit's Monitoring Plan is Arbitrary, Capricious, and is Not Functional to Evaluate Compliance.

1. The Monitoring Plan Must be Subject to Public Review and Comment.

State Board Orders WQ 2015-0075 and WQ 2020-0038 confirm that monitoring is central to ensuring that programs developed via a Safe Harbor scheme are working to reduce the pollutant at issue and will achieve compliance. Therefore, municipal stormwater permittees "should be further required, again through a transparent process, to monitor the results and return to their analysis to verify assumptions and update the solutions." State Board Order WQ 2015-0075 at 52. Further, federal law requires that each NPDES permit includes monitoring provisions that "yield data which are representative of the monitored activity," 40 C.F.R. § 122.48(b), and that "assure compliance with permit limitations." 40 C.F.R. § 122.44(a)(1)(i); *see Nat. Res. Def. Council v. Cnty. of Los Angeles*, 725 F.3d 1194, 1207 (9th Cir. 2013) ("[A]n NPDES Permit is unlawful if a permittee is not required to effectively monitor its permit compliance[.]") Accordingly, the Permit must include monitoring provisions that allow each permittee, the Regional Board, and third parties to determine whether a permittee is complying with the permit. *See Sierra Club v. Union Oil Co. of Cal.*, 813 F.2d 1480, 1483 (9th Cir. 1982); *see also Brentwood v. Central Valley Reg. Water Quality Control Bd.*, 123 Cal.App.4th 714, 723 (2004). The monitoring provisions are just as key to the efficient operation of Phase 1 MS4 Permits as

any other NPDES permits. *Sierra Club*, 813 F.2d at 1491 ("The NPDES program fundamentally relies on self-monitoring.") Monitoring serves a dual purpose: first, to allow permittees to assess their own compliance and quickly respond if non-compliance is discovered, and second, to "keep enforcement actions simple and speedy." *Brentwood,* 123 Cal.App.4th at 723-24.

The 2026 Permit does not include a monitoring program. Instead, the Permit provides some baseline requirements, and then monitoring plans are to be developed by the dischargers and submitted within 18 months of permit adoption for approval (with no deadline) by the Executive Officer. 2026 Permit at 213. A 30-day public review period to evaluate a complex monitoring program Permittees had 18 months to develop is insufficient, particularly in light of the high variability between monitoring programs due to the 2026 Permit's lack of clear monitoring program requirements.

2. <u>The Monitoring Plan Must Provide a Mechanism or Criteria Using Sampling Data to Evaluate Compliance with Water Quality Standards or TMDL Waste Load Allocations.</u>

The Clean Water Act requires states to issue permits containing pollutant limits that create "clear and identifiable requirements" to "provide manageable and precise benchmarks for enforcement." S. Rep. No. 92-414, at 81 (1971). NPDES permits must set "effluent limitations"—end-of-pipe restrictions—"on quantities, rates, and concentrations of... constituents... discharged from point sources." 33 U.S.C. § 1362(11). These effluent limitations are written as either (a) numeric pollutant restrictions (e.g., a monthly average limit of 30 mg/L of total suspended solids) or (b) narrative requirements to implement specific management practices when a numeric limit is not feasible. *See Costle*, 568 F.2d at 1380.

Unfortunately, the 2026 Permit generally requires compliance with WQSs and WLAs, but then provides only a vague statement of how the discharger might demonstrate compliance. The 2026 Permit specifically does not indicate how the monitoring plan will be used to evaluate compliance.

For example, the 2026 Permit includes no standards, no methodology, for evaluating whether "[t]he discharge from the Permittee's MS4 was controlled to a level that it did not cause or contribute to the exceedance in the receiving water(s)," no methodology for differentiating between impaired and unimpaired waters, toxic, bioaccumulative, or conventional pollutants, or for evaluating compliance with WLAs where TMDLs have been adopted. In fact, the 2026 Permit acknowledges that the Monitoring Program is not adequate to determine compliance:

> Determinations that discharges are causing or contributing to exceedances of water quality standards will be based, *in part*, on assessments of water quality data which are performed according to scheduled cycles of monitoring, analysis, and reporting required in attached Monitoring and Reporting Program R8-2026-0034 (Attachment C). 2026 Permit at 32 (emphasis added).

The 2026 Permit does not articulate what else goes into a compliance determination, how other considerations might be weighted, or how members of the public or the dischargers are to determine whether a particular permittee complies with the Permit.

The 2026 Permit continues to include no criteria for evaluating compliance for pollutants not subject to a TMDL. According to the 2024 303(d) list, 70 receiving waters in Region 8 are listed as impaired, for between 1 and 12 pollutants each, in the 5A category, each requiring but lacking a TMDL. Regional Board staff estimates 8,775 water bodies and applicable WQS in Region 8. Yet, rather than providing a compliance evaluation method for non-TMDL pollutants and specifically for discharges of impairing pollutants to impaired water bodies, the 2026 Permit merely repeats the legal requirement that the Monitoring Program demonstrate compliance. *See* 2026 Permit at Attachment C. Attachment C sets out Monitoring Plan requirements and describes sampling methods, but does not determine compliance evaluation methods. The 2026 Permit sets out "goals" (pp. 203-04), sampling methods (p. 204-07), and outfall sampling requirements (p. 207-08). Table C.1 sets out a List of Constituents within Watersheds, requiring sampling for pollutants set out in the table. Table C.1 lists six receiving waters and 29 parameters—obviously

missing dozens of impaired MS4 discharge receiving waters and impairing pollutants discharged by MS4 systems.

Repeating the Clean Water Act and State Board requirements that the 2026 Permit include monitoring sufficient to determine compliance, while listing only a fraction of the impaired water bodies and impairing pollutants for required monitoring, and providing no method for evaluating compliance with dozens of applicable WQSs, fails to comply with law. Further, in the absence of numeric effluent limitations, or even a methodology for evaluating compliance, a compliance evaluation is impossible. Without articulating "manageable and precise benchmarks for enforcement" that explains how data collected through the Monitoring Plan is used to determine compliance with the requirements of the Permit, the 2026 Permit is inconsistent with the requirements of the Clean Water Act and State Board Orders, and illegal.

3. The Program Monitoring Elements are Not Consistent Across Permittees, Making BMP Level of Effort Review Across Permittees Impossible.

The Program Effectiveness Assessment in the 2026 Permit employs the same monitoring and reporting program currently used in Orange County's MS4 Permit. *See* 2026 Permit at 92-93, Fact Sheet at 336-39; *see also* Order No. R8-2009-0030, NPDES Permit No. CAS618030, as amended by Order No. R8-2010-0062. The 2026 Permit's Program Effectiveness Assessment, like the existing monitoring program for Orange County's MS4 requires no consistency in reporting data metrics, making the evaluation of program effectiveness functionally impossible across permittees.

As a result of inconsistent performance metrics, the Regional Board has consistently failed to undertake any evaluation of program effectiveness for the Orange County Permit. *See* Orange County Annual Reports 2019-2023. Evaluating the progress of the monitoring program for multiple years is imperative to determining the effectiveness of the permit. Yet the program effectiveness assessments for the last five years contain no evaluation, program trend analysis, or discussion of water quality deterioration or improvement. *See id.* Without determining the

effectiveness of the measures implemented in the previous permit, the Regional Board continues to employ the same measures in the 2026 Permit.

The current monitoring program for Orange County makes it difficult or impossible for permittees, the Regional Board, or third parties to determine compliance with permit limitations because the performance metrics are inconsistent and the reporting data insufficient. To the extent the 2026 Permit continues existing monitoring, the 2026 Permit violates the State Board's Orders and the Clean Water Act.

vi. The 2026 Permit Fails to Conduct Any Compliance Analysis and Fails to Meet Reasonable Potential Analysis Requirements of the Clean Water Act.

A first step in reissuing an NPDES Permit is to evaluate compliance and impacts to water quality during the prior permit term. The State Board has made clear that when MS4 Permits include safe harbor provisions, the State Board has stated:

> Permittees should be required, through a transparent process, to show that they have analyzed the water quality issues in the watershed, prioritized those issues, and proposed appropriate solutions. Permittees should be further required, again through a transparent process, to monitor the results and return their analysis to verify assumptions and update the solutions. State Board Order WQ 2015-0075 at 51-52; *accord id.* at 77-78.

The Clean Water Act requires every NPDES permit writer to consider all available data to conduct an analysis as to whether the discharges have the "reasonable potential" to cause or contribute to violations of WQSs. EPA Regulations at § 122.44(d)(1)(i) state, "Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standards, including [s]tate narrative criteria for water quality." Because of that regulation, EPA

and many authorized NPDES states refer to the process that a permit writer uses to determine whether a WQBEL is required in an NPDES permit as a reasonable potential analysis ("RPA").

When determining the need for a WQBEL, a permit writer should use any available effluent and receiving water data as well as other information pertaining to the discharge and receiving water (e.g., type of industry, existing TBELs, compliance history, stream surveys), as the basis for a decision. The permit writer might already have data available from previous monitoring or he or she could decide to work with the permittee to generate data before permit issuance or as a condition of the new permit. *NPDES Permit Writer's Manual*, US EPA (2010) at 6-23.

Despite this, the 2026 Permit references no data review or compliance review from the prior permit cycle. All data analysis/trend analysis that is referenced in the Fact Sheet are between 4 and 20 years old. 2026 Permit Fact Sheet at 238-41. And while the Regional Board asserts that the 2026 Permit can rely on existing TMDLs as a surrogate for the required RPA, the majority of water body/pollutant combinations at issue in the Draft MS4 Permit do not have TMDLs, and must use existing data to develop WQBELs where appropriate.

vii. <u>The 2026 Permit's Exemption from TMDL WLA Violations Caused by Authorized Non-Stormwater Discharges is Circular and Illegal.</u>

The 2026 Permit prohibits non-stormwater discharges to and from the MS4 [as required by Section 402(p)], 2026 Permit at 24, with the exception of those listed at pp. 24-25. Non-stormwater discharges in Table 3 are authorized, "unless such discharges are identified by the Permittee(s) or the Executive Officer as a significant source of pollutants." *Id.* at 25.

Despite the limitations on non-stormwater discharges in Table 3, every appendix to the 2026 Permit addressing TMDL compliance allows a discharger to exempt itself from compliance with WQBELs by demonstrating that authorized non-stormwater discharges cause the violation. *Cf.* 2026 Permit at 102. An authorized non-stormwater discharge that causes or contributes to a violation of a WQBEL is by definition "a significant source of pollutants." As such, none of the non-stormwater discharges listed at Table 3 are authorized where the discharger demonstrates

WQBEL violations caused by the discharge as required the compliance determinations in the appendices. In any event, the 2026 Permit provides no legal basis for authorizing any discharges causing violations of WQBELs or WQSs.

viii. The 2026 Permit's Antidegradation Analysis is Arbitrary, Capricious, and the 2026 Permit Concedes it Will Result in Continued Degradation for a Decade or More.

Because the 2026 Permit proposes to include Safe Harbor provisions, an anti-degradation analysis that complies with State Board Resolution No. 68-16 and 40 C.F.R. § 131.12 is required. The anti-degradation analysis requires the Regional Board to prohibit degradation to impaired waters, and to maintain high-quality waters of the State unless the Regional Board makes specific findings justifying degradation. State Board Order WQ 2015-0075 at 28; *see also* Administrative Procedures Update 90-004 ("APU 90-004"). The anti-degradation analysis must demonstrate the socio-economic benefit of the continued degradation—impacted community by impacted community—to justify that discharge. *Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1279 ("*Agua*"). Permits authorizing discharges that further degrade already impaired waters are prohibited.

If the Regional Board intends to continue to authorize discharges of municipal stormwater that degrades high-quality waters, it must conduct the required analysis. *Agua*, at 1278. This analysis must be based on findings of fact, not merely a recitation of the statutory requirement. Further, the findings supporting the antidegradation analysis must "enable the reviewing court to trace and examine the agency's mode of analysis" and "minimize the likelihood the agency will randomly leap from evidence to conclusions." *Topanga Assn. for a Scenic Community v. Cnty. of Los Angeles* (1974) 11 Cal.3d 506, 516; *see id.* at 517 fn. 16. The Regional Board provides no such analysis.

The 2026 Permit concedes that the degradation of waters will continue, likely for decades, under the permit. 2026 Permit Fact Sheet at 249 ("In this regard, some impaired waterbodies may remain the same or continue to degrade before showing improvement. This period may be

multiple years."). If the Regional Board determines that "a discharge [authorized under the Permit] will degrade high quality water," the Regional Board may only allow the resulting degradation if they make findings establishing that such degradation (1) will be consistent with maximum benefit to the people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in state policies. *Agua*, at 1268 (citing *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12. Moreover, the Water Boards must consider the need to include a finding that specifies that water quality degradation is permissible when balanced against the benefit to the public of the activity in question, while indicating in its analysis the socioeconomic and public benefits that will result from lowered water quality. APU 90-004, at 1.

Rather than conducting the required anti-degradation analysis, supported by the facts, the 2026 Permit merely recites the elements of an anti-degradation analysis and asserts they have been met. 2026 Permit at 248-49. In importing the anti-degradation analysis from the Los Angeles area MS4 Permit fact sheet virtually whole cloth, staff justifies the continued degradation of area creeks and beaches via a three-step analysis in the 2026 Permit. First, Staff argues that WMPs are designed to eventually end degradation through cost-effective structural controls. 2026 Permit Fact Sheet, at 262. Second, the Regional Board asserts that permittees need the safe harbors—which "deem" permittees in compliance with WQSs while participating in the WMP programs—as an incentive to implement those WMP programs. *Id.*, at 262. Third, the Regional Board balances the "significant environmental, public health, and economic costs" resulting from ongoing stormwater pollution against the future benefits of WMP implementation, ultimately concluding that insulating polluters while they implement WMPs is "necessary to accommodate important economic or social development." *Id*., at 264-65.

The second step of the Regional Board's antidegradation analysis contains the critical finding supporting the adoption of the safe harbors in the 2026 Permit—that municipal permittees

would not implement WMPs or otherwise comply with the MS4 Permit in the absence of the safe harbors. The Fact Sheet makes three claims relating to the "deemed in compliance" approach:

a. "Without the deemed compliance approach, Permittees are expected to shift at least some of their limited resources budgeted for planned, comprehensive, long-term, multi-benefit projects, to measures that are reactive, short-term, and ultimately less effective or protective of water quality in the long run." 2026 Permit Fact Sheet at 263;

b. "WMPs with the broader deemed compliance option (Alternative 4) better incentivize building and investing in long-term structural and non-structural controls that will improve water quality in the long run for multiple constituents and with multiple benefits." *Id.* at 262;

c. "Deeming Permittees in compliance while they are implementing their WMP projects allows Permittees to focus on constructing multi-benefit projects and long-term water sustainability planning, instead of focusing immediately (and spending funds) on addressing violations or defending litigation related to those violations that might occur before their projects are completed." *Id*.

Yet the 2026 Permit contains no evidentiary support, no facts, and no analysis to underlie these findings. The 2026 Permit concedes that trend analyses have not been conducted for most pollutants and waterbodies regulated by the Permit. 2026 Permit Fact Sheet at 263. Those analyses that have been conducted are between 4 and 20 years old. 2026 Permit Fact Sheet at 238-41. No analyses of data collected under the prior MS4 permits is considered or referenced in the 2026 Permit. Thus, the findings relied upon in the 2026 Permit to justify authorizing continued degradation of receiving waters under the safe harbor scheme fail to meet legal requirements and are arbitrary and capricious.

The 2026 Permit also provides no analysis to support its assertion that shielding permittees, and deeming discharges as in compliance no matter how polluted those discharges are, is in the public interest. Instead, staff asserts that:

> A Permittee would have to make significant tradeoffs in the services that it provides its residents and businesses to comply with while additional funding is sought. This may manifest itself in the reduction of some public services or prevent other public services from being provided... Reductions in service levels could harm the quality of life of residents and affect the efficiency of businesses' economic activity. Reductions in service level could disproportionately affect disadvantaged communities. 2026 Permit Fact Sheet at 258-59.

The 2026 Permit includes no analysis of the cost of continued pollution of area creeks, rivers, and beaches, no discussion of the public health impacts and costs from exposure to pollutants and no discussion of impacts to tourism from beach closures caused by MS4 discharges. Instead, the 2026 Permit engages in speculation about possible impacts that may harm quality of life.

And while the 2026 Permit imports its anti-degradation analysis from the Los Angeles MS4 Permit Fact Sheet, the 2026 Permit does not consider the effectiveness of the Safe Harbor program in Los Angeles. The experience in the Los Angeles area provides the best data point for evaluating the effectiveness of Safe Harbor provisions for achieving progress toward WQS compliance. The 2012 Los Angeles County MS4 Permit contains Safe Harbor language shielding permittees, yet Safe Harbors have failed to result in meaningful progress towards either implementation of the BMPs set out in the WMPs and EWMPs, or in protecting area receiving waters as of 2018. Neither Los Angeles nor Orange County have conducted or published an evaluation of BMP implementation since 2018. Since the Safe Harbor provisions were first included in the 2012 Los Angeles MS4 Permit, the twelve enhanced watershed management groups are, on average, only nine percent of the way towards completing their volume reduction

requirements to achieve compliance as identified in their EWMPs. *See Stormwater Report, Tracking Progress Towards Managing Stormwater Pollution in Los Angeles County from 2012 through* 2018, Heal the Bay at 10 (2019). As such, the 2026 Permit adopts a safe harbor program from the 2012 Los Angeles MS4 Permit, that neither promotes nor demands compliance with WQSs by permittees.

Rather than improving water quality, the years since the 2012 Los Angeles MS4 Permit was adopted have seen stagnant or worsening pollutant levels in Los Angeles' rivers and beaches. Receiving water sampling data demonstrates that MS4 discharges authorized by the 2012 MS4 Permit are degrading both impaired and high-quality receiving waters. For example, in February 2020, the Natural Resources Defense Council and LA Waterkeeper completed a statistical analysis of receiving water data in Ballona Creek, Dominguez Channel, the Los Angeles River, Malibu Creek, and the San Gabriel River. The Report found: (1) statistically significant increases in heavy metal concentrations in wet conditions from 2000-2018; (2) the majority of assessments reveal no change in analyte concentration over time in both study periods, 2000-2018 and 2012-2018; and (3) the proportion of E. coli exceedances for 4 of the 5 water bodies in wet conditions was greater than 50% for 2012-2018. *See Los Angeles County Municipal Separate Storm Sewer Systems (MS4). Time Series Analysis, 2000-2018* (Sean Mueller, Feb. 23, 2020) at 2. This study confirms that rather than improving receiving water quality since its adoption over eight years ago, the 2012 MS4 Permit has authorized either continued levels of degradation or accelerated degradation in both high-quality and impaired waters during both wet and dry weather. *Id.* at 17-48.

In fact, the analyses of water quality trends in regions already implementing safe harbor provisions in MS4 permits demonstrate that the opposite is true—insulating dischargers from enforcement results in minimal levels of program implementation and worsening receiving water quality. *See Time Series Analysis, 2000-2018* (Sean Mueller, Feb 23, 2020) at p. 2; *Stormwater*

Report, Tracking Progress Towards Managing Stormwater Pollution in Los Angeles County from 2012 through 2018 (2019, Heal the Bay), at 10.

Because the 2026 Permit provides no facts, data, or analysis to support the contention that Safe Harbors are needed to produce progress in program implementation or water quality improvements, and because all available data indicates that Safe Harbors in fact worsen water quality and program implementation, the 2026 Permit's anti-degradation analysis is arbitrary and capricious and contrary to law.

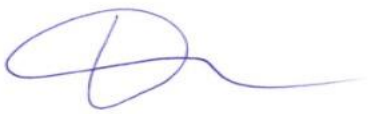
8. THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGER, IF NOT THE PETITIONER

A true and correct copy of this Petition was sent to the Regional Board and the dischargers by email on October 8, 2026. A true and correct copy of this Petition was sent to the Regional Board, State Board, and the Principal Permittees by U.S. mail on October 8, 2026.

9. THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD

Petitioner has previously raised and presented all the issues addressed in this Petition by comment letters submitted to the Regional Board on July 3, 2024, and July 20, 2026, and in oral testimony at Regional Board public hearings on July 24, 2026. Petitioner also presented power point slides to the Regional Board during its oral testimony.

Respectfully submitted,



Daniel Cooper

Sycamore Law, Inc.

Counsel for Orange County Coastkeeper,

Inland Empire Waterkeeper