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18 **STATE OF CALIFORNIA**
19 **WATER RESOURCES CONTROL BOARD**

20 In Re Petitions Challenging 2012 Los Angeles
21 Municipal Separate Storm Sewer System
22 Permit (Order No. R4-2012-0175)

SWRCB/OCC File Nos. A-2236 (a) – (kk)

**RESPONSE IN SUPPORT OF LOS
ANGELES COUNTY MS4 PERMIT;
REQUEST FOR SUPPLEMENTAL
EVIDENCE**

1 **I. Introduction**

2 The County of Los Angeles (“County”) and the Los Angeles County Flood Control District
3 (“District”) hereby submit this response in support of Regional Board Order No. R4-2012-0175, Waste
4 Discharge Requirements for Municipal Separate Storm Sewer System (“MS4”) Discharges Within the
5 Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of
6 Long Beach MS4, NPDES Permit No. CAS004001 (“2012 LA MS4 Permit” or “Permit”). The County
7 and the District support the 2012 LA MS4 Permit as adopted by the Los Angeles Regional Water
8 Quality Control Board (“Regional Board”). The 2012 LA MS4 Permit is a legal and appropriate
9 approach to managing storm water that will improve water quality, increase regional water supply, and
10 diminish reliance on imported water, thereby enhancing communities and the environment locally and
11 throughout California.

12 Through this Permit, the State Water Resources Control Board (“State Board”) has the
13 opportunity to support a groundbreaking approach to treating storm water as a resource, not a waste,
14 through binding permit terms that echo the State Board’s vision for stormwater management. As set
15 forth in the State Board’s “Storm Water Management in California” fact sheet recently updated on June
16 12, 2013:

17 While early program efforts focused on controlling pollutants and implementing good
18 management practices, the program is now also emphasizing holistic strategies aimed at
19 not only preventing problems but providing many community benefits. Storm water is
20 an important resource and Low Impact Development and Green Infrastructure
21 techniques are now capitalizing on opportunities in California. The goal is to capture the
water that runs off concrete and non-permeable surfaces and use it, for example, to water
trees, plants and other living things on the same plot of land from which it would flow
away. Groundwater supplies are replenished, too, and the amount of pollutants that flow
into our waterways is reduced.

22 Storm Water Management in California Fact Sheet, p. 1.¹

23 As another example of the State Board’s vision, on February 5, 2013 the State Board adopted
24 the Phase II Small MS4 General Permit (2013-0001-DWQ) with a relevant finding introducing the
25 permit and of significant importance for the instant dispute:

26 ///

27 _____
28 ¹ See Request for Supplemental Evidence.

1 Storm water is a resource and an asset and should not be treated as a waste product.
2 Managing rainwater and storm water at the source is a more effective and sustainable
3 alternative to augmenting water supply, preventing impacts from flooding, mitigating
4 storm water pollution, creating green space, and enhancing fish and wildlife habitat.
5 **California encourages alternative, innovative, multi-objective solutions to help use
6 and protect this valuable resource, while at the same time controlling pollution due
7 to urban runoff.**

8 State Water Resources Control Board, Phase II Small MS4 General Permit; Order No. 2013-0001-
9 DWQ, p. 5. (Emphasis added.)²

10 A review of the 2012 LA MS4 Permit and the Administrative Record will lead to the
11 inescapable conclusion that the Permit is precisely what the State Board has encouraged: a new
12 paradigm of managing storm water as a resource, not a waste. The Permit does this through its
13 Watershed and Enhanced Watershed Management Programs ("WMPs" and "EWMPs").

14 **II. WMPs and EWMPs**

15 The Regional Board adopted the 2012 LA MS4 Permit on November 8, 2012 after three days of
16 hearings as well as four public workshops and meetings spanning almost two years. In proposing the
17 Permit's terms, Regional Board staff used experience and best professional judgment to translate the
18 goal of achieving water quality standards into meaningful, effective permit terms. (EPA's NPDES
19 Permit Writer's Manual specifically recognizes the importance of using best professional judgment.
20 See e.g., NPDES Permit Writer's Manual, at p. 13, Chapter 6.³) After reviewing the voluminous
21 comments submitted, hearing testimony, and taking into consideration staff's expertise, the Regional
22 Board adopted a permit that encompasses the lessons learned from decades of stormwater management
23 and total maximum daily load ("TMDL") development in the Los Angeles Region. The 2012 LA MS4
24 Permit builds upon the previous 2001 iteration of the permit and includes the option for permittees to
25 use a watershed management program /enhanced watershed management program approach to comply
26 with provisions of the Permit.

27 During the November 2012 hearing, some commenters criticized the Permit's incentivized and
28 cooperative approach towards water quality improvements and predicted that permittees would do
nothing if the Regional Board adopted the permit. (See, e.g., November 8 Hearing Transcript, pp. 275-

² See Request for Supplemental Evidence.

³ See Request for Supplemental Evidence.

1 276.) These predictions were wrong. Less than 9 months after the permit adoption hearing, 85 of the
2 86 permittees under the 2012 LA MS4 Permit spent enormous resources and time committing to
3 implementing the Permit through the WMP/EWMP approach. Permittees that have submitted a Notice
4 of Intent (“NOI”) committing to implementation of WMPs and EWMPs include:

- 5 • Upper Santa Clara River Watershed, representing 3 permittees through the City of Santa
6 Clarita as lead permittee, filed an NOI in June of 2013 committing to implementation of
7 an EWMP;
- 8 • Upper Los Angeles River Watershed Group, representing 17 permittees through the City
9 of Los Angeles as lead permittee, filed an NOI on June 27, 2013 committing to
10 implementation of an EWMP;
- 11 • Los Angeles River Upper Reach 2 Sub Watershed, representing 8 permittees through the
12 City of Huntington Park as lead permittee, filed an NOI on June 27, 2013 committing to
13 implementation of a WMP;
- 14 • Lower Los Angeles River Watershed, representing 9 permittees through the City of
15 Signal Hill as lead permittee, filed an NOI on June 26, 2013 committing to
16 implementation of a WMP;
- 17 • Rio Hondo/San Gabriel River Water Quality Group, representing 8 permittees through
18 the City of Sierra Madre as lead permittee, filed an NOI on June 27, 2013 committing to
19 implementation of an EWMP;
- 20 • Upper San Gabriel River, representing 7 permittees through the County of Los Angeles
21 as lead permittee, filed an NOI on June 26, 2013 committing to implementation of an
22 EWMP;
- 23 • East San Gabriel Valley Watershed Management Area, representing 4 permittees
24 through the City of La Verne as lead permittee, filed an NOI in June of 2013 committing
25 to implementation of a WMP;
- 26 • Lower San Gabriel River, representing 14 permittees through the City of Norwalk as
27 lead permittee, filed an NOI committing to implementation of a WMP with the option to
28

1 switch to an EWMP;

- 2 • Los Cerritos Channel Watershed Group, representing 7 permittees through the City of
3 Long Beach as lead permittee, filed an NOI on June 27, 2013 committing to
4 implementation of a WMP with the option to switch to an EWMP;
- 5 • Malibu Creek Watershed Group, representing 6 permittees through the City of Calabasas
6 as lead permittee, filed an NOI on June 27, 2013 committing to implementation of an
7 EWMP;
- 8 • Marina del Rey, representing 4 permittees through the County of Los Angeles as lead
9 permittee, filed an NOI on June 26, 2013 committing to implementation of an EWMP;
- 10 • North Santa Monica Bay Coastal Watersheds, representing 3 permittees through the City
11 of Malibu as lead permittee, filed an NOI committing to implementation of an EWMP;
- 12 • Santa Monica Bay Jurisdictions 2 & 3, representing 5 permittees through the City of Los
13 Angeles as lead permittee, filed an NOI on June 27, 2013 committing to implementation
14 of an EWMP;
- 15 • Beach Cities Watershed Management Group, representing 5 permittees through the City
16 of Redondo Beach as lead permittee, filed an NOI on June 28, 2013 committing to
17 implementation of an EWMP;
- 18 • Palos Verdes Peninsula EWMP Agencies, representing 5 permittees through the City of
19 Rancho Palos Verdes as lead permittee, filed an NOI on June 27, 2013 committing to
20 implementation of an EWMP;
- 21 • Ballona Creek, representing 8 permittees through the City of Los Angeles as lead
22 permittee, filed an NOI on June 27, 2013 committing to implementation of an EWMP;
- 23 • Dominguez Channel Watershed Management Area Group, representing 6 permittees
24 through the City of Los Angeles as lead permittee, filed an NOI on June 27, 2013
25 committing to implementation of an EWMP;
- 26 • Alamitos Bay/Los Cerritos Channel Group, representing 2 permittees through the
27 County of Los Angeles as lead permittee, filed an NOI on June 24, 2013 committing to
28

1 implementation of a WMP;

- 2 • City of Carson filed an NOI on June 26, 2013 committing to implementation of an
- 3 individual WMP;
- 4 • City of Compton filed an NOI on June 26, 2013 committing to implementation of an
- 5 individual WMP;
- 6 • City of El Monte filed an NOI on June 26, 2013 committing to implementation of an
- 7 individual WMP;
- 8 • City of Gardena filed an NOI on June 27, 2013 committing to implementation of an
- 9 individual WMP;
- 10 • City of Irwindale filed an NOI on June 25, 2013 committing to implementation of an
- 11 individual WMP;
- 12 • City of La Habra filed an NOI on June 22, 2013 committing to implementation of an
- 13 individual WMP;
- 14 • City of Lawndale filed an NOI on June 25, 2013 committing to implementation of an
- 15 individual WMP;
- 16 • City of Lomita filed an NOI on June 17, 2013 committing to implementation of an
- 17 individual WMP;
- 18 • City of San Fernando filed an NOI committing to implementation of an individual
- 19 WMP;
- 20 • City of South El Monte filed an NOI on June 27, 2013 committing to implementation of
- 21 an individual WMP;
- 22 • City of Walnut filed an NOI on June 26, 2013 committing to implementation of an
- 23 individual WMP;
- 24 • City of West Covina filed an NOI on June 17, 2013 committing to implementation of an
- 25 individual WMP.⁴

26 Filing the NOI is just the first of many steps. Pursuant to the terms of the 2012 LA MS4 Permit,

27 _____
28 ⁴ See Request for Supplemental Evidence.

1 permittees that choose to implement a WMP or EWMP approach will have continued oversight by the
2 Regional Board during the development and implementation of WMPs and EWMPs. Additionally, as
3 required by the Permit, a Technical Advisory Committee (“TAC”) has been formed to discuss and
4 provide input on key technical issues related to the development of the WMP and EWMP plans. This
5 permit-wide TAC helps to promote consistency among the permittee watershed groups regarding
6 technical approaches, including the reasonable assurance analysis that is a required element of the
7 WMP or EWMP. Chaired by staff from the Regional Board, the TAC also includes representatives
8 from EPA Region 9, each of the WMP and EWMP groups, Council for Watershed Health, NRDC, Heal
9 the Bay, and Los Angeles Waterkeeper. To date the TAC has met three times, on July 24, August 28,
10 and September 17, 2013, and is expected to meet monthly throughout the WMP and EWMP planning
11 process.

12 A draft WMP or EWMP plan must be submitted to the Regional Board and implemented upon
13 approval by the Executive Officer. (2012 LA MS4 Permit, pp. 56-57.) Permittees must provide a
14 comprehensive evaluation every two years thereafter. (2012 LA MS4 Permit, p. 54.) During this
15 period, permittees are obligated to continue to implement the watershed control measures in their
16 existing stormwater management programs, including actions within each of the Permit’s six categories
17 of minimum control measures, continue to eliminate non-stormwater discharges, and continue to
18 implement control measures where possible from existing TMDL implementation plans. (2012 LA
19 MS4 Permit, pp. 54, 57-58.) Significantly, permittees that do not elect to develop a WMP or EWMP,
20 or that do not have an approved WMP or EWMP within 28 or 40 months, respectively, will be subject
21 to the Permit’s baseline requirements, including demonstrating compliance with receiving water
22 limitations and applicable interim water quality-based effluent limitations. (2012 LA MS4 Permit, p.
23 58.)

24 **III. Request for Supplemental Evidence**

25 The County and District respectfully request that the Administrative Record be supplemented
26 with the following:

- 27 • Notices of Intent (“NOI”) filed by permittees and available on the Regional Board

1 website (Attachment A, Parts 1-7);

- 2 • State Board Issue Paper titled Municipal Storm Water Permit Receiving Water
- 3 Limitations Board Workshop November 20, 2012 (Attachment B);
- 4 • State Water Resources Control Board, Phase II Small MS4 General Permit; Order No.
- 5 2013-0001-DWQ (Attachment C);
- 6 • State Water Resources Control Board, Storm Water Management in California Fact
- 7 Sheet (Attachment D);
- 8 • *Santa Monica Baykeeper v. Kramer Metals, Inc.* Consent Decree (Attachment E); and
- 9 • EPA, NPDES Permit Writer’s Manual, Chapter 6 (Attachment F).

10 The State Board has directed that petitioners or interested persons may include specific legal or
11 policy issues that are significant or necessary to understand their positions. (State Board Response to
12 Additional Requests July 29, 2013, at p. 2.) California Code of Regulations, title 23, section 648.2
13 provides that the State Board may take official notice of such facts as may be judicially noticed by the
14 courts of this state, and Evidence Code section 452(c) allows the State Board to take official notice of
15 “[o]fficial acts of the legislative, executive, and judicial departments of the United States...” Courts
16 have found that “official acts under Evidence Code section 452(c) “include records, reports and orders
17 of administrative agencies.” (*Rodas v. Spoegel* (2001) 87 Cal.App.4th 513, 518.) Each of the
18 documents set forth above falls within one or more of these categories. They are of assistance in
19 understanding the legal and policy issues at issue in these petitions and are official acts or records of
20 governmental agencies or the courts.

21 **IV. The Regional Board’s Approach to the Permit is Legally Valid and an Appropriate Use of**
22 **Agency Discretion**

23 MS4 permits, as with all NPDES permits, are intended to support the objective of the federal
24 Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the
25 Nation’s waters.” (33 U.S.C. § 1251(a).) At the same time, through the Clean Water Act, Congress
26 provided that EPA and state agencies are to recognize the unique issues of stormwater management in
27 attempting to reach that goal. To give EPA and state agencies the flexibility needed to address the
28

1 complexity of stormwater, Congress in Clean Water Act section 402(p)(3)(B)(iii) provides that EPA
2 and the states can include provisions that EPA or the state determines “appropriate” for the control of
3 pollutants in MS4 discharges. (See *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159,
4 1166-1167.) In this regard, section 402(p)(3)(B)(iii) does not require municipal storm sewer discharges
5 to comply strictly with numeric effluent limitations, but allows for the creation of “such other
6 provisions as the [EPA or state] Administrator... determines appropriate for the control of such
7 pollutants.” (*Id.*) California courts have upheld the State and Regional Board’s use of discretion.
8 (*Building Industry Association of San Diego County v. State Water Resources Control Board* (2004)
9 124 Cal.App.4th 866, 883.)

10 Accordingly, the CWA allows the Regional Board to exercise its best professional judgment in
11 establishing permit terms. Here, over a considerable time period, Regional Board staff evaluated the
12 different approaches for permitting municipal stormwater in the Los Angeles region based on staff’s
13 experience under the prior permits and the need to implement the 33 TMDLs adopted since the 2001
14 permit. Based on this best professional judgment, the Regional Board found that incentivizing the use
15 of watershed based programs through WMPs and EWMPs is an optimal way to meet the goals of the
16 Clean Water Act.

17 **V. The Permit Does Not Violate the Clean Water Act**

18 The 2012 LA MS4 Permit is legally valid and does not violate the Clean Water Act. The
19 Permit’s provisions remain faithful to the mandates and requirements of anti-backsliding, anti-
20 degradation, and TMDLs. As the Regional Board staff testified during the permit adoption hearing, the
21 2012 LA MS4 Permit is a rigorous permit that accelerates water quality improvements by increasing
22 the requirements of the 2001 permit. (November 8 Hearing Transcript, pp. 23, 315.)

23 The County and the District have already addressed the anti-backsliding, antidegradation and
24 TMDL issues in their comments submitted on August 15, 2013 in conjunction with receiving water
25 limitation portions of the Permit. As set forth in those comments, WMPs and EWMPs do not violate
26 anti-backsliding, antidegradation or TMDL requirements. The County and District’s August 15, 2013
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28

1 submission is hereby incorporated by reference⁵ and this brief will address other arguments that have
2 been raised about the Permit.

3 **A. The Permit Incorporates Waste Load Allocations Consistent With Applicable TMDLs**

4 The 2012 LA MS4 Permit's incorporation of waste load allocations is consistent with the
5 TMDLs. The Permit requires that:

6 The Permittees shall comply with the applicable water quality-based effluent limitations
7 and/or receiving water limitations contained in Attachments L-R, consistent with the
8 assumptions and requirements of the WLAs established in the TMDLs, including
9 implementation plans and schedules, where provided for in the State adoption and
10 approval of the TMDL...

11 2012 LA MS4 Permit, Part VI.E.1.c, pp. 141.

12 Nevertheless, some petitioners have contended that the Permit's use of a design storm and the
13 lack of numeric effluent limits vitiate this part of the Permit. This argument lacks merit.⁶ First, it is
14 well-recognized that a permit can reflect TMDL waste load allocations through BMPs; numeric effluent
15 limits are not required. (See EPA November 2002 Memorandum.) EPA underlined this approach in
16 the fact sheet that accompanied its recently issued storm water permit for the District of Columbia:

17 Today's Final Permit is premised upon EPA's longstanding view that the MS4
18 NPDES permit program is both an iterative and an adaptive management process
19 for pollutant reduction and for achieving applicable water quality standard and/or
20 total maximum daily load (TMDL) compliance. See generally, "National Pollutant
21 Discharge Elimination System Permit Application Regulations for Stormwater
22 Discharges," 55 F.R. 47990 (Nov. 16, 1990).

23 EPA is aware that many permittees, especially those in highly urbanized areas such
24 as the District, likely will be unable to attain all applicable water quality standards
25 within one or more MS4 permit cycles. Rather the attainment of applicable water
26 quality standards as an incremental process is authorized under section
27 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), which requires
28 an MS4 permit "to reduce the discharge of pollutants to the maximum extent
practicable" (MEP) "and such other provisions" deemed appropriate to control
pollutants in municipal stormwater discharges. To be clear, the goal of EPA's
stormwater program is attainment of applicable water quality standards, but
Congress expected that many municipal stormwater dischargers would need

⁵ The County and District also incorporate by reference the comments they submitted on November 13, 2012 in conjunction with the public workshop on receiving water limitations held by the State Board on November 20, 2012.

⁶ As a legal matter, the Permit was not required to include this provision. 40 C.F.R. 122.44(d)(1)(vii)(B), on which some petitioners rely, does not apply to municipal stormwater permits. The provisions of section 122.44 apply only "when applicable." Section 122.44(d) addresses the provisions of the Clean Water Act that require permits to comply with water quality standards. Because the Clean Water Act does not require municipal stormwater permits to comply with water quality standards, (compare 42 U.S.C. § 1342(p)(3)(A) with 42 U.S.C. § 1342(p)(3)(B); *Defenders of Wildlife v. Browner*, supra), 40 C.F.R. § 122.44(d) is not applicable to MS4 permits.

1 several permit cycles to achieve that goal.

2 Therefore today's Final Permit is clear that attainment of applicable water quality
3 standards and consistency with the assumptions and requirements of any
4 applicable WLA are requirements of the Permit, but, given the iterative nature of
5 this requirement under CWA Section 402(p)(3)(B)(iii), the Final Permit is also
6 clear that "compliance with all performance standards and provisions contained in
7 the Final Permit shall constitute adequate progress toward compliance with
8 DCWQS and WLAs for this permit term" (Section 1.4).

9 D.C. Permit Fact Sheet at 5-6. (Emphasis added.)

10 Under the EWMP provisions of the LA MS4, Permittees will design their water quality
11 programs using the 85th percentile, 24-hour event storm. It was appropriate for the Regional Board to
12 rely on its expertise and best professional judgment in concluding that the use of a design storm is
13 appropriate. The design standard for the trash TMDL, which advises the permittees as to the design
14 standard that must be met, has made the trash TMDL the most successful TMDL in the Los Angeles
15 region. Building upon that experience among others, the Regional Board determined that use of a
16 design storm, and in particular an 85th percentile design storm, is a reasonable means for implementing
17 Clean Water Act requirements.

18 Design storms are in fact a widely used storm water tool. For example, the State Board in the
19 draft Industrial General Storm Water Permit proposes to use the 85th percentile design storm. That
20 draft permit provides that all new, volume based treatment BMPs shall be designed to treat the volume
21 of runoff produced from an 85th percentile 24-hour storm event, similar to the design storm adopted by
22 the Regional Board here. (See Draft General Permit for Storm Water Discharges Associated With
23 Industrial Activities; NPDES No. CAS000001, p. 34.)

24 Another example is a Federal Clean Water Act storm water case consent decree available on the
25 State Board Office of Enforcement website and filed in the United States District Court for the Central
26 District of California. *Santa Monica Baykeeper v. Kramer Metals, Inc.*, involved litigation brought by
27 Los Angeles Waterkeeper, then known as the Santa Monica Baykeeper, against an industrial
28 stormwater permittee whose discharges flow through the MS4 and then into the Los Angeles River.⁷
The federal consent decree includes what is termed as an "Interim Qualifying Storm Event:" for the

⁷ See Request for Supplemental Evidence.

1 first year of the consent decree “Kramer Inc. shall eliminate storm water discharges from the Kramer
2 1760 facility for all storms up to and including the 5 year, 24 hour storm event.” (Consent Decree,
3 Attachment E, at p. 5.) Subsequent wet seasons applied a “Discharge Minimization Qualifying Storm
4 Event” as defined by “all storms up to and including the 25 year, 24 hour storm event.” (*Id.* at p. 8.)

5 **B. The Permit Incorporates Lawful Compliance Schedules**

6 Contrary to some petitioner’s assertions, the 2012 LA MS4 Permit does include lawful interim
7 deadlines for TMDL compliance. Each WMP and EWMP must incorporate the compliance schedules
8 of the TMDLs and, “where necessary develop interim milestones and dates for their achievements...”
9 (2012 LA MS4 Permit, p. 64.)⁸

10 The Regional Board reasonably concluded that those deadlines should not be set until the
11 WMPs and EWMPs are developed and approved. By their nature, TMDLs are based on an analysis of
12 waste generation and wasteload reduction on a watershed scale. Therefore, jurisdictions within the
13 watershed often share the responsibilities for achieving these waste load reductions to comply with
14 TMDLs. Jurisdictions have previously joined together to submit TMDL implementation plans that are
15 watershed based. The 2012 LA MS4 Permit expands on that practice to allow for coordinated
16 implementation in an effort to achieve watershed scale water quality benefits and results.

17 Some petitioners’ contentions with respect to the Metals TMDLs are also erroneous. These
18 petitioners premise their arguments on the provisions of State Board Resolution No. 2000-15, *Policy*
19 *for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of*
20 *California*. That plan, however, specifically states that it does not apply to stormwater discharges.
21 (Policy at 1 n.1.) Because that plan does not apply to stormwater discharges, the Regional Board was
22 not limited by its provisions.

23 **C. The Permit’s Provisions Are Adequately Supported by the Finding and Evidence in**
24 **the Record**

25 The 2012 LA MS4 Permit’s provisions with respect to anti-backsliding and the WMPs,
26

27 ⁸ Moreover, contrary to some petitioner’s contentions, the Santa Monica Bay and Los Angeles River Bacteria TMDLs, as
28 incorporated into the permit, do have interim deadlines (Permit, Attachment M, pp. M-1 et seq. (Santa Monica Bay);
Attachment O, pp. O-7 et seq. (Los Angeles River).

1 including the EWMPs, are adequately supported by findings and evidence in the record. First,
2 Regional Board staff have testified that the 2012 LA MS4 Permit is more stringent, not less stringent,
3 than the requirements of the prior, 2001 LA MS4 Permit that is being replaced, including the
4 incorporation of provisions reflecting 33 TMDLs that had not been incorporated into the 2001 LA MS4
5 permit. (See e.g., November 8 Hearing Transcript, p. 315.)

6 Second, the Permit requires that the permittees conduct a reasonable assurance analysis as part
7 of the WMP and EWMP process. The objective of this analysis is “to demonstrate the ability of
8 Watershed Management Programs and EWMPs to ensure that Permittees’ MS4 discharges achieve
9 applicable water quality based effluent limitations and do not cause or contribute to exceedances of
10 receiving water limitations.” (2012 LA MS4 Permit, p. 64.) Therefore, there is evidence before the
11 State Board that the provisions of the 2012 LA MS4 Permit do not violate anti-backsliding policies and
12 that water quality standards will be met.

13 **D. The Permit’s WMPs and EWMPs Do Not Conflict with 33 U.S.C. 1313(d)(4)**

14 Some petitioners argue that the Permit violates the provisions of 33 U.S.C. § 1313(d)(4)(A) and
15 (B). This argument also lacks merit. 33 U.S.C. § 1313(d)(4)(A) and (B) are applicable only to
16 revisions of effluent limitations that were based on TMDLs or other waste load allocations established
17 under section 1313. No such revisions have been made by the Regional Board in the Permit. The only
18 TMDLs that had been incorporated into the 2001 permit were the Los Angeles River Trash and the
19 Marina del Rey Bacteria TMDLs. The 2012 Permit does not revise those provisions. 33 U.S.C. §
20 1313(d)(4)(A) and (B) are therefore not applicable. In addition, with respect to 33 U.S.C. §
21 1313(d)(4)(B), this section applies only to waters that equal or exceed levels necessary to protect the
22 designated uses or otherwise required by applicable water quality standards. Here the challenging
23 petitioners are arguing against the application of WMPs or EWMPs in watersheds that do not meet
24 water quality standards. 33 U.S.C. § 1313(d)(4)(B) is not applicable for this reason also.

25 Finally, even if the new Permit were revising effluent limitations that had been based on
26 TMDLs and those waters currently met water quality standards, there would be no violation of the anti-
27 degradation policy in violation of section 1313(d)(4)(B). The State Board has adopted Resolution No.
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1 68-16 as the state’s anti-degradation policy. This policy provides that “existing high quality” waters
2 shall be maintained unless an exception is established. Pursuant to the State Board Administrative
3 Procedures Update 90-004, “if the Regional Board has no reason to believe that existing water quality
4 will be reduced due to the proposed action, no antidegradation analysis is required.” (APU 90-004, p.
5 2.)

6 The Regional Board found that the 2012 LA MS4 Permit approach is consistent with anti-
7 degradation policies. (2012 LA MS4 Permit, p. 25.) This finding is supported by the record. No
8 provision of the 2012 LA MS4 Permit authorizes an increase in the discharge of waste. Instead, the
9 WMPs and EWMPs will be designed to achieve water quality standards and, while the WMPs and
10 EWMPs are being developed, the permittees must continue with the same measures that they
11 implemented under the prior permit as well as meeting additional requirements. The WMPs and
12 EWMPs will improve, not degrade the quality of waters.

13 In addition, permittees are required to conduct a reasonable assurance analysis for each water
14 body-pollutant combination addressed by its WMP and the reasonable assurance analysis must be
15 quantitative and performed using a peer-reviewed model in the public domain. (2012 LA MS4 Permit,
16 p. 63.) Permittees must also develop an integrated monitoring program to assess progress toward
17 achieving the water quality-based effluent limitations and/or receiving water limitations per the
18 compliance schedules, and progress toward addressing water quality priorities. (*Id.* at p. 66.)

19 The 2012 LA MS4 Permit not only includes provisions that allow for WMPs and EWMPs to be
20 implemented to improve the quality of waters on a watershed-based scale, but also requires those
21 permittees that do not choose to implement these programs to comply with the baseline requirements of
22 the 2001 LA MS4 Permit that have been incorporated into the 2012 Permit along with 33 TMDLs. The
23 Permit does not allow degradation of water quality because permittees must either comply with the
24 previous requirements of the 2001 LA MS4 Permit, including additional TMDLs, or implement a WMP
25 or EWMP approach supported by sound science and designed to achieve water quality standards.

26 **VI. The Permit’s WMP/EWMP Approach Creates Multiple Benefits**

27 The 2012 LA MS4 Permit preserves the provisions of the 2001 LA MS4 Permit by allowing
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1 permittees to continue to implement projects that comply with the provisions and requirements carried
2 over from the 2001 LA MS4 Permit. However, Permittees are also given the option to develop WMPs
3 or EWMPs to implement the rigorous requirements of the Permit on a watershed-wide basis. (2012 LA
4 MS4 Permit, pp. 47-48.) This watershed management approach allows permittees to join together and
5 partner on multi-benefit, regional projects.

6 Through the available option for permittees to use a WMP or EWMP approach to comply with
7 the 2012 LA MS4 Permit, the Regional Board allows for an approach that coordinates various surface
8 and groundwater regulatory programs and promotes cooperative, collaborative, cost-effective efforts
9 within a watershed to achieve multiple benefits. During 2012 LA MS4 Permit hearings the Regional
10 Board staff testified that watershed-based approaches are well recognized as efficient and effective
11 mechanisms to improve water quality and attain multiple benefits, including water conservation, reuse,
12 and sustainability. (October 4 Hearing Transcript, p. 33.) Staff testified that there have been significant
13 water quality improvements in the region when watershed approaches have been used. (*Id.*) These
14 multi-benefit projects are sustainable and foster collaboration. They alleviate flooding, serve to
15 replenish and conserve local water supply, create open space and recreational opportunities throughout
16 the community, and create wildlife habitat.

17 **A. The Permit's New Watershed Based Approach Appropriately Improves an**
18 **Outdated Non-Watershed Based RWL Approach**

19 The new approach used in the 2012 LA MS4 Permit is an advance in regional storm water
20 management. The 2001 permit was adopted before the adoption of the majority of TMDLs, and before
21 the paradigm shift in stormwater management to a focus on conserving stormwater for water
22 conservation purposes. New permits should reflect advancements in storm water management --
23 otherwise those advancements cannot be realized. In this regard, the State Board has discussed the
24 flexibility and deference afforded to regional boards in adopting permits:

25 The Clean Water Act generally requires NPDES permits to include technology-
26 based effluent limitations and any more stringent limitations necessary to meet water
27 quality standards. In the context of NPDES permits for MS4s, however, the Clean
28 Water Act does not reference the requirement to meet water quality standards. MS4
discharges must meet a technology-based standard of reducing pollutants in the
discharge to the Maximum Extent Practicable (MEP), but requirements to meet water

1 quality standards are at the discretion of the permitting agency. Further, under the
2 Porter-Cologne Water Quality Control Act, waste discharge requirements must
3 implement applicable water quality control plans, including water quality objectives;
4 however, the Porter-Cologne Act also affords the State Water Board and regional water
5 quality control boards (collectively, Water Boards) flexibility to consider other factors,
6 such as economics, when establishing any NPDES permit requirements that are more
7 stringent than required by the Clean Water Act. (Footnotes omitted).

8 Municipal Storm Water Permit Receiving Water Limitations Board Workshop November 20, 2012,
9 p.1.⁹

10 The 2012 LA MS4 encourages planning on a watershed-based scale. Further, because the
11 EWMPs can improve water quality and water supply, provide flood control, and create recreation and
12 open space benefits, they will allow permittees to combine different funding sources to obtain funding
13 for stormwater quality projects that would not otherwise be available. The Regional Board properly
14 recognized that it should promote multiple benefit projects by providing for permit terms that
15 encourage the accomplishment of these goals.

16 **B. Implementation Of The Permit Will Conserve Water**

17 For years, the municipal stormwater permittees in Los Angeles County have grappled with vast
18 amounts of stormwater as it washes over impervious surfaces and then is ushered into flood control
19 channels and lost. Stormwater runoff is frequently called a significant source of water pollution, but it
20 can also be a significant source of water supply. As demands for fresh water supply continue to
21 increase, stormwater infiltration will be of paramount importance. With decades of stormwater
22 regulation as background and experience, the Regional Board has embraced a new watershed-based
23 approach by adopting the 2012 LA MS4 Permit designed to encourage rainwater harvesting as a
24 significant component of permit compliance through WMPs and EWMPs.

25 In advance of the Permit, some permittees, including the County and the City of Los Angeles,
26 required low impact development technologies and requirements in an effort to improve stormwater
27 quality. These independent efforts are important, but watershed-based and regional coordinated efforts
28 to create large infiltration areas and projects throughout Los Angeles County with the intention of
increasing water supply will obtain even greater results. Permittees have begun the process of locating

⁹ See Request for Supplemental Evidence.

1 possible areas for these stormwater infiltration projects. Projects can range among a number of
2 concepts, including constructed wetlands with parks, infiltration basins under shopping center parking
3 lots, or stormwater basins in locations ideal for aquifer recharge. Permittees may also partner with non-
4 permittees such as other state agencies, water agencies, or private property owners. When there is a
5 large rain storm in Los Angeles, as much as an estimated ten (10) billion gallons flows through the Los
6 Angeles storm drain system and out to the Pacific Ocean.¹⁰ Considering that one acre-foot of water
7 equals about 326,000 gallons and generally supplies the needs of a family of four for a year, this
8 resource should not be wasted. The stormwater that currently falls on the streets in Los Angeles
9 County should be used to recharge aquifers and offset the region's demand on distant, expensive water
10 sources. The 2012 LA MS4 Permit's WMP and EWMP can accomplish this.

11 **C. The Approach Adopted in the Permit Enhances Permittees' Ability to Comply with**
12 **Permit Provisions**

13 There are a number of unique challenges in Los Angeles County that complicate the
14 management of stormwater quality and the issuance of an MS4 permit. The fact that storm and
15 nonstormwater discharges can originate within different jurisdictions are comingled within the
16 receiving waters, the variable nature and concentration of the pollutants, the large number of TMDLs,
17 and the sheer number of municipalities presents complex issues that must be addressed in a MS4
18 permit. The 2012 LA MS4 Permit contains provisions to address these challenges. The 2012 LA MS4
19 Permit integrates water supply with water quality through EWMPs that encourage an integrated
20 approach to watershed-based planning and programs. The complexities of these challenges necessitate
21 the use of WMPs and EWMPs to address the challenges on a watershed-based scale rather than by
22 permittees individually.

23 As compared to other permits or orders that are now adopting this approach, the 2012 LA MS4
24 Permit is aggressive. For example, in September of 2012, the City of Philadelphia and EPA resolved
25 an enforcement order pertaining to stormwater. Under this resolution the city was required to install
26 green infrastructure throughout the city. The approximately 134 square mile city was given *four* years

27 _____
28 ¹⁰ City of Los Angeles Stormwater Program FAQ, <<http://www.lastormwater.org/about-us/frequently-asked-questions/>> (as of September 17, 2013).

1 to develop an implementation plan, and 25 years to implement that plan. In contrast, the 84 cities in the
2 3,000 square miles covered under the 2012 LA MS4 Permit are given only two and a half years to
3 develop their implementation plans and much less than 25 years to implement them.

4 Storm water should be managed in a manner that encourages cooperation while resulting in
5 public work projects that augment water supply and improve communities. The 2012 LA MS4 Permit
6 does this. It incentivizes environmental stewardship by permittees and rewards innovative approaches.
7 The Permit's approach should be embraced, not rejected.

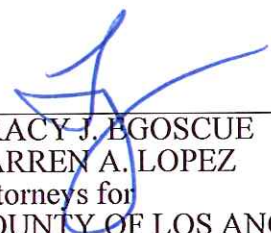
8 **VII. CONCLUSION**

9 For the foregoing reasons, the challenges to the 2012 LA MS4 Permit should be summarily
10 DENIED.

11
12 DATED: October 15, 2013

13 Respectfully submitted,
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