

Notice of Intent I. Individual Watershed Management Plan

1. *Rationale for I-WMP*

The **City of West Covina** has chosen the I-WMP, albeit with reservation, to meet TMDL and non-water quality standards (referred to collectively as “WQSs”) for several reasons including but not limited to the following:

- i. The I-WMP allows the City to determine to what extent its existing stormwater quality management program (SQMP), which has been in effect since 2002, is meeting TMDLs and non-TMDL WQSs, based on outfall monitoring against ambient WQSs. It is possible that the City has been meeting some or even most WQSs. If outfall monitoring shows persistent exceedances the I-WMP will contain a mechanism for addressing it.
- ii. The City cannot justify an Enhanced Watershed Management Plan (E-WMP) at this time because: (1) there are no water quality monitoring data that would justify this extreme and costly option; (2) neither the County of Los Angeles (which wrote the E-WMP provision in the current MS4 permit) nor the City of Los Angeles has indicated what multi-benefit projects it is proposing to provide the “safe harbor”¹ that would enable participating permittees to achieve compliance even if exceedances of TMDLs and non-TMDL WQSs occur²; (3) there is no guarantee that participating in an E-WMP would assure compliance with WQSs; (4) there is no current funding mechanism for the E-WMP³; and (5) were the City to commit to an E-WMP, it would be required to enter into an MOU that could bind it to its requirements even if funding is not available.
- iii. The City has chosen the I-WMP, even though it still ties it to having to comply with strict waste load allocations (WLAs) at the outfall and apparently in the receiving water as well. The City would have preferred to meet WQSs through the implementation of its stormwater management plan (SWMP) as is provided

¹Neither the County nor City of Los Angeles, which are encouraging permittees to participate in “regional multi-benefit” projects that would provide the safe harbor, has yet to disclose what those projects are.

²The MS4 permit asserts that the E-WMP provides compliance with WQSs and even with some minimum control measures (viz., the 6 core programs that form the stormwater management program required under federal law). There is reason to believe that this provision is extra-legal and could be voided either under administrative or judicial challenge. For one thing, an E-WMP is not a water quality based effluent limitation (WQBEL) which would translate a WQS into a compliance action. Perhaps it could have been one had the MS4 permit made clear that the E-WMP contains BMPs capable of meeting all the numeric WQSs over time. Instead, the MS4 permit incorrectly uses WQBEL to mean the same thing as a waste load allocation. Further, the EWMP’s regional multi-benefit project requirement cannot guarantee compliance with WLAs measured at the outfall if the project is located outside of permittee’s MS4. Even if the MS4 permit survives challenge, there is no guarantee that the E-WMP and its safe harbor provision will carry-over to the next MS4 permit. MS4 permits are five years in duration and the next Regional Board has the authority change permit requirements. It could not be argued that the anti-backsliding provision of Clean Water Action Section 402(o) would compel the next Regional Board to continue the E-WMP. This is because anti-backsliding only applies to WQSs, not to the means of achieving them. Further, 402(o) contains other anti-backsliding exemptions.

³The Los Angeles County Board of Supervisors indicated at its March 12, 2013 public hearing on the Clean Beaches, Clean Water Fee Initiative that it does not intend to re-try this proposition as a 218 parcel fee. Instead, they suggested that if another fee measure is attempted it would be through a regular tax vote.

under the Receiving Water Limitation (RWL) section of the MS4 permit. The RWL can be interpreted to mean that if a permittee implements its SWMP in a timely and complete manner it will be in compliance with WQSs. If persistent exceedances of WQSs are detected from outfall discharges the permittee shall report them to the Regional Board along with a plan for improving BMPs to address the exceedances. This constitutes an “iterative process.” However, the MS4 permit appears to over-ride the RWL provision by requiring permittees to meet the WQSs by any means necessary by interim TMDL deadlines. Nevertheless, just to err on the side of caution, the City has chosen the I-WMP because it will provide more time for compliance with interim WLAs. It is expected that by the time compliance with interim TMDLs is due, the administrative petition and state-wide RWL language (expected to be decided by the State Water Resources Control Board some time in February of 2014), will have been resolved. Although West Covina is opting for an I-WMP and CIMP, it shall work in cooperation with the following permittees on a watershed basis.

Watershed/Sub-watershed	Participating MS4s
<ul style="list-style-type: none"> • San Gabriel River⁴ 	<ul style="list-style-type: none"> • El Monte (reach 3) • South El Monte (reach 3) • Glendora (reach 5 and Walnut Creek) • Irwindale (reach 4 and 5) • West Covina (Walnut and San Jose Creek)

Each participating MS4 will be responsible for preparing its own individual WMPs and conducting its own monitoring. However, because each of these permittees shares the same consultant, cost-sharing of I-WMP and CIMP development shall result in de facto terms.

2. *Water Quality Based Effluent Limitations and Receiving Water Limitations*

Dry and wet weather interim and final water quality based effluent limitations (WQBELs) and receiving water limitations (RWLs) are discussed below. There is a definitional problem with these terms, however. Neither the MS4 permit nor state and federal law define or refer to an interim or final WQBEL or RWL. Nor is there a definition of a dry or wet weather WQBEL and RWL. However, based on conversations with Regional Board staff it appears that a dry and wet weather WQBEL is synonymous with a dry and wet weather waste load allocation in a TMDL, but applied to outfalls. And, it appears that a dry and wet weather RWL are TMDL WLAs applied to a receiving water. The use of the term RWL is confusing because it does not square with its use under the Receiving Water Limitation section of the MS4 permit. Further, the MS4 permit defines a RWL to mean:

⁴Note: The TMDLs for reaches and segments within the San Gabriel River Metals TMDL (currently a USEPA TMDL) extends metals TMDLs (copper, lead, zinc, and selenium) to all permittees that drain into this watershed, regardless of whether a permittee is located within the impaired reach as determined by the State’s 303(d) list.

Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.

Nevertheless, the foregoing definition is deficient to the extent that is limited only to water quality objectives (WQOs), which are State standards. The definition should only have referenced WQSs, which are federal standards and according to the Los Angeles Region Basin Plan also includes WQOs. Or it should have just added WQSs in the sentence, thereby making it clear that WQSs and WQOs are RWLs. This is an important distinction because a WQO cannot be interpreted to mean or apply to a TMDL.

Beyond this, if the Regional Board intended interim and final RWLs to mean WLAs that require compliance in receiving waters, based on in-stream monitoring, it is mistaken. As RWL language in the Order at V.A.1 explains: *Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.* From this, it would be unreasonable to conclude that an RWL can be expressed in interim or final terms. It has been suggested that the RWL is merely a compliance standard, expressed as a WLA, applied to the receiving water that must be complied through in-stream measurements. However, it is clear from Order section V.A.1 that determining violations of RWLs can only be determined by measuring discharges from the MS4 (viz., an outfall or end-of-pipe).

i. *Dry and Wet Weather Interim and Final WQBELs for San Gabriel River-Related TMDLs*

The City cannot identify wet weather interim and final WQBELs because of the uncertainty of what a WQBEL means. There is no definition of a wet weather or dry weather WQBEL anywhere in federal law or USEPA guidance. There is also no definition in Attachment A of the Order. It only explains it as acronym, which stands for a “water quality based effluent limitation.” It has been suggested that a WQBEL is the same as a WLA. The City disagrees with this interpretation. A WQBEL is a means of attaining a WLA, generally expressed as BMPs. Complicating matters is that the SGR M-TMDL is a USEPA TMDL, which only requires WQBEL-BMPs to achieve compliance with TMDL WLAs. WQBELs, within the context of this TMDL, translate WLAs into BMPs, rendering a clear definition that does not exist in the Order.

Further complicating matters is that USEPA TMDLs do not define WQBELs to mean the same as WLAs. Instead, as noted in the current MS4 permit, USEPA TMDLs interpret WQBELs to mean BMPs. Until the SGR M-TMDL is adopted as State TMDL, which must go through a basin plan amendment process, the City will rely on USEPA’s definition of a WQBEL. In any case, dry and wet WLAs are

numeric targets established for USEPA’s SGR M-TMDLs. They are listed in the table below.

San Gabriel River Watershed TMDLs

Wet Weather WLA			
Water Body	Copper	Lead	Zinc
San Gabriel River Reach 2 ⁵	N/A	81.34 mg/l x daily storm volume (L)	N/A
Coyote Creek ⁶	24.71 mg/l x daily storm volume (L)	96.99 mg/l x daily storm volume (L)	144.57 mg/l x daily storm volume (L)
Dry Weather			
Water Body	Copper	Selenium	Zinc
Coyote Creek	20 mg/l	N/A	N/A
San Gabriel Estuary ⁷	3.7 mg/l	N/A	N/A
San Jose Creek Reach 1	NA	5 mg/l	N/A

According to the San Gabriel River Metals TMDL (SGR-MTMDL), which is currently a USEPA TMDL, all permittees located in the San Gabriel River watershed are subject to waste load allocations (WLAs) for copper, zinc, lead, and selenium as following excerpt from it indicates:

*Wet-weather allocations will be developed for all upstream reaches and tributaries in the watershed that drain to impaired reaches during wet weather.*⁸ Discharges to these upstream reaches can cause or contribute to exceedances of water quality standards in San Gabriel River Reach 2 and Coyote Creek and thus contribute to impairments.

However, the City is of the view that it should not be subject to any of the SGR M-TMDLs. Table 7-1 of the TMDL lists West Covina as being subject to TMDLs for Walnut Creek for toxicity and San Jose Creek Reach 1 for selenium. However, according to the 2010 303(d) list, toxicity for Walnut Creek and San Jose Creek, Reach 1, for selenium has been de-listed.

In spite of this, Regional Board staff has concluded that the City is subject to all of the M-TMDLs because of the tributary rule. The tributary rule does not apply here, however. It only operates to extend a beneficial use within a reach to an

⁵The City does not drain into Reach 2 of the San Gabriel River.

⁶According to the 2010 303(d) list relating to Coyote Creek: (1) the source of dissolved copper is “unknown;” (2) the source of lead is “point source municipal waste water; and (3) zinc has been delisted.

⁷According to the 2010 303(d) list, the source of dissolved copper for the San Gabriel River Estuary is unknown.

⁸This assertion contradicts State Board Water Quality Order 2001-15, which held: *There is no provision in state or federal law that mandates the adoption of separate water quality standards for wet weather conditions (see page 10).*

unidentified water body such as a stream or a lake. It cannot extend a beneficial use to an outside reach for which that same use does not exist. For example, the beneficial use of Reach 2 of the Rio Hondo is ground water recharge. It obviously cannot apply the same use to an upstream or downstream reach, even though the reaches are tributary to it. And, in any case, a beneficial use and a water quality standard are two separate issues. A water quality standard is intended to protect a beneficial use. If that standard is not sufficient, based on monitoring, then a TMDL would be required.

ii. *Dry and Wet Weather Interim and Final Receiving Water Limitations for San Gabriel River-Related TMDLs*

See paragraph (ii) above.

3. *Watershed Control Measures*

It is not clear if the MS4 permit requires watershed control measures for the I-WMP option non-TMDL pollutants. Nevertheless, the City's I-WMP shall identify watershed controls measures (WCMs) to be considered for implementation based on monitoring data generated from the CIMP. If persistent exceedances are detected, the I-WMP will be amended to include BMPs tailored to address the exceedances for TMDL or non-TMDL pollutants. The BMPs will be implemented to include one or more of the 6 minimum control measures mandated for MS4s under the Clean Water Act that will be specific to the TMDL.

Should additional WCMs be required, based on monitoring data indicating persistent exceedances detected at the outfall against ambient standards, the City will rely on implementation plans already developed for TMDLs by a number of permittees, including the County of Los Angeles Watershed Management Division. Specifically, it will review both structural and non-structural BMPs in the various implementation plans. The BMPs will undergo a reasonable assurance analysis using an appropriate performance-predicting model. Selection of the final BMP or suite of final BMPs will be based on the extent of the pollution problem (viz., the frequency and level of exceedances) and their individual or combined efficacy in addressing the exceeded WLAs.

4. *Demonstration of a Low Impact Development Ordinance*

The City has begun development of the LID ordinance to the extent that: (1) it has reviewed the City and County of Los Angeles' versions; and (2) is considering a more abbreviated ordinance of its own. The City's experience with the Standard Urban Stormwater Management Program (SUSMP) ordinance is that the more requirements specified in a code can result in less flexibility that could, as a result, pose a problem to enforcement. The City, therefore, is leaning towards code language that will be brief and will defer to LID guidelines that the City plans to develop at a later date, just as was the case for the SUSMP ordinance. It was the

stormwater quality management plan (SQMP) development planning/SUSMP guidelines under the previous Order that actually determined how compliance was to be specifically achieved. Further, guidelines can be easily amended as opposed to amending the code.

5. *Demonstration of Green Street Policy Development*

The Green Street Policy shall be based on the requirements of the Order which applies to the **Land Use Development Program** and its subject new development and redevelopment projects:

Street and road construction of 10,000 square feet or more of impervious surface area shall follow USEPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets (December 2008 EPA-833-F-08-009) to the maximum extent practicable. Street and road construction applies to standalone streets, roads, highways, and freeway projects, and also applies to streets within larger projects.

This provision clearly directs permittees to follow USEPA guidance to the maximum extent practicable⁹ and is applicable to 10,000 square feet or more of impervious surface. The City shall apply it to new transportation corridors in areas of new development which are defined as *standalone streets, roads, highways, and freeway projects, and also applies to streets within larger projects*. It shall not, as specified in the Order, apply to routine maintenance for subject redevelopment projects necessary to:

maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Impervious surface replacement, such as the reconstruction of parking lots and roadways which does not disturb additional area and maintains the original grade

The City's commitment to this policy shall be expressed through: (1) the Land Use Development element of its Stormwater Management Program ("SWMP"), which includes this and five other minimum control measures; and through (2) its General Plan Transportation Element at the time of its next update. The policy shall be effectuated as a type of infiltration best management practice (BMP) permittees have been incorporating into new and redevelopment projects under the previous Order's SUSMP since 2006.

The City sees no necessity in placing or implementing its green street program in its I-WMP. This is because green infrastructure is associated with the Land Use Development Program which is a mandatory core SWMP component that would be

⁹MEP will be based on, among other factors, cost and infiltration rates and shall allow for infiltration of street runoff through other media such as porous concrete.

implemented even if a permittee only chose to rely on its minimum control measures (“MCMs”) to achieve compliance with TMDLs and other water quality standards.

6. *Technical Advisory Committee*

The MS4 permit specifies a technical advisory committee (“TAC”) that will “advise and participate” in the development of WMPs and E-WMPs. It is not clear if the MS4 permit intended the TAC to also include I-WMPs. Further, although the TAC is to be comprised of representatives of watershed management areas (“WMAs”) it does not specify a procedural mechanism for choosing them. The previous MS4 permit specified watershed management committees which were structured to make decisions based on majority rule. These committees were not carried over to this MS4 permit. A similar decision-making mechanism will need to be developed for selecting the TAC.

END SECTION I

Notice of Intent II. Coordinated Integrated Monitoring Plan

The City declares its preference for participation in a Coordinated Integrated Monitoring Plan (“CIMP”). The CIMP will include participation with other MS4 permittees according to watersheds as mentioned above. The CIMP will address all of the monitoring requirements specified in the MS4 permit’s Monitoring and Reporting Program (“MRP”) element. The purpose of the CIMP is to: (1) characterize watersheds/sub-watersheds relative to WQSs; (2) determine to what extent MS4 permittees are meeting or not meeting WQSs; and (3) achieve monitoring cost savings through collective participation with other permittees sharing common watershed location.

The City takes the position that a comparison of outfalls discharges against ambient referents is the only legally valid monitoring requirement for determining compliance. To this end, the City shall collect outfall samples in accordance with the MRP and measure them against ambient standards.¹⁰ Ambient standards have been used by the Los Angeles Regional Water Quality Control Board’s Surface Water Ambient Program (SWAMP) for Dominguez Channel, Los Angeles River, and Machado Lake. It should be noted, however, that the Regional Board has not adhered to a consistent definition of ambient water quality monitoring. Although it references ambient in the Los Angeles River metals and bacteria TMDLs, it has not done so for the Dominguez Channel Harbors Toxics TMDL and for the Machado Lake Nutrients and Toxics TMDLs.

Ambient water quality monitoring is generally understood to mean collecting water quality samples during dry weather either during the dry season or during the wet season following a storm event. This has been confirmed by the Regional Board’s SWAMP. SWAMP indicated that initially it performed ambient monitoring between 48 and 72 hours after a storm event. It later chose to conduct ambient during the spring and summer because there was no significant difference between the two sampling periods.

Measuring outfall discharges against wet weather WLAs is not required under federal or state law.¹¹ This argument is also reflected in the City’s administrative petition challenging the MS4 permit. Nevertheless, the City shall compare outfall discharges against wet weather WLAs and data generated from existing in-stream stations relative to applicable TMDLs as well as against ambient discharges for purposes of reference and comparison rather than compliance.

END SECTION II

¹⁰It is well established that water quality standards, including California Toxics Rule standards, are ambient standards.

¹¹See State Water Resources Control Board Order WQ 2001-15, page 10-11.