

August 11, 2016

Sent via email to losangeles@waterboards.ca.gov

Members of the Los Angeles Regional Water Quality Control Board
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

RE: LA County MS4 Permit – Response to Petition for Review of NSMB EWMP Approval
(Order No. R4-2012-0175; NPDES Permit No. CAS004001)

Dear Members of the Los Angeles Regional Water Quality Control Board:

The City of Malibu (City), as an interested party to the above referenced petition and public hearing notice issued on July 19, 2016, wishes to submit the following response for the Los Angeles Regional Water Quality Control Board (Regional Board) to consider with respect to claims made by Los Angeles Waterkeeper and Natural Resources Defense Council (collectively, Petitioners). The Petitioner's claims lack merit and, for reasons explained in this letter, the City respectfully requests the Regional Board decline to review the petition.

Following adoption of the 2012 Los Angeles Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit (Permit), the City of Malibu, County of Los Angeles, and Los Angeles County Flood Control District (collectively, Permittees) agreed to collaborate on the development of an Enhanced Watershed Management Plan (EWMP) for the North Santa Monica Bay Coastal Watersheds (NSMBCW). The Permittees are also known as the NSMBCW EWMP Group. The NSMBCW EWMP is intended to facilitate effective, watershed-specific Permit implementation strategies in accordance with Permit Part VI.C. The EWMP describes the NSMBCW-specific water quality priorities identified jointly by the Permittees and sets forth the program plan, including specific control measures and best management practices (BMPs), necessary to achieve water quality targets (Water Quality-Based Effluent Limitations [WQBELs] and Receiving Water Limitations [RWLs]). The EWMP also includes technical analysis performed to support target achievement and Permit compliance.

Essentially, the Petitioners are arguing that the NSMBCW EWMP failed to consider available Area of Special Biological Significance (ASBS) water quality data, and failed to apply the ASBS water quality standards, making the Executive Officer's decision to approve the EWMP improper. This is not correct and the Executive Officer's decision to approve the EWMP was consistent with the Permit.

Pursuant to requirements of the Permit, the NSMBCW EWMP Group, in good faith, hired a reputable, experienced consulting firm, GeoSyntec, which is familiar with the Permit requirements, to develop this EWMP for the NSMBCW. As described in the referenced public hearing notice, Regional Board staff reviewed three drafts of the EWMP and on April 19, 2016, the Executive Officer approved the Permittees' fourth EWMP submittal dated March 2016. The Permittees also submitted for Regional Board staff consideration a EWMP Work Plan dated June 2014 and a Compliance Plan for ASBS No. 24 (dated September 20, 2015). The ASBS Compliance Plan was prepared on behalf of the Permittees by Weston Solutions, another reputable and capable consulting firm, for the purpose of complying with the ASBS Exception and Special Protections issued by the State Water Resources Control Board (State Board).¹

The Petitioners claim that the approved EWMP, which incorporates the 160-page ASBS Compliance Plan as Appendix E, provides inadequate consideration of existing data pertaining to ASBS outfalls and ocean water quality. The following are specific reasons why the Petitioners' claims lack merit:

- By way of incorporating the ASBS Compliance Plan as an appendix, the EWMP provides a rational analysis as to how the applicable ASBS water quality standards will be met during implementation of the EWMP. The State Board has reviewed and provided substantive comments on the Compliance Plan and has never found that it applies incorrect standards, as Petitioners suggest.
- Analysis presented in the Compliance Plan, which is part of the EWMP, provides consideration of the monitoring data for ASBS 24 outfalls and receiving water with respect to documenting the requirements for compliance with ASBS water quality standards.
- To understand why the ASBS water quality data and standards were not explicitly discussed in the body of the EWMP (as opposed to providing this in an appendix), it is important to consider the EWMP development timeline. Simply, the ASBS outfall monitoring data in question was obtained well after the EWMP baseline water quality analysis had already been completed (January 2014). Petitioners are arguing that the EWMP and Reasonable Assurance Analysis (RAA) should have included data that was collected by another entity (Southern California Coastal Water Research Project [SCCWRP]) simultaneously with preparation of the EWMP and RAA. While some raw data may have been collected prior to submittal of the EWMP Work Plan, the data was not synthesized and considered to have met Quality Assurance /Quality Control criteria until it was released for publication (between February 2014 and February 2015).² For context, the draft EWMP Workplan was prepared and in its final review stage by May 2014 and due to Regional Board staff in June of 2014.

¹ In 2004, the City of Malibu, County of Los Angeles, and the Los Angeles County Flood Control District requested exceptions for stormwater discharges to ASBS 24 from the State Board. The State Board received requests from numerous other applicants for an exception to the Ocean Plan. In 2012, the State Board adopted a General Exception. The General Exception includes Special Protections, which specify prohibited discharges and other requirements that dischargers covered under the General Exception must comply with. The Permittees (separately) were included in the list of responsible entities required to prepare a Draft and Final ASBS Compliance Plan for point source discharges of stormwater in ASBS 24. This Compliance Plan was prepared by the Permittees in accordance with the General Exception.

² http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/816_ASBSBioaccumulation.pdf

- All ASBS data collected during the period in question was included in the September 2015 ASBS Compliance Plan, which is part of the EWMP.
- Incorporating the Compliance Plan into the EWMP was an appropriate way for the Permittees to provide due consideration of the ASBS water quality data and standards while keeping development of the EWMP on schedule to be finished by the strict deadlines in the Permit.
- Regional Board staff reviewed the approved EWMP Work Plan, as well as drafts of the EWMP and Compliance Plan, and requested the NSMBCW EWMP Group add the Compliance Plan to the EWMP. Regional Board staff requested this for the specific purpose of ensuring the EWMP document how the Permittees will meet their obligations under the MS4 Permit for compliance with ASBS water quality standards.
- Waterboards' final approval of the Compliance Plan itself was not necessary for the Permittees' EWMP to have provided due consideration of the ASBS water quality data and ASBS standards and establish an acceptable plan for MS4 Permit compliance. Lastly, The Permittees have responded to all State Board comments on the Compliance Plan and the City is implementing the Plan in advance of the ASBS Exception compliance deadline of spring 2018, even though the State Board has not yet issued a formal letter acknowledging final approval.
- Explicit discussion of the ASBS data analysis within the RAA section of the EWMP was and is unnecessary because the totality of the EWMP was considered by Regional Board staff in its review. Including that discussion in the body of the EWMP text may have been a more direct way to present the analysis, but it would have produced no meaningful difference in the EWMP's identified water quality priorities and BMPs.

The EWMP cannot be a moving target. It took a tremendous amount of time, effort and collaboration by the Permittees and their consultants to meet the EWMP submittal deadline in June 2015. To the extent any ASBS data was made available after the EWMP Work Plan was prepared and while the RAA and EWMP were well underway, the Permittees addressed that issue by attaching the ASBS Compliance Plan as an Appendix to the EWMP (as required by Regional Board staff).

Assuming Petitioners' ultimate goal is protection of the ASBS, it is worth noting that in its February 2015 publication of the ASBS data in question, SCCWRP concluded that water quality observed in Southern California ASBS is generally comparable to natural water quality following storm events.³

Additionally, the EWMP and RAA, by their very nature, are part of an adaptive management framework. The Permittees have committed to performing a re-evaluation every two years of the water quality priorities identified in the EWMP based on the most recent water quality data for discharges from the MS4 and the receiving water(s), as well as an ongoing reassessment of sources

http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/817_ASBSPlumes.pdf

http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/818_ASBSRockyIntertidal.pdf

http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/852_SouthCoastASBS_FinalRep.pdf


³ Schiff, K.C., and J. Brown. 2015. South Coast Areas of Special Biological Significance Regional Monitoring Program Year 2 Results. Southern California Coastal Water Research Project. Costa Mesa, CA. Technical Report 852. February 2015.

of pollutants in MS4 discharges. Also, the RAA is an adaptive tool that will be updated periodically to account for all existing and new data.

For the Regional Board to invalidate the Executive Officer's April 19, 2016 final approval of the EWMP would serve no purpose other than to delay the Permittees' implementation of the EWMP and to increase the Permittees' already significant compliance burden. Considering this, and the reasons listed above as to why the Petitioner's claims lack merit, the City respectfully requests the Regional Board uphold the Executive Officer's final approval.

Thank you for your consideration of these comments. If there are any questions, please feel free to contact Dr. Andrew Sheldon, Environmental Sustainability Manager, at (310) 456-2489 extension 251 or asheldon@malibucity.org.

Sincerely,



Reva Feldman
City Manager

cc: Craig George, Environmental Sustainability Director
Andrew Sheldon, Environmental Sustainability Manager
Sam Unger, Executive Officer, Los Angeles Regional Water Quality Control Board
Deborah Brandes, Los Angeles Regional Water Quality Control Board



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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GAIL FARBER, Director

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August 18, 2016

IN REPLY PLEASE
REFER TO FILE: **WM-7**

Mr. Samuel Unger, P.E.
Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Attention Ms. Renee Purdy

Dear Mr. Unger:

**LOS ANGELES COUNTY MS4 PERMIT
RESPONSE TO PETITION FOR REVIEW OF NORTH SANTA MONICA BAY
ENHANCED WATERSHED MANAGEMENT PROGRAM APPROVAL**

In response to the Regional Water Quality Control Board's Notice of Opportunity to Respond to Petition and Notice of Public Meeting, issued July 19, 2016, the County of Los Angeles and Los Angeles County Flood Control District are submitting the enclosed comments in response to the Natural Resource Defense Council and Los Angeles Waterkeeper Petition For Review of North Santa Monica Bay Enhanced Watershed Management Program Approval.

If you have any questions regarding the enclosed comments, please contact me at (626) 458-4300 or ageorge@dpw.lacounty.gov or your staff may contact Mr. Bruce Hamamoto at (626) 458-5918 or bhamamo@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

ANGELA R. GEORGE
Assistant Deputy Director
Watershed Management Division

GC:pt

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Enc.

RB-AR 6266

**COMMENTS OF THE COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT IN RESPONSE TO PETITION FOR REVIEW
OF EXECUTIVE OFFICER'S ACTION APPROVING THE
NORTH SANTA MONICA BAY ENHANCED WATERSHED MANAGEMENT
PROGRAM**

I. INTRODUCTION

On April 19, 2016, this Board's Executive Officer approved the North Santa Monica Bay Enhanced Watershed Management Program (NSMB EWMP). The Executive Officer's approval came only after extensive Regional Board staff and public review, including review of comments submitted by petitioners Los Angeles Waterkeeper and Natural Resource Defense Council, Inc., (petitioners).

The NSMB EWMP was submitted in compliance with the Los Angeles County Municipal Stormwater Permit (MS4 Permit) and is based on a full consideration of available monitoring data and applicable water quality standards, including the Ocean Plan and the State Water Resources Control Board's (State Board) Special Protections, State Board Order Nos. 2012-0012 and 2012-0031 (Special Protections), applicable to Area of Special Biological Significance 24 (ASBS). Contrary to petitioners' assertions, the EWMP does take into consideration both ASBS monitoring data and standards; this monitoring data and these standards are an integral part of the ASBS Compliance Plan prepared in accordance with the Special Protections, and the EWMP is consistent with and incorporates this Compliance Plan.

Accordingly, the County of Los Angeles and the Los Angeles County Flood Control District respectfully request that the Regional Board find, based on the uncontroverted evidence before the Board, as set forth in the exhibits to petitioners' petition, that the NSMB EWMP did consider the relevant ASBS monitoring data and standards because it incorporates and is consistent with the ASBS Compliance Plan; and that the Executive Officer's approval of the NSMB EWMP was, therefore, proper.

**II. THERE WAS A FULL PUBLIC COMMENT PERIOD BEFORE THE
EXECUTIVE OFFICER APPROVED THE NSMB EWMP**

A. The NSMB EWMP

Part VI.C. of the MS4 Permit provides that permittees can develop watershed management programs and enhanced watershed management programs to implement the Permit's terms. The purpose "is to allow Permittees the flexibility to implement the requirements of this Order on a watershed scale through customized strategies, control measures, and BMPs." (MS4 Permit, p. 47, Part VI.C.1.a.)

Participation in a WMP or EWMP is voluntary and shall (i) prioritize water quality issues resulting from stormwater and non-stormwater discharges; (ii) identify and implement strategies, control measures, and BMPs to achieve applicable water

quality-based effluent limitations and compliance with receiving water limitations and non-stormwater prohibitions; (iii) contain an integrated monitoring and assessment program; (iv) modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the monitoring and reporting program; and (v) provide opportunity for meaningful stakeholder input. (MS4 Permit, p. 47-48, Parts VI.C.1.b and f.)

Pursuant to Part VI.C of the MS4 Permit, the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District prepared an EWMP for the NSMB coastal watersheds. The NSMB EWMP covers the coastal subwatersheds within the Santa Monica Bay Beaches Bacteria (SMBBB) TMDL jurisdictional groups 1 and 4 and that portion of the Malibu Creek Watershed within the City of Malibu, SMBBB TMDL jurisdictional group 9. The NSMB EWMP area encompasses 55,121 acres, including 20 subwatersheds and 28 fresh water coastal streams. See NSMB EWMP, p. ES-3.

B. The NSMB EWMP was Adopted after Full Public Comment

The NSMB EWMP was adopted after an opportunity for full public comment and after extensive consideration by the Executive Officer and his staff. As summarized in the Executive Officer's April 19, 2016, approval of the EWMP, on July 1, 2015, the Regional Board provided public notice and a 61-day period to allow for public review and written comment on various draft EWMPs, including this one. On July 9 and November 5, 2015, the Regional Board held public workshops on the draft EWMPs. On March 3, 2016, the Board held a third public workshop. (See April 19, 2016, letter attached as Exhibit D to the Petition, at p. 2.)

Concurrent with that public review, Regional Board staff reviewed the draft NSMB EWMP. As part of that process, Regional Board staff corresponded with the NSMB EWMP group's permittees and their consultants and on October 21, 2015, sent a letter to the group setting forth staff's comments and requesting revisions that needed to be addressed prior to approval. Where appropriate, the public's comments were incorporated into this letter to ensure that the public's comments were addressed in the revised EWMP. *Id.*

The NSMB EWMP group submitted a revised EWMP on January 19, 2016. After submittal of this revised NSMB EWMP, Regional Board staff had several telephone and e-mail exchanges with the group's members and their consultants to discuss staff's remaining comments and necessary modifications. *Id.*

On April 1, 2016, the NSMB EWMP group submitted a second revised EWMP. Regional Board staff requested a small number of minor changes and a final version was submitted on April 7, 2016. On April 19, 2016, the Executive Officer approved the NSMB EWMP. *Id.*, pp. 2-3.

III. PETITIONERS' CHALLENGE

Petitioners now challenge the NSMB EWMP. Petitioners do not, however, challenge the NSMB EWMP in its entirety. Instead, they only challenge that portion of the NSMB EWMP that addresses discharges into the ASBS.

Significantly, petitioners do not identify any violation of the ASBS Special Protections that will result under the NSMB EWMP. Instead, petitioners' sole contention is that the NSMB EWMP failed to consider certain ASBS stormwater and non-stormwater monitoring data and failed to utilize ASBS stormwater and non-stormwater standards (Petitioners' Memorandum of Points and Authorities in Support of Petition (Petitioners' Mem.) at 1-2).

Petitioners are incorrect. Because the ASBS Compliance Plan is based on the ASBS monitoring and ASBS standards, including the monitoring data and standards that are the subject of this petition, and because the ASBS Compliance Plan is incorporated into the NSMB EWMP, the appropriate ASBS monitoring and standards are incorporated into the NSMB EWMP.

IV. THE NSMB EWMP IS BASED ON ALL RELEVANT ASBS STORMWATER AND NON-STORMWATER MONITORING DATA

A. ASBS 24

Discharges into ASBSs, including ASBS 24, are regulated primarily by the State Board. In 2012, the State Board adopted Order Nos. 2012-0012 and 2012-0031. These State Board Orders set forth Exceptions to the Ocean Plan's prohibition against discharge of waste into ASBSs, and Special Protections regulating those discharges, including discharges into ASBS 24.

The Exceptions and the Special Protections address point and non-point stormwater discharges into ASBSs. Stormwater discharges are authorized under the Special Protections' conditions and shall not alter natural ocean water quality, as that phrase is defined in the Special Protections. Non-stormwater discharges, with certain exceptions, are prohibited. State Board Order No. 2012-0012, Attachment B at 1-2.

Holders of the Exceptions are required to adopt an ASBS Compliance Plan to address the requirement to maintain natural water quality and the prohibition of non-stormwater runoff from point sources. The ASBS Compliance Plan is submitted to the State Water Board and is approved by its Executive Director or the Executive Officer of the Regional Board for permits issued by it. State Board Order No. 2012-0012, Attachment B at 2-3. Holders of Exceptions have 6 years in which to implement structural controls and comply with the requirement to maintain natural ocean quality. *Id.* Attachment B at 5.

Exception holders also are required to prepare an ASBS Pollution Prevention Plan to address similar requirements that govern non-point source discharges. Exception holders are given the same period of time in order to implement these requirements. *Id.*, Attachment B at 6 and 9.

Finally, the Special Protections set forth the monitoring requirements for discharges into the ASBS. *Id.*, Attachment B at 13-18.

In adopting the Exceptions and the Special Protections, the State Board found that “granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply with the prohibitions and special conditions that comprise the Special Protections” *Id.* at 1. The State Board further found that “granting the requested exceptions is in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, and maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security),” and that “granting the exceptions is consistent with federal and state antidegradation policies.” *Id.* at 2.

Thus, State Board Order No. 2012-0012 and its Special Protections authorize the NSMB EWMP permittees to discharge into ASBS 24 in accordance with its Special Protections. State Board Order No. 2012-0012, Attachment A. In accordance with those Special Protections, the NSMB EWMP permittees have submitted their ASBS Compliance and Pollution Prevention Plans to the State Board and have performed the required monitoring. The Compliance and Pollution Prevention Plans have been subjected to public comment, including comments by petitioners, the State Board has provided comments to the NSMB EWMP permittees on the Compliance Plan (the State Board made no comments on the Pollution Prevention Plans), and, in accordance with the State Board’s direction, the NSMB EWMP permittees submitted to the State Board a final Compliance Plan reflecting those comments (the Pollution Prevention Plan having been previously submitted). This entire process was overseen by the State Board and its staff.

B. The NSMB EWMP is Based on all Relevant ASBS Stormwater Monitoring Data

Petitioners first contend that the NSMB EWMP is not based on all relevant ASBS stormwater monitoring data. Petitioners’ specific claim is that the NSMB EWMP did not consider the 2013 and 2014 monitoring of ASBS outfalls which showed exceedances of Ocean Plan instantaneous maximum limits. (It should be noted that this monitoring was not conducted at sampling points in the ocean, and, therefore, did not demonstrate exceedances of the Ocean Plan.) (Petitioners’ Mem. at 10:16-24.)

Petitioners’ contention is incorrect. The ASBS Compliance Plan specifically references the 2013 and 2014 outfall monitoring results, as well as the monitoring

results from the receiving water itself as required by the Special Protections, and the ASBS Compliance Plan is specifically incorporated by reference into the NSMB EWMP. Petitioners themselves concede that this data was included in the ASBS Compliance Plan (*Id.* at 10:19-20). The EWMPs' Reasonable Assurance Analysis (RAA) did not need to further consider this data because it was already addressed in the ASBS Compliance Plan. Furthermore, the Regional Board established and approved guidelines for performing a RAA and the NSMB EWMP RAA was performed in full compliance with these guidelines. Thus, the ASBS monitoring is considered by the NSMB EWMP through its incorporation of the ASBS Compliance plan.

Petitioners, nevertheless, quote a sentence from the NSMB EWMP that relates to the jurisdictional area in general, not the ASBS section of the EWMP. This sentence on page 43 of the EWMP, that "stormwater and non-stormwater discharges have not yet been characterized within the NSMB EWMP area" and that this "characterization will occur as part of the implementation of the CIMP," is a correct statement for the EWMP as a whole, but not for the ASBS area of the NSMB EWMP. It is erroneous for petitioners to contend that this general statement about the larger NSMB EWMP jurisdictional area means that the EWMP did not consider the ASBS monitoring data when petitioners themselves recognize that the ASBS Compliance Plan, incorporated into the NSMB EWMP, did in fact consider such data (See Petitioners' Mem. at 10:19-24).¹

Thus, petitioners' contention that the NSMB EWMP is not based on ASBS monitoring is incorrect. As petitioners concede, such monitoring data is included in the ASBS Compliance Plan, and the NSMB EWMP specifically states that the NSMB EWMP's controls "are inclusive of all watershed control measures enumerated in the ASBS 24 Compliance Plan." NSMB EWMP at 115.

In approving the NSMB EWMP, the Regional Board staff specifically recognized this fact. In their response to comments, Regional Board staff provided:

Finally, based on review of the draft EWMP, the Los Angeles Water Board determined that applicable water quality standards were referenced and appropriate monitoring data were reviewed, including those data presented in the ASBS Compliance Plan, which, as noted above, is incorporated by reference into the revised EWMP.

Regional Board Response to Written Comments (May 12, 2016), attached as Exhibit E to the Petition, at pp. 29-30. The Regional Board staff further provided that, should

¹ Petitioners also contend that monitoring in 2007 and 2008 showed exceedances of chromium and copper. Petitioners concede, however, that, as part of the 2013-14 monitoring data, chromium and copper were considered in the development of the Compliance Plan (Petitioners' Mem. at 10:17-24, see ASBS Compliance Plan at 71-75). Neither chromium nor copper was found to cause an alteration of natural water quality under the Special Protections' protocols. ASBS Compliance Plan at 76-77.)

there become any inconsistencies between the ASBS Compliance Plan and the NSMB EWMP, the Board will require the NSMB group to update its NSMB EWMP to ensure such consistency. *Id.* at 29.

C. The NSMB EWMP is Based on all Relevant ASBS Non-Stormwater Monitoring Data

Petitioners make the same argument with respect to ASBS non-stormwater data. For the same reasons, petitioners' argument lacks merit. Like stormwater data, ASBS non-stormwater data was set forth and considered in the ASBS Compliance Plan, which is incorporated by reference into the NSMB EWMP and whose measures are reflected in the EWMP's control measures.

Similar to petitioners' contention with respect to the stormwater monitoring data, petitioners contend that there were 2012 and 2013 ASBS non-stormwater data that were not considered (Petitioner's Mem. at 12:11-19). As petitioners concede (*Id.* at 12:11-14), however, the ASBS Compliance Plan includes this dry weather monitoring data (see Compliance Plan at 49-51). The Compliance Plan then contains programs to address the Special Protections' non-stormwater requirements and prohibitions. Thus, like petitioners' contentions with respect to the stormwater monitoring data, because the Compliance Plan does consider the non-stormwater monitoring, and because the Compliance Plan's requirements are included in the NSMB EWMP, the NSMB EWMP is based on the ASBS non-stormwater monitoring, including programs to address non-stormwater discharges (see EWMP at 115).

Like their argument with respect to stormwater monitoring, petitioners also mischaracterize the NSMB EWMP's statements about non-stormwater inspections. Petitioners refer to a sentence in the NSMB EWMP that provides that the group members will perform source investigations of non-stormwater discharges, and then contend that this sentence means that the NSMB EWMP did not consider ASBS non-stormwater monitoring (Petitioners' Mem. at 12:19-21; see NSMB EWMP at 68).

This sentence, however, is directed to the NSMB EWMP's jurisdictional area as a whole, not the ASBS. Petitioners concede that the non-stormwater discharge data is included in the ASBS Compliance Plan (Petitioners' Mem. at 12:11-16), which is incorporated into the NSMB EWMP.

V. The NSMB EWMP Utilizes Applicable ASBS Stormwater and Non-Stormwater Standards

Petitioner's last two arguments are simply a reprise of their first two arguments. Petitioners contend that the NSMB EWMP fails to utilize applicable ASBS stormwater and non-stormwater standards. In support of these arguments, petitioners again cite provisions in the NSMB EWMP that relate to the Santa Monica Bay watershed in general (Petitioner's Mem. at 14:9-11) and screening of non-stormwater discharges throughout the NSMB EWMP's jurisdictional area (*Id.* at 15:17-22). Petitioners again ignore the fact that the NSMB EWMP incorporates the programs set forth in the ASBS Compliance Plan to comply with the ASBS stormwater and non-stormwater

standards (NSMB EWMP at 115), and thus the EWMP and its RAA did not need to consider these standards any further.

Petitioners do not deny that the ASBS Compliance Plan is sufficient to comply with the ASBS standards. Instead, petitioners only contend that the Compliance Plan is "draft," that there was additional monitoring that was to be conducted after submission of the plan, and that the MS4 Permit and the ASBS exception required incorporation of ASBS exception standards into any NPDES permit (Petitioners' Mem. at 14:27-15:5).

The State Board, however, in its March 17, 2015, letter providing comments on the Compliance Plan, attached as Exhibit J to the Petition, required the NSMB EWMP permittees to submit a final compliance plan in response to the State Board's comments by September 20, 2015. Petitioners' petition, Exhibit J at 3. The NSMB EWMP permittees did so. The State Board has not issued any additional correspondence or requested any additional information in response to the submission of this final compliance plan.

Moreover, the Executive Officer has already addressed these issues. As noted above, in response to comments, the Executive Officer specifically provided that, should there be any inconsistencies between the NSMB EWMP and the ASBS Compliance Plan after the State Board's review of that plan, he will require the NSMB EWMP permittees to update the NSMB EWMP to ensure consistency between the NSMB EWMP and the Compliance Plan (Response to Comments, p. 29). The additional monitoring of the ASBS and two outfalls has been conducted and will be submitted to the State Board by the end of September 2016. That monitoring does not show the need for any modification of the Compliance Plan. Finally, the ASBS exceptions are being implemented through the MS4 Permit. Petitioners must comply with all receiving water limitations, and are doing so through implementation of the NSMB EWMP. This includes compliance with the ASBS Special Protections.

VI. CONCLUSION

For the foregoing reasons, petitioners' petition lacks merit. Petitioners ignore the fact that the ASBS stormwater and non-stormwater monitoring data and standards are the basis for the ASBS Compliance Plan and ignore that the NSMB EWMP contains programs that are consistent with and implement the ASBS Compliance Plan. As the Regional Board staff set forth in their response to comments, the staff determined that applicable water quality standards were referenced and appropriate monitoring data were reviewed, including those data presented in the ASBS Compliance Plan. Response to Written Comments at pp. 29-30.

Accordingly, the County and the District respectfully request that the Regional Board find, based on the substantial evidence before the Board as set forth in the exhibits to petitioners' petition, that the EWMP did consider the relevant ASBS stormwater and non-stormwater monitoring data and standards; and that the Executive Officers' approval of the EWMP was therefore proper.

GC:pt

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August 18, 2016

Members of the Los Angeles Regional Water Quality Control Board
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

**Subject: Los Angeles County MS4 Permit – Response to Petition for Review of NSMBCW
EWMP Approval**

Dear Members of the Los Angeles Regional Water Quality Control Board:

Thank you for the opportunity to provide written comments on the *Petition for Review of the Los Angeles Regional Water Quality Control Board Executive Officer's Action to Approve the North Santa Monica Bay EWMP Pursuant to the L.A. County MS4 Permit* (Petition) filed on May 19, 2016 by Los Angeles Waterkeeper, Lawyers for Clean Water, and Natural Resources Defense Council. Geosyntec Consultants (Geosyntec) served as the technical consultant supporting the North Santa Monica Bay Coastal Watershed (NSMBCW) agencies in preparing the NSMBCW, or North Santa Monica Bay (excluding Malibu Creek Watershed), Enhanced Watershed Management Program (EWMP). The following provides information regarding the preparation of the North Santa Monica Bay EWMP for your consideration.

1. The Petition alleges that the Executive Officer improperly approved the NSMBCW EWMP despite a failure to comply with the relevant terms of the Los Angeles County MS4 Permit (MS4 Permit). In particular, the Petition argues that the EWMP failed to consider relevant, available ASBS stormwater and non-stormwater data. The MS4 Permit specifies that the “[Reasonable Assurance Analysis (RAA)] shall commence with assembly of all available, relevant sub-watershed data collected within the last 10 years, including land use and pollutant loading data, establishment of quality assurance/quality control (QA/QC) criteria, QA/QC checks of the data, and identification of the data set meeting the criteria for use in the analysis” (MS4 Permit, Section VI.C.5.b.iv(5)).

Comments:

Since the Regional Water Quality Control Board (Regional Board) authored both the MS4 Permit and RAA Guidance documents, a primary objective during EWMP development was to confirm, directly with Regional Board staff, that our technical approach met the letter and intent of both the MS4 Permit and RAA Guidance. Multiple meetings were held (both with Regional Board staff and in public presentations) in order to confirm EWMP and RAA conformance. Through the submittal of the required Work Plan, which included data sources, analysis regimes, model approaches, and input and output formats, our expectation is that the North Santa Monica Bay EWMP approach is consistent with Regional Board expectations. More specifically, data sets (including updated land

use and BMP performance datasets) and analysis approaches were explicitly presented in the Work Plan in order to confirm that all known and appropriate datasets were being utilized.

Data collection and EWMP development (initiated in October 2013) were also required to meet the MS4 Permit-defined submittal schedules. The first step in the development of the EWMP Work Plan (submitted in 2014) was to identify water body-pollutant combinations to be modeled in the RAA. Relevant information from Bight '08 was included in this assessment, as information from Bight '13 (referenced in the Petition) was not yet available.

It is our understanding, however, that as new data are collected through the Coordinated Integrated Monitoring Program (CIMP) or other studies, these data may be integrated and utilized in subsequent refinements and adaptations of the North Santa Monica Bay EWMP, per the Adaptive Management stipulations of the MS4 Permit.

The North Santa Monica Bay EWMP and RAA can be refined and adapted via:

- Utilization of the Structural BMP Prioritization and Analysis Tool (SBPAT), which allows new monitoring data to be transparently and easily incorporated to update and improve the model outcomes;
 - Updating the RAA conceptual model methodology developed for bacteria load estimates (which incorporated monitoring data collected over 10 years as part of the Santa Monica Bay Beaches Bacteria TMDL Coordinated Shoreline Monitoring Program) with new data;
 - Updating the RAA with other data, such as outfall data collected as part of the CIMP implementation.
2. The Petition alleges that the Executive Officer improperly approved the North Santa Monica Bay EWMP despite its failure to comply with the conditions of State Board Resolution No. 2012-0012 (“ASBS Exception”) (Ex F). In particular, it alleges that the North Santa Monica Bay EWMP fails to apply ASBS Exception standards to stormwater discharges to ASBS 24, and fails to apply the ASBS Exception’s prohibition against non-stormwater discharges.

Comments:

The ASBS 24 Compliance Plan for the County of Los Angeles and City of Malibu (September 2015), which was drafted to comply with State Board Resolution No. 2012-0012, was included in the North Santa Monica Bay EWMP and is considered an integral part of the watershed management program for the NSMBCW. Based on consultation with Regional Board staff, it was understood that inclusion of the 2015 Plan would satisfy the requirement to incorporate ASBS-specific activities into the North Santa Monica Bay EWMP. The North Santa Monica Bay EWMP

does not supersede or replace the Compliance Plan, but includes it as part of the overall approach to watershed management.

With respect to non-stormwater requirements, the Compliance Plan includes the non-stormwater discharge requirements of Resolution No. 2012-0012, which are thereby incorporated into the North Santa Monica Bay EWMP.

With respect to the ASBS related stormwater requirements, the RAA addresses those water body-pollutant combinations identified through the prioritization process as required in the MS4 Permit and as presented in section 4 of the Work Plan. For the water body-pollutant combinations modeled in the RAA, the Ocean Plan instantaneous maximum criteria were used, consistent with requirements of the ASBS Exception.

Finally, this approach satisfies the requirement to incorporate the most current data available at the time. It may be worth noting that the Petitioners may have commented on the attachments in the *draft* EWMP, which included the 2014 Compliance Plan, and not the Final EWMP, which included the 2015 Compliance Plan.

We hope this information provides clarifications to the issues raised by the Petitioners. Please call Mr. Chris Wessel at (310) 957-6117 with any questions you may have.

Sincerely,



Ken Susilo, PE. D.WRE, CPSWQ
Senior Principal and Manager of Geosyntec Consultants Los Angeles Operations

cc: Deborah Brandes, Los Angeles Regional Water Quality Control Board
Rob DuBoux, City of Malibu
Jennifer Brown, City of Malibu
Giles Coon, County of Los Angeles
Armando D'Angelo, County of Los Angeles