

Brandes, Deborah@Waterboards

From: lyris@swrcb18.waterboards.ca.gov
Sent: Wednesday, August 24, 2016 1:52 PM
To: Brandes, Deborah@Waterboards
Subject: LA Water Board Meeting Agenda Two-Day Meeting September 7-8, 2016
Attachments: 09-07- 08-16 two-day (JF).pdf; 09-07- 08-16 two-day - Spanish.pdf



This is a message from the California Regional Water Quality Control Board, Los Angeles Region (4).

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Los Angeles Regional Water Quality Control Board

Notice of
Public Two-Day Meeting

<p>Day One Wednesday, September 7, 2016 12:30 p.m.</p> <p><u>Meeting Location:</u> City of Agoura Hills (Council Chambers) 30001 Ladyface Court Agoura Hills, California 91301</p>	<p>Day Two Thursday, September 8, 2016 9:00 a.m.</p> <p><u>Meeting Location:</u> City of Santa Clarita (Council Chambers) 23920 Valencia Blvd. Santa Clarita, California 91355</p>
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Agenda

The Los Angeles Regional Board strives to conduct an accessible, orderly, and fair meeting. The Chair of the Board will conduct the meeting and establish appropriate rules and time limitations for each agenda item. The Board will only act on items designated as action items. Action items on the agenda are staff proposals, and may be modified by the Board as a result of public comment or Board member input. Additional information about Board meeting procedures is included after the last agenda item.

Generally, the Board accepts oral comments at the meeting on agenda items and accepts written materials regarding agenda items in advance of the meeting. For some items requiring public hearings, written materials and oral comments will be accepted only according to the procedures set forth in a previously issued public notice for the particular agenda item. To ensure a fair hearing and that the Board Members have an opportunity to fully study and consider written material, unless stated otherwise, written materials must be provided to the Executive Officer **not later than 5:00 p.m. on August 24, 2016. Please consult the agenda item description because certain items may have an earlier deadline for written submissions. If you are considering submitting written materials, please consult the notes at the end of the agenda. Failure to follow the required procedures may result in your materials being excluded from the hearing record; however, failure to timely submit written materials does not preclude a person from testifying before the Board.**

Continuance of Items: The Board will endeavor to consider all matters listed on this agenda on its specified day. However, time may not allow the Board to hear all matters listed. Matters not heard on Day One will be continued to Day Two. Matters not heard at this meeting may be carried over to the next Board meeting or to a future Board meeting. Parties will be notified in writing of the rescheduling of their item. Please contact the Regional Board staff for information about rescheduled items.

DAY ONE**INTRODUCTORY ITEMS**

1. **Roll Call.**
2. **Order of Agenda.** Note that the agenda items are numbered for identification purposes only and may not necessarily be considered in this order.
3. **Board Member Communications.**
 3. a. Ex Parte Disclosure. Board Members will identify any discussions they may have had requiring disclosure pursuant to Government Code section 11430.40.
 3. b. Board Member Reports. The Board Members may discuss communications, correspondence, or other items of general interest relating to matters within the Board's jurisdiction.

UNCONTESTED ITEMS

*(Items marked with an asterisk are expected to be routine and noncontroversial. The Board will be asked to approve these items at one time without discussion. Any Board member or person may request that an item be removed from the Uncontested calendar. **Items removed from the Uncontested calendar may be heard at a future meeting.**)*

Waste Discharge Requirements that Serve as Individual NPDES Permits Termination-

- *4. Consideration of termination of Waste Discharge Requirements for Torrance Logistics Company, LLC (Previous Owner: ExxonMobil Oil Corporation) – Southwestern Terminal Area 1, Terminal Island; NPDES No. CA0003689. (Comment submittal deadline was July 29, 2016) [Mazhar Ali, (213) 576-6652]

Renewal-

- *5. Consideration of tentative Waste Discharge Requirements for SFPP, L.P., Norwalk Pump Station, Norwalk; NPDES No. CA0063509. (Comment submittal deadline was August 15, 2016) [Ching Yin To, (213) 576-6695]

CONTESTED ACTION ITEMS**Petition**

6. Consideration of Petition for Review of the Executive Officer's Action to Approve the Enhanced Watershed Management Program for the North Santa Monica Bay Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175. (The deadline to submit responses to the Petition was August 18, 2016). [Renee Purdy, (213) 576-6622]

Waste Discharge Requirements/Water Reclamation Requirements and Cease and Desist Order**Renewal -**

7. Consideration of tentative Waste Discharge Requirements (WDRs) and Water Reclamation Requirements (WRRs), and a tentative Cease and Desist Order (CDO) for The Kissel Company, Inc. and the Paradise Cove Land Company, LLC – Paradise Cove

Wastewater Treatment Plant including systems at Paradise Cove Mobile Home Park and the Paradise Cove Beach Café, City of Malibu (File No. 01-083). (Comment submittal deadline for the tentative WDRs/WRRs was May 23, 2016, and comment submittal deadline for the tentative CDO was June 13, 2016) [Mercedes Merino, (213) 620-6156]

7.1 Waste Discharge Requirements/Water Reclamation Requirements

7.2 Cease and Desist Order

8. **Adjournment of Day One of current meeting.** (Day Two of the current meeting will be held on September 8, 2016 at the City of Santa Clarita, Council Chambers, located at 23920 Valencia Boulevard, Santa Clarita, CA 91355, beginning at 9:00 a.m.)

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DAY TWO

9. **Roll Call.**
10. **Order of Agenda.** Note that the agenda items are numbered for identification purposes only and may not necessarily be considered in this order.
11. **Approval of draft meeting Minutes for the July 14, 2016 Board meeting.**
[Ronji Moffett, (213) 576-6612]
12. **Board Member Communications.**
12. a. Ex Parte Disclosure. Board Members will identify any discussions they may have had requiring disclosure pursuant to Government Code section 11430.40.
12. b. Board Member Reports. The Board Members may discuss communications, correspondence, or other items of general interest relating to matters within the Board's jurisdiction.

BOARD BUSINESS REPORTS

13. **Executive Officer's Report.** [Samuel Unger, (213) 576-6605]
14. **Update from State Board.** [Fran Spivy- Weber]

PUBLIC FORUM

15. Any person may address the Board regarding any matter within the Board's jurisdiction provided the matter does not appear elsewhere on this agenda, has not been scheduled to appear on a future agenda, and is not expected to be imminently scheduled for the Board's consideration. Remarks will be limited to three (3) minutes, unless otherwise directed by the Chair. If a person intends to use a PowerPoint presentation or other **visual aids, you must contact Ronji Moffett, (213) 576-6612, at the Regional Board at least 48 hours prior** to the meeting to arrange for equipment use and be prepared to load any PowerPoint presentation on the computer prior to the meeting to assure the orderly conduct of the meeting.

CONTESTED ACTION ITEM**Basin Planning/Total Maximum Daily Load**

16. Consideration of tentative Basin Plan Amendment to Incorporate a Total Maximum Daily Load (TMDL) for Nutrients in Elizabeth Lake, Munz Lake, and Lake Hughes. (Comment submittal deadline was August 5, 2016) [Stefanie Hada, (213) 576-6804]

INFORMATION

(This item is for informational purposes only, and no voting will take place on this item.)

17. Informational update on the progress of residential accommodation and temporary relocation for the implementation of cleanup in the Carousel community. [Susana Lagudis, (213) 576-6694]

CONTESTED ACTION ITEMS**Amendments to NPDES Permits for Municipal Separate Storm Sewer System (MS4) Discharges**

18. Consideration of tentative amended Waste Discharge Requirements for MS4 Discharges within the coastal watersheds of Los Angeles County, except those discharges originating from the City of Long Beach MS4; Order No. R4-2012-0175, NPDES No. CAS004001. (LA County MS4 Permit). The tentative amendment would incorporate changes from the revised Ballona Creek and Los Angeles River Watershed Trash TMDLs. (Comment submittal deadline was August 11, 2016) [Chris Lopez, (213) 576-6674]
19. Consideration of tentative amended Waste Discharge Requirements for MS4 Discharges from the City of Long Beach; Order No. R4-2014-0024, NPDES No. CAS004003 (City of Long Beach MS4 Permit). The tentative amendment would incorporate changes from the revised Los Angeles River Watershed Trash TMDL. (Comment submittal deadline was August 12, 2016) [Chris Lopez, (213) 576-6674]

CLOSED SESSION

20. As authorized by Government Code section 11126, the Regional Board will be meeting in closed session. Closed session items are not open to the public. Items the Board may discuss include the following: [Jennifer Fordyce (JF) (916) 324-6682; Frances McChesney (FM) (916) 341-5174; David Coupe (DC) (510) 622-2306]

Litigation filed against the Los Angeles Regional Water Quality Control Board (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.1 *City of Redondo Beach v. Los Angeles Regional Water Quality Control Board and State Water Resources Control Board*, California Court of Appeal, Second Appellate District, Case No. B271631 [Challenging assessment of administrative civil liability in Order on Complaint No. R4-2008-0058M]. (FM)
- 20.2 *Balcom Ranch v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Ventura County Superior Court, Case No. 56-2012-00419048-CU-MC-VTA [Challenging assessment of administrative civil liability in Order on Complaint No. R4-2010-0023]. (DC)

- 20.3 *City of Duarte v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Orange County Superior Court, Case No.30-2016-00833614-CU-WM-CJC [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.4 *Natural Resources Defense Council and Los Angeles Waterkeeper v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Los Angeles County Superior Court, Case No. BS156962 [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.5 *City of Gardena v. Los Angeles Regional Water Quality Control Board and State Water Resources Control Board*, Orange County Superior Court, Case No. 30-2016-00833722-CU-WM-CJC [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.6 *Peak Foreclosure Services v. Bayview Loan Servicing, LLC; Del Rey Cleaners et al.*, Los Angeles County Superior Court, Case No. BS157001 [Claim filed for recovery of costs associated with Amended Cleanup and Abatement Order No. R4-2014-0143]. (DC)
- 20.7 *Barclay Hollander Corporation v. California Regional Water Quality Control Board, Los Angeles Region, et al.*, Los Angeles County Superior Court, Case No. BS158024 [Challenging issuance of Revised Cleanup and Abatement Order No. R4-2011-0046 (Revised April 30, 2015)]. (DC)
- 20.8 *Wayne Fishback v. Michael D. Antonovich et al.*, United States District Court for the Central District of California, Case No. 2:15-cv-05719 [Seeking preliminary injunction, alleging violations of procedural and substantive due process and other claims for relief]. (DC)
- 20.9 *Wishtoyo Foundation v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS159479 [Challenging issuance of waste discharge requirements/water reclamation requirements, Order No. R4-2011-0079-A01]. (DC)
- 20.10 *Tesoro Refining & Marketing Company LLC and Tesoro SoCal Pipeline Company LLC v. Los Angeles Regional Water Quality Control Board*, Los Angeles County Superior Court, Case No. BS160502 [Challenging issuance of Cleanup and Abatement Order No. R4-2013-0064]. (JF)
- 20.11 *Los Angeles Waterkeeper v. California State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Los Angeles County Superior Court, Case No. BS163391 [Challenging Resolution No. R15-004 establishing site specific water quality objectives for copper and lead in the Los Angeles River and tributaries]. (JF)

Litigation filed by the Los Angeles Regional Water Quality Control Board against other parties (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.12 *State Department of Finance, State Water Resources Control Board and Los Angeles Regional Water Quality Control Board v. Commission on State Mandates*, Supreme Court of California, Case No. S214855 [Challenging the Commission's decision that portions of the 2001 Los Angeles County MS4 permit created unfunded state mandates]. (JF)

- 20.13 *California Regional Water Quality Control Board, Los Angeles Region v. United States Army Corps of Engineers; Lieutenant General Thomas P. Bostick, In his Official Capacity*, United States District Court for the Central District of California, Case No. 2:16-cv-01091 [Alleging unauthorized discharges of dredge and fill materials and other pollutants into waters of the United States in violation of Clean Water Act sections 301, 401, and 404]. (JF)

Petitions for Review of Los Angeles Regional Water Quality Control Board actions filed with the State Water Resources Control Board (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.14 *In re: Petition of Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay for Review of Executive Officer's Action to Conditionally Approve nine WMPs Pursuant to the 2012 MS4 Permit*, SWRCB/OCC File A-2386 [Challenging the Executive Officer's approval, with conditions, of nine Watershed Management Programs (WMPs) pursuant to the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.15 *In re: Petition of Los Angeles Waterkeeper and NRDC for Review of Executive Officer's Action to Approve the North Santa Monica Bay EWMP*, SWRCB/OCC File A-2477 [Challenging the Executive Officer's approval of the North Santa Monica Bay EWMP pursuant to the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)

Test Claims filed with the Commission on State Mandates (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.16 *In re: Los Angeles Region Water Permit – Ventura County*, Commission on State Mandate Test Claim No. 110-TC-01 [Regarding a test claim filed by Ventura County Watershed Protection District and the County of Ventura alleging that portions of Order No. R4-2010-0108 created unfunded state mandates]. (JF)
- 20.17 *In re: Los Angeles Region Water Permit – Cities of Los Angeles County*, Commission on State Mandate Test Claim No. 13-TC-01 [Regarding a test claim filed by several cities within Los Angeles County alleging that portions of Order No. R4-2012-0175 created unfunded state mandates]. (JF)
- 20.18 *In re: Los Angeles Region Water Permit – County of Los Angeles*, Commission on State Mandate Test Claim No. 13-TC-02 [Regarding a test claim by the County of Los Angeles and Los Angeles County Flood Control District alleging that portions of Order No. R4-2012-0175 created unfunded state mandates]. (JF)

Other matters:

- 20.19 Consultation with counsel about:
- (a) A matter which, based on existing facts and circumstances, presents significant exposure to litigation against the Regional Board (Government Code section (Gov. Code, § 11126, subd. (e)(2)(B).); or
 - (b) A matter which, based on existing facts and circumstances, the Regional Board is deciding whether to initiate litigation (Gov. Code, § 11126, subd. (e)(2)(C).) (JF/FM/DC)
- 20.20 Consideration of the appointment, employment, or evaluation of performance about a public employee. (Gov. Code, § 11126, subd. (a).) (JF/FM/DC)

21. **Adjournment of current meeting.** (The next regular meeting of the Board will be held on October 13, 2016 at the Metropolitan Water District of Southern California, Board Room, 700 North Alameda Street, Los Angeles, CA, 90012, and beginning at 9:00 a.m.)

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Ex Parte Communications: An ex parte communication is a communication to a board member from any person, about a pending matter, that occurs in the absence of other parties and without notice and opportunity for them to respond. The California Government Code prohibits the board members from engaging in ex parte communications during permitting, enforcement, and other “quasi-adjudicatory” matters. Ex parte communications are allowed on pending general orders (such as general waste discharge requirements, general waivers, and general Clean Water Act section 401 water quality certifications) subject to the disclosure requirements of Water Code section 13287 (for further information and disclosure forms, please visit http://www.waterboards.ca.gov/losangeles/laws_regulations/). The Regional Board discourages ex parte communications during rulemaking and other “quasi-legislative” proceedings. The ex parte rules are intended to provide fairness, and to ensure that the board’s decisions are transparent, based on the evidence in the administrative record, and that evidence is used only if stakeholders have had the opportunity to hear and respond to it. Ex parte rules do not prevent anyone from providing information to the water boards or requesting that the water boards take a particular action. They simply require that the information come into the record through proper channels during a duly noticed, public meeting. A board member who has engaged or been engaged in a prohibited ex parte communication will be required to publicly disclose the communication on the record and may be disqualified from participating in the proceeding. For more information, please look at the ex parte questions and answers document found at www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Procedures: The Regional Board follows procedures established by the State Water Resources Control Board. These procedures are established in regulations commencing with section 647 of title 23 of the California Code of Regulations. The Chair may establish specific procedures for each item, and consistent with section 648, subdivision (d) of title 23 of the California Code of Regulations may waive nonstatutory provisions of the regulations. Generally, all witnesses testifying before the Regional Board must affirm the truth of their testimony and are subject to questioning by the Board Members. The Board does not, generally, require the designation of parties, the prior identification of witnesses, or the cross examination of witnesses. Generally, speakers are allowed three minutes for comments. Any requests for an alternate hearing process, such as requesting additional time to make a presentation, should be made to the Executive Officer in advance of the meeting, and under no circumstances later than 5:00 p.m. on the Thursday preceding the Board meeting. The provisions of this paragraph shall be deemed superseded to the extent that they are contradicted by a hearing notice specific to a particular agenda item.

Written Submissions: Written materials (whether hand-delivered, mailed, e-mailed, or facsimiled) ***must be received prior to the relevant deadline*** established in the agenda and public notice for an item. If the submitted material is more than 10 pages or contains foldouts, color graphics, maps, or similar items, 12 copies must be submitted prior to the relevant deadline.

Failure to comply with requirements for written submissions is grounds for the Chair to refuse to admit the proposed written comment or exhibit into evidence. (Cal. Code Regs., tit. 23, § 648.4, sub. (e).) The Chair may refuse to admit written testimony into evidence unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance

with the deadline would otherwise create a hardship. In an adjudicatory matter, where there is a showing of prejudice to any party or the Board from admission of the written testimony, the Chair may refuse to admit it.

Administrative Record: Material presented to the Board as part of testimony that is to be made part of the record must be left with the Board. This includes photographs, slides, charts, diagrams, etc. All Board files pertaining to the items on this Agenda are hereby made a part of the record submitted to the Regional Board by staff for its consideration prior to action on the related items.

Accessibility: Individuals requiring special accommodations or language needs should contact Rosie Villar at (213) 576-6630 or rvillar@waterboards.ca.gov at least ten working days prior to the meeting. TTY/TDD Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Availability of Complete Agenda Package: A copy of the complete agenda package is available for examination at the Regional Board Office during regular working hours (8:00 a.m. to 5:00 p.m. Monday through Friday) beginning 10 days before the Board meeting. Questions about specific items on the agenda should be directed to the staff person whose name is listed with the item.

Continuance of Items: The Board will endeavor to consider all matters listed on this agenda. However, time may not allow the Board to hear all matters listed. Matters not heard at this meeting may be carried over to the next Board meeting or to a future Board meeting. Parties will be notified in writing of the rescheduling of their item. Please contact the Regional Board staff to find out about rescheduled items.

Challenging Regional Board Actions: Pursuant to Water Code section 13320, any aggrieved person may file a petition to seek review by the State Water Resources Control Board of most actions taken by the Regional Board. A petition must be received within 30 days of the action. Petitions must be sent to State Water Resources Control Board, Office of Chief Counsel; Attn: Phil Wyels, Assistant Chief Counsel; 1001 "I" Street, 22nd Floor; Sacramento, CA 95814.

Los Angeles Regional Water Quality Control Board

Aviso de Reunión Pública de Dos Días

<p>Día Uno Miércoles, 7 de septiembre, 2016 12:30 p.m.</p> <p>Sitio de la reunión: City of Agoura Hills (sala de reuniones del Consejo) 30001 Ladyface Court Agoura Hills, California 91301</p>	<p>Día Dos Jueves, 8 de septiembre, 2016 9:00 a.m.</p> <p>Sitio de la reunión: City of Santa Clarita (sala de reuniones del Consejo) 23920 Valencia Blvd. Santa Clarita, California 91355</p>
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Agenda

Los Angeles Regional Board (la Junta) se esfuerza por dirigir una reunión imparcial, ordenada y accesible a todo el que necesite atención. El Presidente de la Junta realizará la reunión y establecerá las reglas y límites de tiempo necesarios, para cada punto de la agenda. La Junta tomará acción sólo en los puntos designados como puntos de acción. Los puntos de acción en la agenda son propuestas del personal; y podrán ser modificadas por la Junta como resultado de los comentarios del público o por información de algún miembro de la Junta. Tras el último punto de la agenda, se incluirá información sobre los procesos a seguir con respecto a las reuniones de la Junta.

Generalmente, la Junta (Board) acepta comentarios orales en la reunión sobre puntos de la agenda y acepta material por escrito tocante a puntos de la agenda, antes de la reunión. Para algunos puntos que requieren audiencias públicas, se aceptarán comentarios orales además de material escrito, sólo en conformidad con los procesos establecidos en un aviso público previamente emitido, para ese punto de la agenda en particular. Para asegurar una audiencia imparcial y que los Miembros de la Junta tengan una oportunidad para estudiar y considerar plenamente el material escrito, salvo se indique otro método, todo material escrito tendrá que proveérsele al Funcionario Ejecutivo **no más tarde de las 5:00 p.m. el 5 de julio de 2016. Favor de consultar la descripción del punto de la agenda porque ciertos puntos tienen una fecha de vencimiento más temprana para material escrito. Si ud. está considerando presentar material escrito, favor de consultar las notas al fin de la agenda. El no seguir el proceso que se requiere, podría resultar en que se excluya su material escrito de las actas oficiales. no obstante, el no haber presentado material escrito oportunamente no le impide a una persona, declarar oralmente ante la Junta (Board).**

DÍA UNO

PUNTOS INTRODUCTORIOS

1. **Pasar Lista.**
2. **Orden de la Agenda.** Observación: los puntos de la agenda están enumerados sólo por identificarlos y es posible que no necesariamente se traten en ese orden.
3. **Comunicaciones para los Miembros de la Junta (Board).**
 - 3.a. Divulgación de comunicación ex parte. Los Miembros de la Junta identificarán cualquier conversación que hayan tenido que requiera su revelación, conforme al Government Code section 11430.40.
 - 3.b. Reportes de los Miembros de la Junta. Los Miembros de la Junta pueden hablar de la comunicación, de la correspondencia o de otros puntos de interés general que son pertinentes a asuntos dentro de la jurisdicción de la Junta.

ASUNTOS NO IMPUGNADOS

(Se espera que los puntos marcados con un asterisco sean de rutina y no controvertidos. Se le pedirá a la Junta que apruebe estos puntos todos juntos y sin discusión. Cualquier miembro de la Junta o persona puede pedir que se remueva un punto del calendario de asuntos no discutidos. ***Los puntos que hayan sido removidos del calendario de puntos no impugnados se pueden tratar en una reunión futura.***)

Requisitos de Descargo de Desperdicios (WDRs) que funcionan como permisos de NPDES individuales

Terminación-

- *4. Consideración de terminación de Requisitos de Descargo de Desperdicios (WDRs) para Torrance Logistics Company, LLC (Previo Dueño: ExxonMobil Oil Corporation) – Southwestern Terminal Area 1, Terminal Island; NPDES No. CA0003689. (La fecha límite para presentar comentarios fue el 29 de julio de 2016) [Mazhar Ali, (213) 576-6652]

Renovación-

- *5. Consideración de Requisitos de Descargo de Desperdicios (WDRs) tentativos para SFPP, L.P., Norwalk Pump Station, Norwalk; NPDES No. CA0063509. (La fecha límite para presentar comentarios fue el 15 de agosto de 2016) [Ching Yin To, (213) 576-6695]

ASUNTOS IMPUGNADOS

PETICIÓN

6. Consideración de Petición de Repasar la Acción del Funcionario Ejecutivo para Aprobar el Programa de Gestión de Cuencas Mejorado para North Santa Monica Bay; en Conformidad con el Permiso de *Sistema Municipal de Alcantarillado Separado* (MS4) del Condado de Los Angeles, Orden Núm. R4-2012-0175. (La fecha límite para presentar comentarios fue el 18 de agosto de 2016). [Renee Purdy, (213) 576-6622]

Requisitos de Descargo de Desperdicios (WDRs) y Requisitos de Reciclaje de Agua (WRRs) y Orden de Cesar y Desistir

Renovación -

7. Consideración de Requisitos de Descargo de Desperdicios (WDRs) y Requisitos de Reciclaje de Agua (WRRs) tentativos y una Orden de Cesar y Desistir tentativa para: The Kissel Company, Inc. y la Paradise Cove Land Company, LLC – Paradise Cove

RB-AR 6383

Wastewater Treatment Plant, incluyendo sistemas en Paradise Cove Mobile Home Park y el Paradise Cove Beach Café', City of Malibu; File No. 01-083. (La fecha límite para presentar comentarios sobre los WDRs/WRRs tentativos fue el 23 de mayo de 2016) [Mercedes Merino, (213) 620-6156]

7.1 Requisitos de Descargo de Desperdicios (WDRs)/Requisitos de Reciclaje de Agua (WRRs)

7.2 Orden de Cesar y Desistir

8. **Cierre del Día Uno de la reunión actual.** (El Día Dos de esta reunión será a las 9 a.m. el 8 de septiembre del 2016, en la sala de reuniones del Consejo de la Ciudad de Santa Clarita, en: 23920 Valencia Boulevard, Santa Clarita, CA 91355,

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DÍA DOS

9. **Pasar Lista.**

10. **Orden de la Agenda.** Observación: los puntos de la agenda están enumerados sólo por identificarlos y es posible que no necesariamente se traten en ese orden.

11. **Aprobación de las minutas preliminares de la reunión de la Junta (Board) del 14 de julio del 2016.** [Ronji Moffett, (213) 576-6612]

12. **Comunicaciones para los Miembros de la Junta (Board).**

12.a. Divulgación de comunicación ex parte. Los Miembros de la Junta identificarán cualquier conversación que hayan tenido que requiera su revelación, conforme al Government Code section 11430.40.

12.b. Reportes de los Miembros de la Junta. Los Miembros de la Junta pueden hablar de la comunicación, de la correspondencia o de otros puntos de interés general que son pertinentes a asuntos dentro de la jurisdicción de la Junta.

REPORTES DE ASUNTOS DE LA JUNTA (BOARD)

13. **Reporte del Funcionario Ejecutivo.** [Samuel Unger, (213) 576-6605]

14. **Actualización de la Junta Estatal (State Board).** [Fran Spivy- Weber]

FORO PÚBLICO

15. Cualquier persona puede dirigirle la palabra a la Junta tocante a cualquier asunto dentro de los poderes jurisdiccionales, si el tema no aparece en alguna otra porción de esta agenda o no ha sido incluido para figurar en una agenda futura y no se espera que se programe inminentemente para la consideración de la Junta. Se limitarán los comentarios a tres (3) minutos, salvo indique algo distinto el presidente de la Junta. Si una persona piensa usar una presentación con PowerPoint o algún otro sistema auxiliar, **deberá comunicarse con Ronji Moffett, al (213) 576-6612, a la oficinas de la Junta Regional**, por lo menos 48 horas antes de la reunión y hacer los arreglos necesarios para el uso del equipo y estar preparado para cargar la presentación de PowerPoint en la computadora antes de la reunión para asegurar que la reunión se lleve a cabo como se planeó.

ASUNTOS IMPUGNADOS

Planificación de Cuencas/Carga Total Máxima Diaria (TMDL)

16. Consideración de Enmienda Tentativa al Plan de la Cuenca para Incorporar una Carga Total Máxima Diaria (TMDL) para Nutrientes en Elizabeth Lake, Munz Lake, y Lake Hughes. (La fecha límite para presentar comentarios fue el 5 de agosto de 2016) [Stefanie Hada, (213) 576-6804]

INFORMACIÓN

(Estos temas solo son para propósitos de información. La Junta (Board) no tomará ninguna acción sobre éstos temas.)

17. Actualización informativa sobre el progreso de los arreglos residenciales y la reubicación temporal de la implementación de limpieza en la comunidad de Carousel. [Susana Lagudis, (213) 576-6694]

ASUNTOS IMPUGNADOS

NPDES Permit for Municipal Separate Storm Sewer System (MS4) Discharges

18. Consideración de Requisitos de Descargo de Desperdicios (WDRs) tentativos para Descargas de Sistema Municipal de Alcantarillado Separado (MS4s) dentro de las cuencas costeras del Condado de Los Angeles, excepto aquellas Descargas que originan del MS4 de la Ciudad de Long Beach. Orden Núm. R4-2012-0175, NPDES Núm. CAS004001. (Permiso MS4 del Condado de LA. Las enmiendas tentativas incorporan cambios de la Carga Total Máxima Diaria (TMDL) modificada para basura de Ballona Creek y la Cuenca de Los Angeles River. (La fecha límite para presentar comentarios fue el 11 de agosto de 2016) [Chris Lopez, (213) 576-6674]
19. Consideración de Requisitos de Descargo de Desperdicios (WDRs) tentativos enmendados para Descargas de Sistema Municipal de Alcantarillado Separado (MS4s) de la Ciudad de Long Beach; Orden Núm. R4-2014-0024, NPDES Núm. CAS004003 (Permiso de MS4 de Long Beach). Las enmiendas tentativas incorporan cambios de la TMDL modificada para basura de la Cuenca de Los Angeles River. (La fecha límite para presentar comentarios fue el 12 de agosto de 2016) [Chris Lopez, (213) 576-6674]

SESIÓN CERRADA

20. Conforme lo autoriza el Government Code section 11126, la Junta Regional se reunirá en sesión tras puertas cerradas. Los puntos de la sesión a puertas cerradas no están abiertos al público. Los puntos que la Junta Regional podría tratar incluyen los siguientes: [Jennifer Fordyce (JF) (916) 324-6682; Frances McChesney (FM), (916) 341-5174; David Coupe (DC) (510) 622-2306;

Litigio entablado contra Los Angeles Regional Water Quality Control Board (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.1 *City of Redondo Beach v. Los Angeles Regional Water Quality Control Board and State Water Resources Control Board*, California Court of Appeal, Second Appellate District, Case No. B271631 [Challenging assessment of administrative civil liability in Order on Complaint No. R4-2008-0058M]. (FM)

- 20.2 *Balcom Ranch v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Ventura County Superior Court, Case No. 56-2012-00419048-CU-MC-VTA [Challenging assessment of administrative civil liability in Order on Complaint No. R4-2010-0023]. (DC)
- 20.3 *City of Duarte v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Orange County Superior Court, Case No.30-2016-00833614-CU-WM-CJC [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.4 *Natural Resources Defense Council and Los Angeles Waterkeeper v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board*, Los Angeles County Superior Court, Case No. BS156962 [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.5 *City of Gardena v. Los Angeles Regional Water Quality Control Board and State Water Resources Control Board*, Orange County Superior Court, Case No. 30-2016-00833722-CU-WM-CJC [Challenging the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.6 *Peak Foreclosure Services v. Bayview Loan Servicing, LLC; Del Rey Cleaners et al.*, Los Angeles County Superior Court, Case No. BS157001 [Claim filed for recovery of costs associated with Amended Cleanup and Abatement Order No. R4-2014-0143]. (DC)
- 20.7 *Barclay Hollander Corporation v. California Regional Water Quality Control Board, Los Angeles Region, et.al.*, Los Angeles County Superior Court, Case No. BS158024 [Challenging issuance of Revised Cleanup and Abatement Order No. R4-2011-0046 (Revised April 30, 2015)]. (DC)
- 20.8 *Wayne Fishback v. Michael D. Antonovich et al.*, United States District Court for the Central District of California, Case No. 2:15-cv-05719 [Seeking preliminary injunction, alleging violations of procedural and substantive due process and other claims for relief]. (DC)
- 20.9 *Wishtoyo Foundation v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS159479 [Challenging issuance of waste discharge requirements/water reclamation requirements, Order No. R4-2011-0079-A01]. (DC)
- 20.10 *Tesoro Refining & Marketing Company LLC and Tesoro SoCal Pipeline Company LLC v. Los Angeles Regional Water Quality Control Board*, Los Angeles County Superior Court, Case No. BS160502 [Challenging issuance of Cleanup and Abatement Order No. R4-2013-0064]. (JF)

Litigio entablado por la Los Angeles Regional Water Quality Control Board contra otras partes (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.11 *State Department of Finance, State Water Resources Control Board and Los Angeles Regional Water Quality Control Board v. Commission on State Mandates*, Supreme Court of California, Case No. S214855 [Challenging the Commission's decision that portions of the 2001 Los Angeles County MS4 permit created unfunded state mandates]. (JF)
- 20.12 *California Regional Water Quality Control Board, Los Angeles Region v. United States Army Corps of Engineers; Lieutenant General Thomas P. Bostick, In his*

Official Capacity, United States District Court for the Central District of California, Case No. 2:16-cv-01091 [Alleging unauthorized discharges of dredge and fill materials and other pollutants into waters of the United States in violation of Clean Water Act sections 301, 401, and 404]. (JF)

Solicitudes para Reexaminación de las Acciones de Los Angeles Regional Water Quality Control Board radicadas con la State Water Resources Control Board (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.13 *In re: Petition of Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay for Review of Executive Officer's Action to Conditionally Approve nine WMPs Pursuant to the 2012 MS4 Permit*, SWRCB/OCC File A-2386 [Challenging the Executive Officer's approval, with conditions, of nine Watershed Management Programs (WMPs) pursuant to the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)
- 20.14 *In re: Petition of Los Angeles Waterkeeper and NRDC for Review of Executive Officer's Action to Approve the North Santa Monica Bay EWMP*, SWRCB/OCC File A-2477 [Challenging the Executive Officer's approval of the North Santa Monica Bay EWMP pursuant to the Los Angeles County MS4 Permit, Order No. R4-2012-0175]. (JF)

Demanda de Prueba radicada con la Commission sobre Mandatos Estatales (Gov. Code, § 11126, subd. (e)(2)(A).):

- 20.15 *In re: Los Angeles Region Water Permit – Ventura County*, Commission on State Mandate Test Claim No. 110-TC-01 [Regarding a test claim filed by Ventura County Watershed Protection District and the County of Ventura alleging that portions of Order No. R4-2010-0108 created unfunded state mandates]. (JF)
- 20.16 *In re: Los Angeles Region Water Permit – Cities of Los Angeles County*, Commission on State Mandate Test Claim No. 13-TC-01 [Regarding a test claim filed by several cities within Los Angeles County alleging that portions of Order No. R4-2012-0175 created unfunded state mandates]. (JF)
- 20.17 *In re: Los Angeles Region Water Permit – County of Los Angeles*, Commission on State Mandate Test Claim No. 13-TC-02 [Regarding a test claim by the County of Los Angeles and Los Angeles County Flood Control District alleging that portions of Order No. R4-2012-0175 created unfunded state mandates]. (JF)

Otros asuntos:

- 20.18 Consultas con abogados respecto a:
- (a) Un asunto que, en base a hechos y circunstancias, presenta riesgo significativo de litigio contra la Junta Regional; (Government Code section (Gov. Code, § 11126, subd. (e)(2)(B).); o
 - (b) Un asunto por el que, en base a los hechos o circunstancias actuales, la Junta Regional está decidiendo si iniciará un litigio legal. (Gov. Code, § 11126, subd. (e)(2)(C).) (JF/FM/DC)
- 20.19 Consideración del nombramiento, empleo u evaluación del rendimiento laboral de un empleado público. (Gov. Code, § 11126, subd. (a).) (JF/FM/DC)
21. **Clausura de la reunión en curso.** La próxima reunión regular de la Junta (Board) será el 13 de octubre del 2016, comenzando a las 9:00 a.m. en: Metropolitan Water District of Southern California, Board Room (sala de reuniones de la Junta [Board]), 700 North Alameda Street, Los Angeles, CA, 90012.

****Comunicaciones Ex Parte:** Una comunicación ex parte es una comunicación a un miembro de la junta de parte de cualquier persona, tocante a un asunto pendiente, que ocurre en la ausencia de otras partes y sin aviso ni oportunidad para que ellos respondan. El Código de Gobierno de California prohíbe a los miembros de la junta de que participen en comunicaciones ex parte durante el proceso de emisión de permisos, la aplicación de la ley y otros asuntos cuasi-adjudicatorios. Se permiten las comunicaciones ex parte sobre las órdenes generales pendientes (como los requisitos generales para la descarga de desperdicios, exenciones generales y certificaciones generales de la calidad del agua conforme a la ley para la limpieza del agua, artículo 401, sujetas a los requisitos de divulgación del Water Code(Código de Agua) section 13287 (para más información y formularios tocante a la divulgación de comunicaciones unilaterales, favor de visitar http://www.waterboards.ca.gov/losangeles/laws_regulations/). La Junta Regional desalienta las comunicaciones ex parte durante el proceso de la formulación de los reglamentos y otras diligencias "cuasi-legislativas". Las reglas tocante a las comunicaciones ex parte tienen como propósito el proporcionar imparcialidad y el asegurar que las decisiones de la junta sean transparentes, en base a las pruebas en las constancias y que las pruebas se utilicen sólo si los constituyentes han tenido la oportunidad de conocerla y responder a la misma. Las reglas sobre las comunicaciones ex parte no impiden que nadie le provea información a las juntas de agua o que les pida a las juntas de agua que tomen alguna acción en particular. Únicamente que la información entre a las constancias por las vías apropiadas durante una reunión pública con el aviso debido. A un miembro de la junta que haya participado o quien ha sido el recipiente de comunicaciones ex parte prohibidas, se le requerirá que divulgue públicamente la comunicación para las constancias y podría descalificársele de participar en la diligencia. Para más información, favor de ver el documento de preguntas sobre comunicaciones ex parte y sus respuestas correspondientes, que se encuentra en www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Procedimientos: La Junta Regional sigue los procedimientos establecidos por el State Water Resources Control Board. Se establecen estos procedimientos en las regulaciones que empiezan con el artículo 647 del título 23 del California Code of Regulations. El presidente puede establecer procedimientos específicos para cada punto y, en conformidad con el artículo 648, subinciso (d) del título 23 del California Code of Regulations, puede suspender las disposiciones de las regulaciones que no son legisladas. Generalmente, todo testigo que declare ante la Junta Regional debe afirmar la veracidad de su testimonio y quedará sujeto a que los Miembros de la Junta le hagan preguntas. La Junta generalmente no requiere la designación de partes, la identificación previa de testigos ni la conainterrogación de testigos. Generalmente, a los hablantes se les permite tres minutos para comentarios. Cualquier petición para un proceso alterno de audiencias, como por ejemplo el pedir tiempo adicional para hacer una presentación, debe hacerse al Funcionario Ejecutivo de antemano a la reunión y, bajo ninguna circunstancia, más tarde de las 5:00 p.m. el jueves antes de la reunión de la Junta. Se considerarán sustituidas las disposiciones de este párrafo al grado que las contradiga un aviso de audiencia que sea específico a un punto particular de la agenda.

Presentaciones Escritas: Materia escrita (sea que fuere entregada en persona, enviada por correo, transmitida por correo electrónico o por fax) **deberá ser recibida antes de la fecha de vencimiento pertinente** establecida en la agenda y en el aviso público para algún punto específico. Si el material que se presenta contiene más de 10 páginas o contiene dobles en las páginas, gráficas a colores, mapas o características similares, deberá hacerse entrega de 12 copias antes de la fecha pertinente de vencimiento.

El no cumplir con los requisitos para las presentaciones por escrito, constituye una base suficiente para que el presidente rehusé admitir el comentario pertinente escrito o el elemento de prueba para las actas. (Cal. Code Regs. tit. 23, § 648.4(e).) El presidente puede rehusar admitir testimonio por escrito como parte de las actas a menos que el proponente pueda demostrar la razón por la que él o ella no pudo presentar el material a tiempo o que el haber cumplido con el requisito de la fecha de vencimiento habría causado dificultad. En un asunto contencioso, cuando se demuestra parcialidad a alguna parte o a la Junta debido a la admisión del testimonio escrito, el presidente puede rehusar admitirlo.

Las Actas Administrativas: El material presentado a la Junta, como parte del testimonio que será parte de las actas deberá quedar en manos de la Junta ya que cualquier material presentado a la Junta como parte del testimonio, formará parte de las actas. Esto incluye fotografías, diapositivas, gráficas, diagramas, etc. Todo expediente de la Junta que es pertinente a los puntos de su Agenda, por medio de la presente se hace parte de las actas presentado a la Junta Regional por el personal para su consideración, antes de tomar acción sobre los puntos relacionados al mismo.

Accesibilidad: Los individuos que requieran adaptaciones especiales o tengan necesidad de interpretación, deberán comunicarse con Dolores Renick al (213) 576-6629 ó a la siguiente dirección electrónica:

drenick@waterboards.ca.gov por lo menos diez días laborales antes de la reunión. Los usuarios de los teléfonos de texto voz-z-voz (TTY/TDD) pueden marcar 7-1-1 para el California Relay Service.

Disponibilidad del Paquete Completo de Información de la Agenda: Se hará disponible una copia completa de la agenda, para examinarla en la Oficina de la Junta Regional, durante las horas laborales normales (8:00 a.m. a 5:00 p.m. de lunes a viernes) empezando 10 días antes de la reunión de la Junta. Deberán dirigir cualquier pregunta sobre algún punto específico de la agenda, a la persona cuyo nombre está anotado junto a ese punto.

Aplazamiento de Temas: La Junta se esforzará por considerar cada asunto anotado en la agenda. No obstante, es posible que el tiempo no permita que la Junta trate todos los puntos. Los que no se traten en esta reunión podrán tratarse en la siguiente o en una futura reunión de la Junta. Se les notificará a las partes por escrito si se re-programa algunos de esos puntos. Favor de comunicarse con el personal de la Junta Regional para averiguar sobre los temas que se han re-programado.

Cómo Disputar Acciones de la Junta Regional (Regional Board): Conforme al Water Code (Código de Agua) artículo 13320, toda persona afectada puede radicar una petición al State Water Resources Control Board para que se reexaminen la mayoría de las acciones de la Junta Regional. Se deberá radicar una petición dentro de 30 días de la acción. Debe enviar las peticiones al State Water Resources Control Board, Office of Chief Counsel (Oficina del Abogado Principal, Junta Estatal para el Control de los Recursos de Agua); ATENCIÓN: Phil Wyels, Abogado Asistente Auxiliar; 1001 "I" Street, 22nd Floor; Sacramento, CA 95814.

Brandes, Deborah@Waterboards

From: Brandes, Deborah@Waterboards
Sent: Thursday, August 25, 2016 11:44 AM
To: Purdy, Renee@Waterboards
Cc: Fordyce, Jennifer@Waterboards
Subject: FW: LA County MS4 Permit- Response to Petition for Review of NSMB EWMP Approval

Here it is! Oh no! I am so sorry, it looks like it was to me but when I saw that I was cced, I assumed the someone higher than me got it but looking closer I see that WB-RB4-los angeles got it and that must be a server or some non-person! How can I help now?

From: Arthur S. Pugsley [<mailto:arthur@lawwaterkeeper.org>]
Sent: Monday, July 25, 2016 11:25 AM
To: WB-RB4-losangeles
Cc: Brandes, Deborah@Waterboards
Subject: LA County MS4 Permit- Response to Petition for Review of NSMB EWMP Approval

On behalf of Petitioners Los Angeles Waterkeeper and Natural Resources Defense Council, I am writing to request additional time for Petitioners to present oral comments before the Board regarding the Petition. I am requesting a total of 20 minutes for Petitioners to present testimony on the issues. Please let me know as soon as possible whether this request will be granted. Thank you.

ARTHUR S. PUGSLEY STAFF ATTORNEY
ARTHUR@LAWATERKEEPER.ORG



120 BROADWAY, SUITE 105 • SANTA MONICA, CALIFORNIA 90401
PH: 310-394-6162 X102 • FX: 310-394-6178 • LAWATERKEEPER.ORG

Brandes, Deborah@Waterboards

From: Mark Lombos <MLOMBOS@dpw.lacounty.gov>
Sent: Thursday, August 18, 2016 2:59 PM
To: Purdy, Renee@Waterboards
Cc: Paul Alva
Subject: RE: Time request for September Board meeting agenda items

Good afternoon Renee,

We would like to request the following:

1. NSMB EWMP Petition - up to 10 minutes
2. LA County MS4 Permit re-opener - up to 5 minutes
3. Santa Clara River Lakes Nutrients TMDL - up to 30 minutes

We have not determined yet who will be speaking for the above items. Would it be possible for us to get into a call sometime in the next week to discuss further?

Also, we just got the notice that the September 8 hearing will be in Santa Clarita. Will there still be a hearing on September 7 at Agoura Hills?

Thank you,
Mark

From: Purdy, Renee@Waterboards [<mailto:Renee.Purdy@waterboards.ca.gov>]
Sent: Wednesday, August 17, 2016 5:14 PM
To: Mark Lombos
Cc: Paul Alva
Subject: RE: Time request for September Board meeting agenda items

Mark,

I believe we set the deadline at tomorrow. It was indicated in the public notices.

Renee

From: Mark Lombos [<mailto:MLOMBOS@dpw.lacounty.gov>]
Sent: Wednesday, August 17, 2016 12:52 PM
To: Purdy, Renee@Waterboards
Cc: Paul Alva
Subject: RE: Time request for September Board meeting agenda items

Hi Renee,

When is the deadline to submit a request for more time to speaking during the September 8 hearing?

From: Purdy, Renee@Waterboards [<mailto:Renee.Purdy@waterboards.ca.gov>]
Sent: Wednesday, August 17, 2016 10:13 AM

To: Paul Alva; Mark Lombos

Subject: Time request for September Board meeting agenda items

Paul and Mark,

We received a call from your staff requesting time to speak on three items:

- 1) NSMB EWMP Petition
- 2) LA County MS4 Permit re-opener
- 3) SCR Lakes TMDL

By reply to this email, please let us know for each item how much time you are requesting, and who will be speaking on each item.

Thank you,
Renee

Brandes, Deborah@Waterboards

From: Jennifer Brown <JBrown@malibucity.org>
Sent: Monday, August 29, 2016 3:57 PM
To: Ridgeway, Ivar@Waterboards
Subject: 9/7 meeting

Hi Ivar,

I checked in with Andrew Sheldon, our Environmental Sustainability Department Manager. He said that the allotment of 10 minutes as you and I discussed would be sufficient. We wanted to have comment time plus be able to reserve for any rebuttals. In case you need names, currently he will be speaking on behalf of Malibu, however I will be in attendance as well in case I need to make comments.

Thank you and let me know if you have any further questions.

All best,

Jennifer Voccola Brown
Sr. Environmental Programs Coordinator

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California Regional Water Quality Control Board,
Los Angeles Region**

Consideration of Petition for Review of the Executive Officer’s Action to Approve
of the North Santa Monica Bay Enhanced Watershed Management Program
(EWMP) Pursuant to the Los Angeles County Municipal Separate Storm Sewer
System (MS4) Permit, Order No. R4-2012-0175

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**Petition for Review of Executive Officer's Approval of the North Santa Monica Bay
Enhanced Watershed Management Program (EWMP)**

ITEM SUMMARY

**California Regional Water Quality Control Board
Los Angeles Region
September 7, 2016
599th Board Meeting**

Item No.	6
Subject	Consideration of petition for review of the Executive Officer's action to approve the Enhanced Watershed Management Program for the North Santa Monica Bay Coastal Watersheds (NSMB EWMP) pursuant to the LA County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175.
Purpose	To consider the petition for review of the Executive Officer's action on April 19, 2016 approving the NSMB EWMP pursuant to the LA County MS4 Permit filed by Los Angeles Waterkeeper and NRDC (collectively, Petitioners). Such consideration includes whether the Regional Water Board will review the petition or not. If the Board decides to review the petition on its merits, it will be asked to do so at a subsequent publicly noticed meeting.
Permit Background	On November 8, 2012, the Regional Water Board adopted Order No. R4-2012-0175, the current LA County MS4 Permit. Part VI.C of the Permit allows Permittees the option to develop, either individually or as part of a group, either a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP) to implement permit requirements on a watershed scale. Development of a WMP or EWMP allows a Permittee to address the highest watershed priorities, including complying with the requirements of Part V.A (Receiving Water Limitations) and Part VI.E and Attachments L through R (Total Maximum Daily Load Provisions), through customized strategies, control measures, and best management practices.
EWMP Review & Approval Process	<p>Pursuant to Part VI.C.4.c of the Los Angeles County MS4 Permit, the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District (collectively, Permittees) submitted a draft NSMB EWMP to the Regional Water Board on June 29, 2015 for review.</p> <p>The NSMB EWMP area encompasses 55,121 acres, including 20 subwatersheds and 28 freshwater coastal streams as identified in the Basin Plan. The western portion of the EWMP area, including half of these subwatersheds, drains to the southern half of the Laguna Point to Latigo Point Area of Special Biological Significance (ASBS 24). The Ocean Plan sets forth</p>

Petition for Review of Executive Officer's Approval of the North Santa Monica Bay Enhanced Watershed Management Program (EWMP)

ITEM SUMMARY

specific requirements and special protections for an ASBS, and these requirements apply to the MS4 discharges from the western half of the NSMB EWMP area.

In conducting its review of the draft EWMPs, Board staff developed a list of review and evaluation questions that was used to ensure a comprehensive and consistent review of the draft EWMPs, including the NSMB EWMP, relative to permit requirements. Each EWMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. C.P. Lai. Staff was overseen by the MS4 Unit Chief, Mr. Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy.

On the basis of Board staff's review, and in consideration of written and oral comments made by interested persons during the public written comment period and first workshop (as described below under "Stakeholder Participation"), the Board provided written comments to the Permittees on the draft NSMB EWMP in October 2015 detailing the Board's comments on the draft EWMP and identifying the revisions that needed to be addressed prior to the Board's approval of the EWMP. The Executive Officer directed the Permittees to submit a revised draft EWMP addressing the Board's comments by January 2016. Both before and after submittal of the revised draft NSMB EWMP, Board staff participated in meetings, phone calls, and email exchanges with the Permittees.

Per Part VI.C.4.c of the Permit, the Board, or the Board's Executive Officer on behalf of the Board, was scheduled to approve or deny the revised draft NSMB EWMP within 3 months of its submittal. Part VI.C.4.e specifies that Permittees that do not have an approved EWMP within 40 months of the Permit's effective date (thus, by April 28, 2016) shall be subject to the baseline requirements of Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A and with applicable interim and final water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).

After reviewing the revised draft NSMB EWMP in relation to the Board's written comments and requested revisions, the Executive Officer concluded that the final NSMB EWMP satisfied the requirements of the Los Angeles County MS4 Permit. On April 19, 2016, the Executive Officer, on behalf of the Regional Water Board, approved the NSMB EWMP pursuant to the Los Angeles County MS4 Permit.

Stakeholder Participation Beginning on June 29, 2015, the Regional Water Board provided a 61-day public review and written comment period on the draft NSMB EWMP along with the other draft EWMPs. On

Petition for Review of Executive Officer's Approval of the North Santa Monica Bay Enhanced Watershed Management Program (EWMP)

ITEM SUMMARY

August 31, 2015, the Petitioners, as well as Heal the Bay, jointly submitted written comments to the Regional Water Board on the draft NSMB EWMP. Where Board staff agreed with the Petitioner's written comments, those comments were incorporated into the Board's review letter on the draft NSMB EWMP to ensure that the public's comments were addressed in the revised EWMP. Further, although not required, Regional Water Board staff prepared responses to Petitioner's written comments on the draft EWMPs, including the NSMB EWMP.

On July 9, 2015 and November 5, 2015, the Board held workshops at its regularly scheduled Board meetings and provided the permittees and interested persons an opportunity to make oral comments on the draft EWMPs submitted to the Board, including the NSMB EWMP.

The Regional Water Board held a third public workshop on March 3, 2016 for permittees and interested persons to specifically discuss the revised draft EWMPs, including the NSMB EWMP, with the Board's Executive Officer, Board members (which were invited to attend), and Board staff.

Throughout the NSMB EWMP review process, Board staff participated in several meetings, phone calls, and email exchanges with Permittees and other stakeholders, including the Petitioners.

Petition for Review

Part VI.A.6 of the Los Angeles County MS4 Permit provides that any Permittee or interested person may request review by the Regional Water Board of any formal determination or approval made by the Executive Officer pursuant to the Permit. A Permittee or interested person may request such review by the Board upon petition within 30 days of the notification of such decision to the Permittee(s) and interested parties on file at the Board. It is at the Regional Water Board's discretion whether to review a petition and, if so, how to resolve it.

On May 19, 2016, the Petitioners filed a "Petition for Review of 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."¹ The Petitioners allege that the Executive Officer improperly approved the NSMB EWMP despite its failure to: 1) "comply with the relevant terms of the MS4 Permit," 2) "comply with the conditions of State Board Resolution No. 2012-0012 ('ASBS Exception')," and 3) "consider relevant, available ASBS stormwater and non-

¹ The petition indicates that it also serves as a petition to the State Water Resources Control Board (State Water Board) pursuant to Water Code section 13320. The State Water Board may choose to conduct separate proceedings on the petition pursuant to Water Code section 13320.

Petition for Review of Executive Officer's Approval of the North Santa Monica Bay Enhanced Watershed Management Program (EWMP)

ITEM SUMMARY

stormwater data and to comply with the ASBS Exception's prohibition against non-stormwater discharges."² The Petitioners seek an order by the Regional Water Board to invalidate the Executive Officer's April 19, 2016 final approval of the NSMB EWMP, and an order remanding the matter to the Board with instructions for staff to require compliance with Permit requirements.³

On July 19, 2016, the Board publicly noticed the petition for review and provided an opportunity for Permittees and interested persons to respond to the petition. The deadline for responses was August 18, 2016. Responses to the petition for review received by the deadline are listed below.

The Regional Water Board Executive Officer and staff have prepared responses to the contentions raised by the Petitioners in their Memorandum of Points and Authorities for the Board's reference, which is included as part of this board package behind Tab 6-6.

Responses Received

Three responses to the petition for review were received from the following:

- 1) City of Malibu
- 2) County of Los Angeles and Los Angeles County Flood Control District
- 3) Geosyntec Consultants (technical consultants for NSMB EWMP)

Additionally, the Petitioners submitted a "Request to Appoint Separate Counsel for Adjudicative and Prosecutorial/Advocacy Functions."

The responses to the Petition and the Petitioner's request are provided behind Tab 6-5 of your board package.

² The California Ocean Plan prohibits the discharge of waste to designated Areas of Special Biological Significance (ASBS). ASBSs are designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. One ASBS is the Laguna Point to Latigo Point ASBS (ASBS Index No. 24), which is the largest of the mainland ASBS in Southern California. The California Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the State Water Board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served. In Resolution No. 2012-0012, the State Water Board approved, subject to specific conditions, certain exceptions to the California Ocean Plan's prohibition against waste discharges to ASBS, including discharges of stormwater by the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District for the Laguna Point to Latigo Point ASBS.

³ Should the Regional Water Board deny Petitioners' request, Petitioners seek "an order by the State Board to invalidate the Regional Board Executive Officer's April 19, 2016 final approval of the NSMB EWMP, any approval by the Regional Board thereof, and an order remanding the matter to the Regional Board with instructions for staff to require compliance with Permit requirements."

**Petition for Review of Executive Officer's Approval of the North Santa Monica Bay
Enhanced Watershed Management Program (EWMP)**

ITEM SUMMARY

Options

At the September 7, 2016 Regional Water Board meeting, the Board may either:

1. Decide to review the petition on its merits; or
2. Decide not to review the petition.

If the Regional Water Board decides to review the petition on its merits, it will do so at a subsequent publicly noticed meeting.

If the Regional Water Board decides not to review the petition, there will be no further Regional Water Board proceedings on the petition.

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18 Attorney for NATURAL
19 RESOURCES DEFENSE COUNCIL, INC.

20 STATE OF CALIFORNIA
21 REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION
22 AND
23 STATE WATER RESOURCES CONTROL BOARD

24 Petition of Los Angeles Waterkeeper and NRDC)
25 for Review by the California Regional Water)
26 Quality Control Board, Los Angeles Region, and)
27 the State Water Resources Control Board, of the)
28 Regional Board Executive Officer's Action to)
Approve the North Santa Monica Bay Watershed)
Management Group's Enhanced Watershed)
Management Program Pursuant to the Los)
Angeles County Municipal Separate Storm Sewer)
System Permit, NPDES Permit No. CAS004001,)
Order No. R4-2012-0175 as amended by State)
Water Board Order WQ 2015-0075)

PETITION FOR REVIEW OF 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

1 Pursuant to Part VI.A.6 of the Los Angeles County Municipal Separate Storm Sewer
2 System (MS4) Permit (Order No. R4-2012-0175) (“2012 MS4 Permit” or “Permit”), Los Angeles
3 Waterkeeper (“LAW”) and the Natural Resources Defense Council (“NRDC”) (collectively
4 “Petitioners”) hereby petition the Los Angeles Regional Water Quality Control Board (“Regional
5 Board”) to review the Regional Board Executive Officer’s action in approving the North Santa
6 Monica Bay Watershed Management Group’s (“County and Malibu”) ¹ Enhanced Watershed
7 Management Program (the “NSMB EWMP” or “EWMP”) pursuant to the 2012 MS4 Permit.
8 Additionally, in accordance with Section 13320 of the California Water Code and Section 2050 of
9 Title 23 of the California Code of Regulations, Petitioners hereby petition the State Water
10 Resources Control Board (“State Board”) to review the Executive Officer’s action to issue this
11 approval.

12 The 2012 MS4 Permit regulates stormwater discharges from MS4s for Los Angeles
13 County, the Los Angeles County Flood Control District, and 84 incorporated cities within Los
14 Angeles County. The 2012 MS4 Permit is the fourth iteration of the MS4 permit for Los Angeles
15 County. Unlike the prior 2001 Permit, the 2012 MS4 Permit provides Permittees the option of
16 developing a Watershed Management Program or an Enhanced Watershed Management Program
17 as an alternative mechanism to comply with permit requirements.

18 On April 19, 2016, the Executive Officer, on behalf of the Regional Board, approved the
19 NSMB EWMP submitted by the County and Malibu. For reasons discussed below, Petitioners
20 request that the Regional Board invalidate the Executive Officer’s approval and remand the matter
21 with instructions to staff to require compliance with Permit conditions. Absent such action by the
22 Regional Board, Petitioners request that the State Board invalidate the Executive Officer’s
23 approval and remand the matter to the Regional Board with instructions to the Regional Board and
24 its staff to require compliance with Permit conditions. The State Board has jurisdiction over this
25 matter because the approval constitutes an abuse of discretion and was inappropriate and improper
26 pursuant to Cal. Water Code §§ 13220 and 13330.

27
28 ¹ The North Santa Monica Bay Watershed Management Group is a group of MS4 Permittees consisting of the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District.

1 1. NAMES, ADDRESSES, TELEPHONE NUMBERS, AND E-MAIL ADDRESSES OF
2 THE PETITIONERS:

3 Los Angeles Waterkeeper
4 120 Broadway, Suite 105
5 Santa Monica, CA 90401

6 Attention: Arthur Pugsley, Esq. (arthur@lawaterkeeper.org)
7 Melissa Kelly, Esq. (melissa@lawaterkeeper.org)
8 (310) 394-6162

9 Natural Resources Defense Council, Inc.

10 1314 Second Street
11 Santa Monica, CA 90401

12 Attention: Becky Hayat, Esq. (bhayat@nrdc.org)
13 (310) 434-2300

14 2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE
15 STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR
16 RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE
17 PETITION:

18 Petitioners seek review of the Regional Board Executive Officer's action to approve the
19 NSMB EWMP pursuant to the 2012 MS4 Permit. A Copy of the Executive Officer's letter of
20 approval is attached as Exhibit D.

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

23 April 19, 2016. (Ex. D.)

24 4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR
25 FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

26 In approving the NSMB EWMP, the Executive Officer failed to act in accordance with
27 relevant governing law, acted inappropriately and improperly, and abused his discretion.

28 Specifically, but without limitation, the Executive Officer:

A. Improperly approved the NSMB EWMP despite its failure to comply with
the relevant terms of the MS4 Permit. (Ex. A.)

B. Improperly approved the NSMB EWMP despite its failure to comply with
the conditions of State Board Resolution No. 2012-0012 ("ASBS
Exception"). (Ex. F.)

1 C. Improperly approved the NSMB EWMP despite its failure to consider
2 relevant, available ASBS stormwater and non-stormwater data and to
3 comply with the ASBS Exception’s prohibition against non-Stormwater
4 discharges. (Ex. B.)

5 5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

6 Petitioners are non-profit, environmental organizations that have a direct interest in
7 protecting the quality of Los Angeles County’s aquatic resources, including Santa Monica Bay, the
8 portion of the Bay designated as an Area of Special Biological Significance between Laguna Point
9 and Latigo Point (“ASBS 24”), and other Los Angeles area waters, as well as the health of
10 beachgoers and other users. NRDC is a non-profit organization whose purpose is to safeguard the
11 Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC
12 represents approximately 70,100 members in California, approximately 14,029 of whom reside in
13 Los Angeles County. LAW is a non-profit organization dedicated to the preservation, protection,
14 and defense of the coastal and inland surface and ground waters of Los Angeles County from all
15 sources of pollution and degradation. LAW represents approximately 3,000 members who live
16 and/or recreate in and around the Los Angeles area.

17 Petitioners have members who regularly use and enjoy waters in the Los Angeles region
18 that are affected by the discharges authorized by the 2012 MS4 Permit. Those members depend on
19 clean water for a variety of sustenance-related, recreational, aesthetic, educational, and scientific
20 purposes, including drinking, hiking, fishing, swimming, boating, wildlife observation, scientific
21 research, photography, nature study, and aesthetic appreciation. Petitioners’ members are impacted
22 by polluted stormwater runoff and its resulting health impacts, particularly by beach closures that
23 restrict the ability of residents and visitors in Los Angeles County to use the beach and local
24 waters for recreation and other purposes.

25 Petitioners’ members are aggrieved by the Executive Officer’s action to approve the
26 NSMB EWMP because such action is an obstruction to achieving the Permit’s ultimate goal of
27 meeting Water Quality Standards (“WQSs”), as required by the Clean Water Act and Porter-
28 Cologne Water Quality Act. Specifically, the Executive Officer’s failure to deny the NSMB

1 EWMP as required by the 2012 MS4 Permit has enormous consequences for Los Angeles County
2 residents and Petitioners' members. The NSMB EWMP is unique in that its geographical scope
3 includes ASBS 24, which requires special protection of species and/or biological communities.
4 The California Water Quality Control Plan, Ocean Waters of California ("Ocean Plan") prohibits
5 all discharge of waste to any ASBS, subject to narrow exceptions articulated in State Board
6 Resolution No. 2012-0012. The County and Malibu applied for and were granted an ASBS
7 exception in 2012, which requires them to abide by the ASBS Exception's conditions.

8 Unfortunately, the NSMB EWMP fails to protect ASBS 24 and to comply with the 2012
9 MS4 Permit and ASBS Exception. Monitoring data collected by the County and Malibu show
10 exceedances of Ocean Plan Instantaneous Maximum Limits for ammonia, cadmium, chromium,
11 copper, lead, nickel, zinc, and high concentrations of PAH, pyrethroids, and TSS at outfalls to the
12 ASBS. Thus, approval of the NSMB EWMP will only lead to the continued degradation of water
13 quality in ASBS 24. Both the Regional and State Board have defined the EWMP as the means by
14 which compliance with WQSs is determined. By approving a clearly deficient EWMP, however,
15 the Executive Officer is allowing Permittees to defer compliance with applicable WQSs, resulting
16 in zero improvement in water quality for North Santa Monica Bay.

17 All of these documented facts demonstrate the considerable negative impact on Petitioners'
18 members and the environment that continues today as a result of the Executive Officer's failure to
19 comply with the terms of the 2012 MS4 Permit by approving the NSMB EWMP.

20 6. **THE SPECIFIC ACTION BY THE REGIONAL OR STATE BOARD WHICH**
21 **PETITIONERS REQUEST:**

22 Petitioners seek an Order by the Regional Board or State Board that:

23 Invalidates the Executive Officer's approval of the NSMB EWMP and remands the
24 matter to the Regional Board and its staff with instructions to revise the EWMP to
25 bring it into compliance with the Los Angeles County Municipal Separate
 Storm Sewer Permit, Order No. R4-2012-0175, NPDES Permit No. CAS004001,
 and the requirements of State Board Resolution 2012-0012.

26 7. **A STATEMENT IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:**

27 See, Section 4, above. Petitioners have also enclosed a separate Memorandum of Points
28 and Authorities in support of legal issues raised in this Petition.

1 8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE
2 REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER:

3 A true and correct copy of this petition was delivered by electronic mail to the State Board,
4 Regional Board and the NSMB EWMP Permittees on May 19, 2016. A true and correct copy of
5 this petition was also mailed via First Class mail to the State Board, Regional Board, and the
6 NSMB EWMP Permittees on May 19, 2016.

7 9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN
8 THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN
9 EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS
10 UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE
11 THE REGIONAL BOARD.

12 All of the substantive issues and objections raised herein were presented to the Regional
13 Board during the period for public comment on the draft EWMPs. Petitioners submitted written
14 comments regarding the NSMB EWMP on August 31, 2015. (Ex. C.) Petitioners presented
15 testimony before the Regional Board on the draft NSMB EWMP on November 5, 2015 and on the
16 revised EWMP on March 3, 2016.

17
18 Respectfully submitted via electronic mail and U.S. Mail,

19 Dated: May 19, 2016

20 LOS ANGELES WATERKEEPER

21
22 

23
24 _____
25 Arthur Pugsley
26 Attorney for LOS ANGELES WATERKEEPER
27
28

1 Dated: May 19, 2016

NATURAL RESOURCES DEFENSE COUNCIL, INC.

2 

3
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5 _____
6 Becky Hayat
7 Attorney for NATURAL RESOURCES
8 DEFENSE COUNCIL, INC.
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is: 1004 O'Reilly Ave, San Francisco,
4 California 94129.

5 On May 19, 2016, I served the within documents described as PETITION FOR REVIEW
6 OF LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD EXECUTIVE
7 OFFICER'S ACTION TO APPROVE THE NORTH SANTA MONICA BAY ENHANCED
8 WATERSHED MANAGEMENT PROGRAM PURSUANT TO THE L.A. COUNTY MS4
9 PERMIT and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
10 PETITION FOR REVIEW OF LOS ANGELES REGIONAL WATER QUALITY CONTROL
BOARD EXECUTIVE OFFICER'S ACTION TO APPROVE THE NORTH SANTA MONICA
BAY ENHANCED WATERSHED MANAGEMENT PROGRAM PURSUANT TO THE L.A.
COUNTY MS4 PERMIT on the following interested parties in said action by submitting a true
copy thereof via electronic mail to the email addresses below:

11 California Regional Water Quality
12 Control Board, Los Angeles Region
13 c/o Sam Unger
14 Executive Officer
samuel.unger@waterboards.ca.gov

State Water Resources Control Board,
Office of the Chief Counsel
c/o Adrianna Crowl
Staff Services Analyst
waterqualitypetitions@waterboards.ca.gov

15 Howard Gest
16 Burhenn & Gest LLP
17 624 Grand Ave Suite 2200
18 Los Angeles, CA 90017
hgest@burhenngest.com

Eric Conard
Senior Associate County Counsel
648 Kenneth Hahn Hall of Administration
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econard@counsel.lacounty.gov

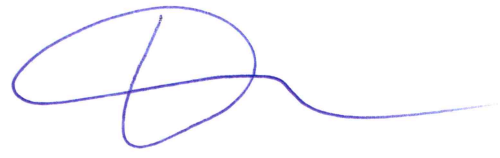
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Christi Hogin
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Reva Feldman
City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu CA 90265
RFeldman@malibucity.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19, 2016, at San Francisco, California.



Daniel Cooper

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20 **STATE OF CALIFORNIA**
21 **REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**
22 **AND**
23 **STATE WATER RESOURCES CONTROL BOARD**

24 Petition of Los Angeles Waterkeeper and NRDC)
25 for Review by the State Water Resources Control)
26 Board of the Regional Board Executive Officer)
27 Approval of North Santa Monica Bay Enhanced)
28 Watershed Management Program Pursuant to the)
MEMORANDUM OF POINTS AND)
AUTHORITIES IN SUPPORT OF)
PETITION FOR REVIEW OF LOS)
ANGELES REGIONAL WATER)
QUALITY CONTROL BOARD)
EXECUTIVE OFFICER APPROVAL)
OF NORTH SANTA MONICA BAY)
EWMP PURSUANT TO THE L.A.)
COUNTY MS4 PERMIT)

1 **I. INTRODUCTION**

2 This petition seeks review of the Los Angeles Regional Water Quality Control Board
3 (“Regional Board”) Executive Officer’s April 19, 2016 approval of the North Santa Monica Bay
4 (“NSMB”) Enhanced Watershed Management Program (“EWMP”) prepared by Los Angeles
5 County, the Los Angeles County Flood Control District (“County”), and the City of Malibu
6 (“Malibu”) pursuant to the 2012 Los Angeles County Municipal Separate Storm Sewer System
7 (“MS4”) Permit (NPDES No. CAS 004001) (“MS4 Permit” or “Permit”).

8 Petitioners’ appeal is necessary because the EWMP fails to consider relevant stormwater
9 and non-stormwater data, fails to apply the applicable standards to stormwater discharges, and fails
10 to apply a prohibition on non-stormwater discharges. To protect important aquatic resources,
11 permittees must fully comply with requirements of the EWMP development process and consider
12 all available data. The NSMB EWMP requires particular attention, because it addresses discharges
13 to the Laguna Point to Latigo Point Area of Special Biological Significance (“ASBS 24”). Areas of
14 Special Biological Significance (“ASBS”) are zones with special habitats, species or biological
15 communities— coastal ecosystem jewels. Consequently, the California Water Quality Control
16 Plan, Ocean Waters of California (State Water Resources Control Board, 2012) (“Ocean Plan”)
17 prohibits all discharge of waste to the ASBS—subject to a narrow exception via a State Board
18 resolution—which authorizes discharges only under specific conditions (“ASBS Exception” or
19 “Exception”). Yet the NSMB EWMP effectively ignores the requirements of the Ocean Plan and
20 ASBS Exception for discharges to ASBS 24. The NSMB EWMP fails to protect ASBS 24 and to
21 comply with the MS4 Permit and the ASBS Exception for at least four reasons:

- 22 1) The NSMB EWMP fails to consider stormwater data for discharges to ASBS 24
23 generated by the Permittees;
- 24 2) The NSMB EWMP fails to consider non-stormwater discharge data for ASBS 24
25 generated by the Permittees;
- 26 3) The NSMB EWMP fails to apply ASBS Exception standards to stormwater
27 discharges to ASBS 24; and
28

1 discharge or receiving water sampling data, stating that “no MS4 discharge monitoring data were
2 available at the time of this assessment.” NSMB EWMP at 43 (Ex. B). Similarly, the RAA for dry
3 weather discharges considers no data, and instead proposes a screening of outfalls for dry weather
4 discharges to be completed by December of 2017, and starting 180 days later, for the dischargers
5 to “strive to eliminate, divert, or treat significant non-stormwater discharges that are unauthorized
6 and determined to be causing or contributing to RWL/WQBEL exceedances.” *Id.* at 69. Finally,
7 for all ocean discharges, the RAA and EWMP consider and apply the Santa Monica Bay Beaches
8 Bacteria (“SMBBB”) TMDL standards *only*, which does not offer the heightened protections
9 necessary for ASBS 24 as the ASBS standards. *Id.* at ES-7.

10 On August 31, 2015, Petitioners commented on the draft EWMP, pointing out the failure to
11 incorporate ASBS protections and the lack of consideration of existing and available monitoring
12 data. LAWK/NRDC/HTB EWMP Comment Letter (August 31, 2015) at 19-20 (Ex. C). On April
13 7, 2016, the County and Malibu submitted a final EWMP. To address compliance with the Ocean
14 Plan, and its standards and prohibitions for discharges to ASBS 24, the final EWMP merely states
15 that its findings are consistent with a 2014 draft Compliance Plan for discharges to ASBS 24—also
16 generated by the County and Malibu—which concludes that no additional measures are necessary
17 to protect ASBS 24. NSMB EWMP at 6 (Ex. B). The ASBS Compliance Plan (discussed below) is
18 attached to the NSMB EWMP as Appendix D. On April 19, 2016, the Regional Board Executive
19 Officer approved the EWMP, but without addressing any of the ASBS-related deficiencies.
20 Regional Board NSMB EWMP Approval Letter (April 19, 2016) (“Regional Board Approval”)
21 (Ex. D). Specifically responding to Petitioners’ comment that the NSMB EWMP fails to consider
22 ASBS data or ASBS discharge standards, Regional Board staff wrote:

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

26 Response to Written Comments, NSMBCW Draft EWMP, at 29-30 (Regional Board, May 12,
27 2016) (“Response to Comments”) (Ex. E).

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B. ASBS Exception

1. Required Incorporation of Exception Terms into NPDES Permits

State Water Resources Control Board Resolution No. 2012-0012 allows discharges of waste into the ASBS only where:

- a. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit and/or waste discharge requirements;
- b. The authorization incorporates all of the Special Protections, contained in Attachment B to this resolution, which are applicable to the discharge; and
- c. Only storm water and nonpoint source waste discharges by the applicants listed in Attachment A to this resolution are covered by this resolution. All other waste discharges to ASBS are prohibited, unless they are covered by a separate, applicable Ocean Plan exception.

Exception at 3 (Ex. F).

Thus, any NPDES permit, such as the 2012 LA County MS4 Permit, can authorize discharges to the ASBS *but only* where the ASBS Exception requirements are *incorporated* into the NPDES permit terms and requirements.

2. ASBS Exception Standards and Prohibitions

a. Stormwater

The ASBS Exception prohibits discharges of stormwater to the ASBS, unless in compliance with the requirements of the Exception. Specifically, discharge of stormwater is allowed only when:

The discharges:

- (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;
- (ii) Are designed to prevent soil erosion;
- (iii) Occur only during wet weather;
- (iv) Are composed of only storm water runoff.

Discharges composed of storm water runoff shall not alter natural ocean water quality in an ASBS.

Exception at Att. B, A.1.E.

Thus, even where discharges to the ASBS fit into these narrow categories, discharges that alter natural ocean water quality in the ASBS are prohibited. The Exception requires sampling to

1 determine whether natural ocean water quality in the ASBS is being altered by the discharges:

2 If the initial results of post-storm receiving water quality testing indicate
3 levels higher than the 85th percentile threshold of reference water quality data and
4 the pre-storm receiving water levels, then the discharger must re-sample the
5 receiving water pre- and post-storm. If after re-sampling the post-storm levels are
6 still higher than the 85th percentile threshold of reference water quality data and the
pre-storm receiving water levels, for any constituent, then natural ocean water
quality is exceeded.

7 Exception at Att. B, B.3.E.

8 **b. Non-Stormwater Discharges**

9 The Exception does not allow non-stormwater discharges, except for six limited categories
10 of dry weather discharges:

- 11 1) Discharges associated with emergency fire fighting operations.
- 12 2) Foundation and footing drains.
- 13 3) Water from crawl space or basement pumps.
- 14 4) Hillside dewatering.
- 15 5) Naturally occurring groundwater seepage via a storm drain.
- 16 6) Non-anthropogenic flows from naturally occurring stream via a culvert or storm
drain, as long as there are no contributions of anthropogenic runoff.

16 ASBS Exception at Att. B, I.A.1.e.

17 In all events, these authorized non-stormwater discharges cannot cause or contribute to violations
18 of Ocean Plan objectives or contribute to alterations of natural ocean water quality. *Id.* Compliance
19 with the non-stormwater prohibition was required immediately upon adoption of the ASBS
20 Exception in 2012. *Id.* at Att. B, I.A.3.a.

21 **3. ASBS Compliance Plan and Pollution Prevention Plan¹**

22 The Exception provides six years to achieve compliance with the stormwater discharge
23 prohibitions. Exception at Att. B, I.A.3.e. To implement pollution controls on this compliance
24 schedule, the dischargers had to develop and submit a draft Compliance Plan (“CP”) by September

25 ¹ In their ASBS submissions, the County and Malibu inappropriately divided their plans into
26 Compliance Plans (point source) and Pollution Prevention Plans (non-point source) based on pipe
27 size (18 inches). While all pipes are point sources for purposes of the ASBS Exception and the
28 Clean Water Act, for purposes of this Petition, the Compliance Plan and Pollution Prevention Plan
are referred to collectively as “CP” or “Compliance Plan.”

1 2013. *Id.* at Att. B, A.3.b. The CP must include a strategy to comply with all special conditions,
2 including maintaining natural ocean water quality. *Id.* at Att. B, I.A.3.b; I.A.2, 2.d., and 2.g. The
3 Exception specifically requires that the CP include:

4 BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm
5 [that] shall be designed to achieve on average:

6 Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the
7 Ocean Plan; or

8 A 90% reduction in pollutant loading during storm events, for the applicant's total
9 discharges.

10 *Id.* at Att. B, I.A.2.d.(1)-(2).

11 Where receiving water monitoring indicates that storm water runoff is causing or
12 contributing to alteration of natural ocean water quality, the County and Malibu are required to
13 submit an additional report within 30 days of receiving the results. Exception at Att. B, I.A.2.h.

14 The report must:

- 15 1) identify the constituents in storm water altering natural water quality and the source
of the constituents;
- 16 2) describe BMPs in place, proposed in SWMPs for future implementation, and any
17 additional BMPs to prevent alteration of natural water quality; and
- 18 3) provide an implementation schedule.

19 *Id.* at Att. B, I.A.2.d.

20 The CP must describe a time schedule to implement structural controls to meet the special
21 conditions, and ultimately be included in the County and Malibu's EWMP submitted pursuant to
22 the MS4 Permit. Exception at Att. B, I.A.3.b. Further, a CP must "describe the measures by which
23 all non-authorized non-storm water runoff (e.g., dry weather flows) has been eliminated." *Id.* at
24 I.A.2.b. Dischargers were required to submit a final CP by September 2015, and where NPDES
25 permits issued by Regional Boards authorize discharges to the ASBS, the draft and final CPs are
26 subject to approval by the Executive Officer of the Regional Board, and incorporation into those
27 NPDES permits. *Id.* at I.2.
28

1 **4. LA County and Malibu Draft Compliance Plan Monitoring**

2 **a. Stormwater Discharge Data**

3 After being granted a one-year extension based on the drought, the County and Malibu
4 submitted a draft compliance plan in September 2014 (“Draft CP”). Draft CP, Cover Page (Ex.
5 G.). A copy of the Draft CP is attached to the NSMB EWMP as Appendix D. The Draft CP
6 includes some, but not all of the sampling required by the ASBS Exception. The Draft CP includes
7 sampling to evaluate alteration of natural ocean water quality by discharges to ASBS 24 primarily
8 at one location, S02. Samples at S02 were collected both at the discharge point of a 36 inch storm
9 drain and in the receiving water at Escondido Beach. *Id.* at ES-4. A single discharge event in 2013
10 was sampled at S01, at a 60 inch storm drain at Zuma Beach. S02 was sampled during storm
11 events on February 19 and March 8, 2013, and February 28, 2014. S01 was also sampled on
12 February 28, 2014. *Id.* at 61-70.² Using the analysis required by the ASBS Exception, the Draft
13 CP reports that stormwater discharges from S01 and S02 contributed to alteration of natural ocean
14 water quality for selenium, total PAH, and mercury. *Id.* at 67-69.

15 The County and Malibu also conducted end of pipe monitoring in 2013 and early 2014 at
16 21 outfalls to the ASBS, with smaller outfall samples analyzed for a limited range of constituents.
17 Draft CP at 71-75. In these samples, the County and Malibu reported repeated exceedances of
18 Ocean Plan Instantaneous Maximum limits, including ammonia, cadmium, chromium, copper,
19 lead, nickel, zinc, and high concentrations of PAH, pyrethroids, and TSS. *Id.* Further, the County
20 and Malibu collected and submitted to the State Board end of pipe monitoring data in ASBS 24 as
21 part of their original ASBS Exception application. This data also documented elevated
22 concentrations of copper, chromium, and PAH, and the State Board confirmed exceedances of
23 Ocean Plan standards of these parameters, as well as acute and chronic toxicity, in discharges to
24 ASBS 24. *See Program Final Environmental Impact Report, Exception to the California Ocean*
25 *Plan for ASBS Discharge Prohibition for Storm Water and Non-Point Source Discharges, with*

26 _____
27 ² This sampling scheme itself violates the Exception’s monitoring requirement that three samples
28 must be collected during “each storm season.” *See* Exception Att. B. at IV.B.2.b. February 2013
and February 2014 are different storm seasons. *See also* Ex __ (SWRCB Comment letter)

1 *Special Protections* (State Water Resources Control Board, Feb 21, 2012) (“ASBS Exception
2 EIS”) at 212-228 (Ex. H).

3 **b. Non-Stormwater Discharge Data**

4 Pursuant to ASBS Exception requirements, the County and Malibu conducted inspections
5 for dry weather discharges during January, February, March and April of 2012, and February,
6 March, May and July of 2013. Draft CP at 50-51, Table 3-3 and 3-4 (Ex F.). The County and
7 Malibu inspected 13 outfalls, and observed dry weather discharges on 73³ occasions during these
8 inspections, many of them repeat discharges. Some, but not all, of these discharges are
9 characterized as “Hillside dewatering,” or “Natural stream,” but the plan provides no data to
10 support these characterizations, nor does it categorize any of the discharges as permitted or
11 unpermitted. The Draft CP also distinguishes, without basis, between discharges that land on the
12 beach in ASBS 24, and those that flow to the surf line. *Id.* at 49. The Draft CP proposes no
13 measures beyond existing outreach programs to address these continuing violations of the
14 Exception and Ocean Plan standards—particularly the numerous dry weather flows that the plan
15 reports as not reaching the “surf.” *Id.* Finally, the Draft CP did not propose, and the County and
16 Malibu have not reported any additional inspections or monitoring of dry weather discharges.

17 **c. LA Waterkeeper and State Board Comments**

18 Both citizen stakeholders and the State Board raised concerns about the Draft CP. In
19 January 2015, LA Waterkeeper commented to the State Board on the deficiencies of the Draft CP,
20 and sent courtesy copies to the County and Malibu. LAWK Draft Compliance Plan Comment
21 Letter (January 13, 2015) (“LAWK Draft CP Comment”) (Ex. I). On March 17, 2015, State Board
22 staff commented on the Draft CP. State Board Draft Compliance Plan Comment Letter (March 17,
23 2015) (“State Board Draft CP Comment”) (Ex. J). State Board staff noted alteration of Natural
24 ocean water quality by ASBS discharges, and required additional sampling and a description of
25 structural BMPs to abate the pollution. *Id.* at 1-2. Staff further noted that: the Draft CP’s

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27 _____
28 ³ This total includes non-stormwater discharges from 10 outfalls that the CP identifies as
“ownership unknown.” CP at 19.

1 distinction between non-stormwater discharges reaching surf and those not reaching surf was
2 irrelevant, and that the Draft CP did not document that non-stormwater discharges would be
3 eliminated, or how measures to eliminate discharges would be maintained over time. Staff required
4 correction to both these gaps. *Id.* at 2-3. Finally, State Board staff required, consistent with the
5 extended ASBS Exception deadline, submission of a Final CP containing the corrections by
6 September 20, 2015. *Id.* at 3.

7 To date no Final CP has been approved by either the Regional Board or State Board. *See*
8 NSMB EWMP at Appendix D; *see also*
9 http://www.waterboards.ca.gov/water_issues/programs/ocean/asbs_general_exception.shtml

10 **II. STANDARD OF REVIEW**

11 Petitioners seek State Board review under both the terms of the MS4 Permit (MS4 Permit at
12 VI.A.6) and California Water Code § 13320, which states, “Upon finding that the action of the
13 regional board, or the failure of the regional board to act, was inappropriate or improper, the state
14 board may direct that the appropriate action be taken by the regional board, refer the matter to any
15 other state agency having jurisdiction, take the appropriate action itself, or take any combination of
16 those actions.” In reviewing the Executive Officer’s action pursuant to either the Permit process or
17 Water Code § 13320, the Board must exercise its independent judgment as to whether the action
18 was reasonable and in order to uphold the action, the Board must find that the action was based on
19 substantial evidence. *See* State Water Resources Control Board, *In the Matter of the Petition of*
20 *Stinnes-Western Chemical Corporation*, September 18, 1986, at 11.

21 Agency actions, such as approval of the EWMP, must be supported by findings. *See*
22 *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection*
23 (2008) 44 Cal. 4th 459, 520-521 (“*EPIC*”) (citing *Topanga Assn. for a Scenic Community v.*
24 *County of Los Angeles*, 11 Cal.3d at 518-522). The record supporting the decision “must set forth
25 findings that bridge the analytical gap between the raw evidence and ultimate decision” to survive
26 a challenge alleging an abuse of discretion. *See Topanga*, 11 Cal.3d at 514-516. Further, findings
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1 must provide “the analytic route [it] traveled from evidence to action” to satisfy this requirement,
2 so as to allow the reviewing court to satisfy its duty to “compare the evidence and ultimate
3 decision to ‘the findings.’” *Id.* at 515. “While the findings need not be ‘extensive or detailed,’
4 ‘mere conclusory findings without reference to the record are inadequate.’” *AGUA*, 210
5 Cal.App.4th at 1281 (citing *EPIC*, 44 Cal.4th at 516-517). Thus, in reviewing the Executive
6 Officer’s approval of the EWMP, the Regional Board, State Board, and Court may not speculate as
7 to the administrative agency’s basis for decision. *Topanga*, 11 Cal.3d at 514-516.
8

9 **III. ARGUMENT**

10 **A. The RAA and EWMP Fail to Consider Relevant, Available ASBS Stormwater** 11 **Data**

12 The MS4 Permit requires the County and Malibu to assemble all available, relevant
13 subwatershed data collected within the last 10 years. MS4 Permit at 65. If those data meet QA/QC
14 requirements, the County and Malibu must identify those data, and use them in the RAA. *Id.*

15 Since at least 2008, sampling data for metals, PAH, ammonia, and other pollutants have
16 been submitted to the State Board for direct discharges to the ASBS. ASBS Exception EIS at 214.
17 In 2007 through 2008, as part of the Exception application process, the County, Malibu, and State
18 Board collected discharge and receiving water data in ASBS 24. This data included documented
19 exceedances of Ocean Plan standards for chromium and copper. *Id.* at 200-208. In 2013 and 2014,
20 the County and Malibu also sampled 21 MS4 outfalls to the ASBS. Draft CP at 73-75. The County
21 and Malibu reported to the State Board repeated exceedances of Ocean Plan Instantaneous
22 Maximum limits, including ammonia, cadmium, chromium, copper, lead, nickel, zinc, and high
23 concentrations of PAH, pyrethroids, and TSS. *Id.*

24 Yet despite readily available and highly relevant data in the County’s, Malibu’s and State
25 Board’s files, and the 2013 and 2014 stormwater data attached to the NSMB EWMP itself as an
26 appendix, the EWMP states:

27 Stormwater and non-stormwater discharges have not yet been characterized within the
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NSMBCW EWMP Area. No MS4 discharge monitoring data were available at the time of this assessment, but discharge characterization will occur as part of the implementation of the CIMP. Since outfall monitoring data from the CIMP were not available at the time of EWMP development, information from regional MS4 land use studies (eg. Los Angeles County, 2000) and/or TMDL technical reports were used in Section 2.2 for the water body prioritization.

NSMB EWMP at 43.

Thus, rather than collecting all of the available and relevant data – or even considering data that the County and Malibu themselves collected and attached to the EWMP – and including those data in the RAA as required by the MS4 Permit, the EWMP simply denies that any such data exist. Instead, the EWMP uses generalized land use data to conduct the RAA. *Id.* Itself a violation of Permit requirements, this self-acknowledged refusal to consider available and highly relevant data not only violates permit requirements but significantly undermines the ability of the RAA and EWMP to protect ASBS 24.

Petitioners pointed out the failure to consider relevant and available data in the RAA and EWMP to Regional Board staff in August 2015—yet the Regional Board Executive Officer approved the NSMB EWMP without addressing the issue. In the subsequently issued Response to Comments, Regional Board staff assert that appropriate data “were reviewed,” and the data contained in the ASBS CP were “incorporated by reference” into the NSMB EWMP. Response to Comments at 30 (Ex. E). The express language of the NSMB EWMP itself that *no* stormwater or receiving water data for ASBS 24 were considered in the EWMP assessment directly contradicts the staff claim; moreover, a simple review of the RAA reveals that the data were not considered. NSMB EWMP at 43. Attachment of the CP as an appendix to the NSMB EWMP, and “incorporation by reference,” is not equivalent to consideration of relevant and available data—particularly when the NSMB EWMP states that no such consideration took place. Further, Regional Board staff can point to no evidence in the EWMP or anywhere else that all the discharge and receiving water data for ASBS 24 referenced in the ASBS Exception EIS were considered as part of the NSMB EWMP. Regional Board staff’s “mere conclusory findings without reference to the record,” both contradict the NSMB EWMP itself and fail to provide “the analytic route

1 traveled from evidence to action.” (*AGUA*, 210 Cal.App.4th at 1281 (citing *EPIC*, 44 Cal.4th at
2 516-517).) The Executive Officer is bound by the unambiguous language of the EWMP when
3 considering whether to approve the document, and cannot rely on counterfactual post hoc
4 assertions that the EWMP considered data that the EWMP itself clearly states that it did not
5 consider. The self-serving statement in the Response to Comments that the EWMP included
6 review of relevant data is blatantly contradicted by the record and thus entitled to no weight. (See,
7 for example, *Scott v. Harris* (2007) 550 U.S. 372, 380 [reversible error to rely on “utterly
8 discredited” assertions].) As such, the Executive Officer acted inappropriately and improperly in
9 approving the NSMB EWMP as the decision was clearly not based on substantial evidence.

10 **B. The RAA and EWMP Fail to Consider ASBS Non-Stormwater Data**

11 As noted above, as part of the ASBS Draft CP monitoring program, the County and Malibu
12 conducted inspections for dry weather discharges during January, February, March and April of
13 2012, and February, March, May and July of 2013 at outfalls to ASBS 24. Draft CP at 50-51,
14 Table 3-3 and 3-4. The County inspected 13 outfalls, and observed dry weather discharges on 73
15 occasions during these inspections, many of them repeat discharges. The Draft CP containing these
16 dry weather inspection data was attached as an appendix to the NSMB EWMP.

17 Despite the considerable effort expended by the County and Malibu on its ASBS dry
18 weather discharge inspections, the NSMB EWMP nowhere mentions or considers the data
19 submitted by the County and Malibu in the Draft CP. In fact, rather than using these data to inform
20 the non-stormwater discharge program, the EWMP proposes to essentially repeat the process
21 conducted pursuant to the ASBS Exception. NSMB EWMP at 65-69. The EWMP proposes to
22 complete its initial screening and source identification of non-stormwater discharges by December
23 28, 2017, to begin monitoring of those outfalls within 90 days of completion of the screening, and
24 to strive to take some action 180 days thereafter. Thus, the NSMB EWMP proposes to delay
25 implementation of any BMPs to address non-stormwater discharges until September 2018 at the
26 soonest—six years after the Exception and the 2012 LA County MS4 Permit were adopted, five
27 years after the County and Malibu submitted data documenting non-stormwater discharges to the
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1 ASBS, and more than two years from now.

2 The failure of the NSMB EWMP to consider the available and relevant data generated by
3 their own non-stormwater discharge survey violates the requirements of the MS4 Permit, creates
4 unnecessary and harmful delays in program implementation, and wastes public resources by using
5 data collection for delay rather than to inform decision-making. Regional Board staff’s conclusory
6 statement in the Response to Comments that appropriate data were considered is contradicted by
7 the NSMB EWMP itself, which considered no existing non-stormwater field data in its analysis. In
8 approving the NSMB EWMP, the Executive Officer acted inappropriately and improperly, and
9 that approval must be overturned.

10 **C. The RAA and EWMP Fail to Utilize Applicable ASBS Stormwater**
11 **Standards**

12 The 2012 LA County MS4 Permit requires that EWMPs “[p]rovide for meeting water
13 quality standards and other CWA obligations by utilizing provisions in the CWA and its
14 implementing regulations, policies and guidance.” MS4 Permit at 49; *see also* 24 (“Pursuant to
15 California Water Code Section 13263(a) the requirements of this Order implement the Ocean
16 Plan.”). Further, the ASBS Exception allows discharges to the ASBS only where the special
17 protections of the ASBS Exception are incorporated into the authorizing NPDES Permit.
18 Exception at 3.

19 For the portion of the NSMB EWMP applicable to ASBS 24, the Ocean Plan standards for
20 stormwater discharges are those set out in the ASBS Exception. They are:

21 Prohibition of Alteration of Natural Water Quality--post-storm receiving water quality
22 with levels higher than the 85th percentile threshold of reference water quality data and
23 the pre-storm receiving water levels. Exception at Att. B, B.3.E; and

24 For CP (incorporation into EWMP, successor to SWMP, mandatory) BMPs sufficient
25 to meet Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the
26 Ocean Plan; *Id.* at I.A.2.d; or

27 For CP (incorporation into EWMP, successor to SWMP, mandatory) BMPs sufficient
28 to achieve a 90% reduction in pollutant loading during storm events, for the applicant’s
total discharges. *Id.*

1 Ocean samples collected by the County and Malibu for the Draft CP confirm that the
2 County and Malibu ASBS stormwater discharges alter natural ocean water quality for at least
3 selenium, total PAH, and mercury. Draft CP at 71-75. Further, outfall samples collected by the
4 County and Malibu demonstrate exceedances of Ocean Plan Chapter II limits for ammonia,
5 cadmium, chromium, copper, lead, nickel, zinc, and high concentrations of PAH, pyrethroids,
6 TSS. *Id.* at 71-75; ASBS Exception EIS at 212-228. Given these documented exceedances, the
7 RAA and resulting NSMB EWMP must consider and apply ASBS Exception standards in order to
8 address these discharges, and to comply with the requirements of the MS4 Permit.

9 Yet the NSMB EWMP nowhere references any of these ASBS standards. In fact, for
10 discharges to the ASBS beaches, the RAA considers and applies the SMBBB TMDL standards
11 *only*. NSMB EWMP at ES-7. SMBBB TMDL standards limit indicator bacteria in the surf zone,
12 apply to all Santa Monica Bay beaches, and are based on an exceedance day determination. While
13 important for public health, the SMBBB TMDL does not achieve the heightened protections
14 required for ASBS – and fails to address the myriad additional pollutants (like metals) being
15 discharged to the ASBS in excess of background levels. Without consideration of these standards
16 in the RAA, the RAA and NSMB EWMP cannot ensure compliance with the Ocean Plan and
17 Exception ASBS standards, nor can BMPs be developed that achieve required compliance.
18 Because the EWMP fails to incorporate the proper standards from the ASBS Exception, there can
19 be no reasonable assurance that the EWMP will meet those standards. And by failing to consider
20 those standards, the EWMP violates the requirements of the MS4 Permit. Moreover, by failing to
21 incorporate those standards into the analysis and resulting program, the EWMP also violates the
22 requirements of the ASBS Exception.

23 Apparently in response to Petitioner’s comments pointing to the lack of ASBS Exception
24 protections, the final NSMB EWMP includes a reference to the Draft CP, and attaches the Draft
25 CP as Appendix D. The EWMP defers to the analysis in the Draft CP, which concluded that no
26 structural BMPs were required. The EWMP’s deferral to the Draft CP fails to meet the
27 requirements of the MS4 Permit and the ASBS Exception for at least three reasons: 1) the Draft
28

1 CP is a draft document, and to date, no Final CP has approved by the State or Regional Board; 2)
2 the Draft CP failed to conduct all required sampling, to propose measures to prevent alteration of
3 natural ocean water quality, or to prevent non-stormwater discharges—failures noted by State
4 Board staff; and 3) the MS4 Permit and the ASBS Exception require incorporation of ASBS
5 Exception standards into any NPDES Permit terms independent of the CP.

6 Because the NSMB EWMP fails to apply ASBS Exception protections, it violates the MS4
7 Permit and the ASBS Exception, and the Regional Board Executive Officer’s approval of the
8 NSMB EWMP was an abuse of discretion, inappropriate and improper, not based on substantial
9 evidence, contrary to law, , and thus should be overturned.

10

11 **D. The RAA and EWMP Fail to Utilize Applicable ASBS Non-Stormwater**
12 **Standards**

13 The ASBS Exception imposes a prohibition on non-stormwater discharges to ASBS, with
14 certain limited exceptions for firefighting and natural sources. Exception at Att. B, I.A.1.e. No
15 matter what the source, non-stormwater discharges cannot cause or contribute to violations of
16 Ocean Plan objectives or contribute to alterations of natural ocean water quality. *Id.*

17 The EWMP proposes a “semi-quantitative conceptual model” to evaluate non-storm water
18 discharges, using a four part test. NSMB EWMP at 63. Any one of the four elements would
19 establish compliance with the MS4 Permit’s qualified dry weather discharge prohibition. *Id.* at 64-
20 65. As an initial matter, the EWMP screening is inconsistent with the ASBS Exception’s dry
21 weather discharge prohibition, and would permit non-stormwater discharges beyond the six limited
22 categories set out in the ASBS Exception. *Compare* ASBS Exception, Att. B. at I.A.e. and NSMB
23 EWMP at 66-69.

24 Further, element three of the EWMP methodology states:

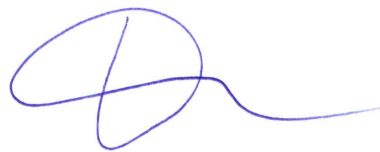
25 For the Santa Monica Bay Beaches Bacteria TMDL compliance monitoring
26 locations, if the allowed summer-dry and winter-dry singles sample exceedance days have
27 been achieved for four out of the past five years and the last two years, then the existing
28 water quality conditions at this compliance monitoring location are acceptable, and
reasonable assurance is demonstrated. *Id.* at 69.

1 As noted above, while the SMBBB TMDL provides important beach standards, it is not equivalent
2 to ASBS protection. In addition, the evaluation in the EWMP fails to even require strict SMBBB
3 TMDL compliance because the EWMP methodology allows additional exceedances to be deemed
4 acceptable. Finally, the EWMP ultimately commits the County and Malibu only to “strive to
5 eliminate, divert, or treat significant non-stormwater discharges that are unauthorized and
6 determined to be causing or contributing to RWL/WQBEL exceedances”—a standard falling far
7 short of the Exception’s prohibition on non-stormwater discharges. *Id.* at 69. Again, the Executive
8 Officer’s approval of the EWMP without application of the ASBS Exception prohibition on non-
9 stormwater discharges was inappropriate and improper, and not based on substantial evidence. It
10 must therefore be overturned.

11 **IV. REQUEST FOR RELIEF**

12 Petitioners seek an order by the Regional Board to invalidate the Regional Board Executive
13 Officer’s April 19, 2016 final approval of the NSMB EWMP, and an order remanding the matter
14 to the Regional Board with instructions for staff to require compliance with Permit requirements.
15 Further, should the Regional Board deny Petitioners’ request, Petitioners seek an order by the State
16 Board to invalidate the Regional Board’s Executive Officer’s April 19, 2016 final approval of the
17 NSMB EWMP, any approval by the Regional Board thereof, and an order remanding the matter to
18 the Regional Board with instructions for staff to require compliance with Permit requirements.

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20 Respectfully submitted,

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23 

24 Dated: May, 19, 2016

25 _____
26 Daniel Cooper
27 Lawyers for Clean Water, Inc.
28 Attorney for Plaintiff Los Angeles Waterkeeper

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Dated: May 19, 2016

NATURAL RESOURCES DEFENSE COUNCIL, INC.



Becky Hayat

Attorneys for NATURAL RESOURCES
DEFENSE COUNCIL, INC.

Dated: May 19, 2016

LOS ANGELES WATERKEEPER



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**DVD CONTAINING EXHIBITS A-J
AND EWMP DOCUMENTATION**

Petition Responses for the Consideration of Petition for Review of the Executive Officer's Action to Approve of the North Santa Monica Bay Enhanced Watershed Management Program (EWMP) Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175

Date	Author
8/11/16	City of Malibu
8/18/16	Los Angeles County and Los Angeles County Flood Control District
8/18/16	Geosyntec Consultants



City of Malibu

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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

"To Enrich Lives Through Effective and Caring Service"

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ALHAMBRA, CALIFORNIA 91803-1331
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GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

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:

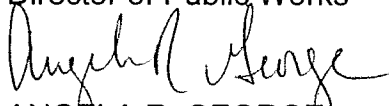
**LOS ANGELES COUNTY MS4 PERMIT
RESPONSE TO PETITION FOR REVIEW OF NORTH SANTA MONICA BAY
ENHANCED WATERSHED MANAGEMENT PROGRAM APPROVAL**

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.

**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

Los Angeles Regional Water Quality Control Board

TO: Regional Water Board Members

FROM: Samuel Unger, PE
Executive Officer 

DATE: August 29, 2016

SUBJECT: Regional Water Board Staff Response to Los Angeles Waterkeeper and Natural Resources Defense Council's Petition for Review of Approval of the North Santa Monica Bay EWMP Pursuant to the LA County MS4 Permit

This memorandum has been prepared for the Regional Water Board's consideration of the "Petition for Review of 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) that was filed by Los Angeles Waterkeeper and Natural Resources Defense Council (collectively, Petitioners) on May 19, 2016 pursuant to Part VI.A.6 of the LA County MS4 Permit. The main contentions raised in the Petition center around the fact that a substantial portion of the coastal zone in the North Santa Monica Bay Enhanced Watershed Management Program (NSMB EWMP) has special status as an "Area of Special Biological Significance" (ASBS). Discharges to ocean waters in California are governed by not only the regional water boards' basin plans, but also by the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan). That plan includes special protections for ASBSs and includes additional requirements for discharges to ASBSs, including MS4 discharges. These ASBS special protections and additional requirements contained in the Ocean Plan are the focus of many of the Petitioners' contentions.

This memorandum is organized under the following headings:

- Part I: Because of the centrality of the Ocean Plan and its ASBS provisions to the Petition, Part I of this memorandum provides background on the relationship of the NSMB EWMP area to the Laguna Point to Latigo Point ASBS ("ASBS 24") as well as background on the Ocean Plan and the ASBS special protections and requirements it contains.
- Part II: Part II provides a summary of the NSMB EWMP development, review, and approval process, including stakeholder participation.
- Part III: Part III provides responses to the specific contentions raised in the Petition.

I. BACKGROUND

A. NSMB EWMP and ASBS 24 Geography

The NSMB EWMP area is the westernmost coastal area in Los Angeles County. It encompasses 86 square miles, including 20 subwatersheds and 28 freshwater coastal streams as identified in Chapter 2 of the Basin Plan. All receiving water bodies in the NSMB EWMP are ultimately tributary to Santa Monica Bay, and thus the regulations set forth in the Ocean Plan are also applicable to the NSMB EWMP. Ten of these subwatersheds drain to the Laguna Point to Latigo Point ASBS, also referred to as ASBS 24.¹ **Figure 1** shows the overall NSMB EWMP area as well as the portion that drains to ASBS 24.²

ASBSs are designated by the State Water Resources Control Board (State Water Board) and protected through the Ocean Plan (as described in Part I.B., below). ASBSs are ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS 24 was established in 1974 by the State Water Board to preserve sensitive marine habitat.³ It stretches 24 miles, spanning the westernmost portion of Los Angeles County and the southeastern part of Ventura County. Approximately 12.8 miles border the NSMB EWMP area in Los Angeles County. It contains 11,842 marine acres and is the largest ASBS along the mainland of Southern California. A wide range of sandy substrate, rocky reef, and coastal pelagic species can be found within ASBS 24.

The southern and central portions of ASBS 24 that are located in Los Angeles County are subject to direct discharges from roads, landscape runoff, homes, and small businesses. In general, the near-coast stormwater runoff along ASBS 24 within Los Angeles County is conveyed through storm drains and/or natural drainage courses before it is discharged at multiple locations along the beach. There are 26 identified outfalls owned, operated/maintained, or monitored by the NSMB EWMP agencies that are located within the ASBS 24 drainage area; ten of these outfalls have been identified as major outfalls.⁴

The requirements set forth in the State Water Board's Resolution No. 2012-021, "Exceptions to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses" apply to MS4 discharges to ASBS 24.⁵

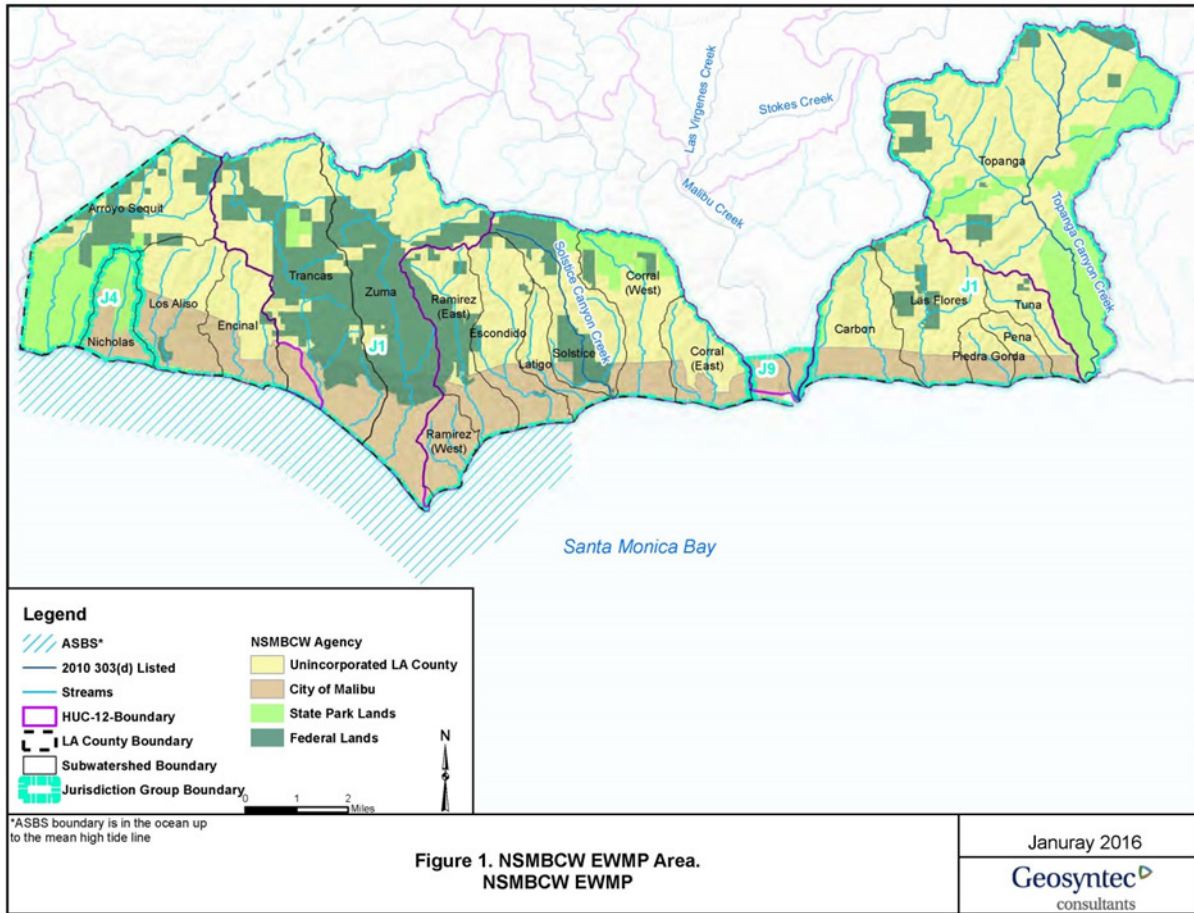
¹ The geographic boundaries of ASBS 24 are defined as the "Ocean water within a line originating from Laguna Point at 34° 5' 40" north, 119° 6' 30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the mean high tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point" (State Water Board Resolution No. 74-28).

² NSMB EWMP, Fig. 1, p. 9. All references to the NSMB EWMP refer to the final EWMP dated March 2016 unless otherwise indicated.

³ *Ibid.*

⁴ See NSMB EWMP, Table 32, p. 143. Within the entire NSMB EWMP area, there are a total of 48 identified outfalls owned, operated/maintained, or monitored by NSMB EWMP agencies.

⁵ Minor modifications to Resolution No. 2012-0012 were made through State Water Board Resolution No. 2012-0031.



B. The Ocean Plan and Its ASBS Special Protections

In 1972, the State Water Board adopted the Ocean Plan (revised in 1978, 1983, 1988, 1990, 1997, 2000, 2005, 2009, 2012, and 2015). The Ocean Plan establishes water quality objectives for California's ocean waters and provides the basis for regulation of wastes discharged into California's coastal waters. It is applicable to both point source discharges, such as MS4 discharges, and non-point source discharges. The Ocean Plan prohibits the discharge of waste to designated ASBSs.

The Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the State Water Board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served. In 2004, the State Water Board notified a number of entities that they must cease the discharge of stormwater and nonpoint source waste into ASBSs or request an exception to the Ocean Plan's Discharge Prohibitions. The State Water Board received 27 applications for an exception to the Ocean Plan prohibition against waste discharges into an ASBS, including from the City of

Malibu, County of Los Angeles, and the Los Angeles County Flood Control District (LACFCD) for MS4 discharges to ASBS 24.⁶

In March 2012, in Resolution No. 2012-0012, the State Water Board adopted a General Exception to the Ocean Plan prohibition against waste discharges to ASBSs for discharges of stormwater and nonpoint source waste by the 27 applicants provided that:

1. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit and/or waste discharge requirements; and
2. The authorization incorporates all of the Special Protections, contained in Attachment B to Resolution No. 2012-0012, which are applicable to the discharge.

The State Water 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. The State Water Board also found that granting the requested exceptions was 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).

MS4 discharges from the City of Malibu, County of Los Angeles, and LACFCD are covered under the Los Angeles County MS4 Permit, which incorporates the applicable ASBS Special Protections set forth in State Water Board Resolution No. 2012-0012.⁷

C. ASBS Compliance Plans and ASBS Monitoring Data Evaluation

The ASBS Special Protections require the City of Malibu, County of Los Angeles, and LACFCD to specifically address the prohibition of non-stormwater discharges, and the requirement to maintain natural water quality for stormwater discharges, to an ASBS in an ASBS Compliance Plan to be included in its Storm Water Management Plans (SWMP).⁸ The ASBS Compliance Plan is subject to approval by the Executive Director of the State Water Board or Executive Officer of the Regional Water Board. In the case of the LA County MS4 Permit, for permittees that opt to develop a Watershed Management Program or an EWMP, the permittees' SWMP is their WMP or EWMP.

The City of Malibu, County of Los Angeles, and LACFCD initially submitted a draft ASBS Compliance Plan in September 2014 that assesses stormwater and non-stormwater discharges to ASBS 24 and provides a plan to comply with ASBS standards. The State Water Board provided comments on the draft ASBS Compliance Plan on March 17, 2015. As required by the State Water Board, the County and City submitted a revised ASBS Compliance Plan in September 2015, addressing the State Water Board's comments. The revised ASBS Compliance Plan is currently under review.

⁶ State Water Board Resolution No. 2012-0012, Attachment A.

⁷ Attachment B of the resolution contains the ASBS Special Protections.

⁸ State Water Board Resolution No. 2012-0012, Attachment B, Part I.A.2.

To guide development of the ASBS Compliance Plans as well as future data evaluation, the ASBS Special Protections require dischargers to conduct a water quality assessment to evaluate compliance with the Ocean Plan narrative objective regarding alteration of natural ocean water quality. The assessment has two required elements:

- An evaluation of ocean water quality within the ASBS relative to natural ocean water quality; and
- If ocean water quality in the ASBS is altered compared to natural ocean water quality, an evaluation to determine whether there is a linkage between altered ocean water quality and the quality of MS4 stormwater discharges to the ocean in the vicinity.

Attachment 1 to the ASBS Special Protections, reproduced as **Figure 2** here, provides a flowchart that illustrates this data evaluation and the required regulatory steps based on the outcome. Per this decision framework, pollutant concentrations in post-storm ocean receiving water are compared to those in pre-storm ocean receiving water. They are also compared to the 85th percentile threshold of unimpacted ocean reference site concentrations. When post-storm ocean water concentrations are greater than pre-storm concentrations *and* are greater than the 85th percentile threshold for two or more consecutive storm events, the constituent(s) are classified as causing exceedances of natural ocean water quality.

For these constituents, the MS4 outfall stormwater data for the discharge closest to the ocean receiving water site are then evaluated. If the MS4 outfall data exceed the Instantaneous Maximum Water Quality Objectives in Table 1 Chapter II of the Ocean Plan, then the Permittees must propose best management practices (BMPs) to control their MS4 stormwater discharges to achieve on average the following target levels: (1) Table 1 Instantaneous Maximum Water Quality Objectives or (2) A 90% reduction in pollutant loading during storm events, for the Permittee's total discharges.

The City of Malibu, County of Los Angeles, and LACFCD collected data on ocean receiving water quality and MS4 stormwater discharge quality in 2013 and 2014 to perform the data evaluation described above. Three ocean monitoring sites in ASBS 24 were monitored. Each ocean monitoring site was paired with a MS4 outfall to evaluate whether there was a linkage between ocean water quality and MS4 stormwater discharge quality. The data collection and evaluation conducted by the Permittees is described in detail in Appendix E of the NSMB EWMP and is summarized in Parts III.B and III.C, below.

II. NSMB EWMP DEVELOPMENT, REVIEW, AND APPROVAL PROCESS

The NSMB Coastal Watersheds group, which includes the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District (collectively, Permittees), agreed to collaborate on the development of an EWMP for the North Santa Monica Bay subwatersheds. Pursuant to Part VI.C.4.c of the LA County MS4 Permit, the Permittees submitted a draft NSMB EWMP to the Regional Water Board on June 29, 2015 for review. The NSMB EWMP was extensively reviewed using the same process as for the other 11 EWMPs. In conducting its reviews, Board staff developed a list of review and evaluation questions that was used to ensure a comprehensive and consistent review of all draft EWMPs relative to permit requirements, including the NSMB EWMP. Each EWMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. Lai. Staff was overseen by the MS4 Unit Chief, Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy.

On the basis of Board staff's review, and in consideration of written and oral comments made by interested persons during the public written comment period and first workshop (as described below under "Stakeholder Participation"), the Board provided written comments to the Permittees on the draft NSMB EWMP in October 2015 detailing the Board's comments on the draft EWMP and identifying revisions that needed to be addressed prior to approval of the EWMP. The Permittees were directed to submit a revised draft EWMP addressing the Board's comments by January 2016. The Permittees submitted a revised NSMB EWMP on January 19, 2016.

Per Part VI.C.4.c of the LA County MS4 Permit, the Regional Water Board, or I on behalf of the Board, was scheduled to approve or deny the revised draft NSMB EWMP within three months of its submittal. Part VI.C.4.e specifies that Permittees that do not have an approved EWMP within 40 months of the Permit's effective date (thus, by April 28, 2016) shall be subject to the baseline requirements of Part VI.D and shall demonstrate compliance with receiving water limitations pursuant to Part V.A and with applicable interim and final water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3).

Both before and after submittal of the revised draft NSMB EWMP, Board staff participated in meetings, phone calls, and email exchanges with the Permittees. Between March 2016 and April 19th, 2016 there were three more iterations of the revised NSMB EWMP to address minor remaining issues, along with two more sets of Board staff reviews of the EWMP.

After reviewing the revised draft NSMB EWMP in relation to the Board's written comments, Board staff concluded that the final NSMB EWMP satisfied the requirements of the LA County MS4 Permit. On April 19, 2016, on behalf of the Regional Water Board, I approved the NSMB EWMP pursuant to the LA County MS4 Permit.

A. Stakeholder Participation

Beginning on June 29, 2015, the Regional Water Board provided a 61-day public review and written comment period on the draft NSMB EWMP along with the other EWMPs. During the written comment period, the Regional Water Board held a public workshop at its regularly scheduled Board meeting on July 9, 2015 and provided permittees and interested persons an opportunity to make oral comments on the draft EWMPs submitted to the Board, including the draft NSMB EWMP.

The Petitioners (with Heal the Bay), as well as other interested persons, submitted comments on the draft EWMPs. The Petitioners and Heal the Bay submitted their joint comment letter on August 31, 2015, which included written comments specific to the draft NSMB EWMP. Regional Water Board staff considered the written comments received during its review of the draft NSMB EWMP. Where Board staff agreed with the written comments, those comments were incorporated into the Board's review letter on the draft NSMB EWMP to ensure that the public's comments were addressed in the revised EWMP. The Board's October 2015 review letter included comments related to the incorporation of ASBS requirements into the NSMB EWMP.

The Regional Water Board held a second public workshop on the draft EWMPs during the Board's regularly scheduled meeting on November 5, 2015, where permittees and interested persons were provided an opportunity to make oral comments on the draft EWMPs, including the NSMB EWMP. Board staff also met with Petitioners and Heal the Bay in February and March 2016 regarding the revised EWMPs.

The Regional Water Board held a third and final public workshop on March 3, 2016 for permittees and interested persons to specifically discuss the revised draft EWMPs, including the NSMB EWMP, with Board members (which were invited to attend) and Board staff, including myself. In consideration of the public interest on the EWMPs, Regional Water Board staff prepared responses to the written comments received on the draft EWMPs. For the NSMB EWMP, these responses were made available on May 11, 2016.

III. Responses to Petitioners' Contentions

On May 19, 2016, the Petitioners filed a "Petition for Review of 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"⁹ The Petitioners allege that I improperly approved the NSMB EWMP despite its failure to: 1) "comply with the relevant terms of the MS4 Permit," 2) "comply with the conditions of State Board Resolution No. 2012-0012 ('ASBS Exception')," and 3) "consider relevant, available ASBS stormwater and non-stormwater data and to comply with the ASBS Exception's prohibition against non-stormwater discharges."¹⁰ The Petitioners seek an order by the Regional Water Board to invalidate my April 19, 2016 final approval of the NSMB EWMP, and an order remanding the matter to the Board with instructions for staff to require compliance with Permit requirements.¹¹ While the Petitioners seek an order invalidating my approval of the NSMB EWMP as a whole, the Petitioners only take issue with how the EWMP addresses MS4 discharges to the ASBS portion of the EWMP area.

The Petition raises two specific areas of concern. First, the Petitioners contend that the NSMB EWMP fails to apply the Ocean Plan General Exception standards to stormwater discharges to ASBS 24 and the General Exception's prohibition against non-stormwater discharges. Second, the Petitioners contend that the NSMB EWMP fails to consider, and utilize in the Reasonable Assurance Analysis (RAA), stormwater and non-stormwater data for discharges to ASBS 24 generated by the Permittees. Because of these perceived deficiencies, the Petitioners conclude that my approval of the NSMB EWMP was "an abuse of discretion, inappropriate and improper, not based on substantial evidence, contrary to law, and therefore must be overturned."¹²

The LA County MS4 Permit includes a number of provisions that implement the ASBS Special Protections, including applicable ASBS standards. These provisions include, but are not limited to:

- Part III.A "Prohibitions – Non-Storm Water Discharges," including Part III.A.3, pertaining to non-stormwater discharges to ASBS 24 specifically;

⁹ The Petition was filed pursuant to Part VI.A.6 of the LA County MS4 Permit. The petition indicates that it also serves as a petition to the State Water Board pursuant to Water Code section 13320. The State Water Board may choose to conduct separate proceedings on the petition pursuant to Water Code section 13320.

¹⁰ Petition for Review, pp. 2-3.

¹¹ Should the Regional Water Board deny Petitioners' request, Petitioners seek "an order by the State Board to invalidate the Regional Board Executive Officer's April 19, 2016 final approval of the NSMB EWMP, any approval by the Regional Board thereof, and an order remanding the matter to the Regional Board with instructions for staff to require compliance with Permit requirements" (Memorandum of Points and Authorities in Support of Petition for Review [Mem. P. & A.], p. 16).

¹² Mem. P. & A., p. 2.

- Part V.A “Receiving Water Limitations;”
- Part VI.C “Watershed Management Program Provisions;” and
- Part VI.E “Total Maximum Daily Load Provisions,” including Part VI.E.5.a.ii-iii “Water Quality-Based Effluent Limitations for Trash.”

The NSMB EWMP implements the requirements of the LA County MS4 Permit and includes, as part of the overall program, the revised “Area of Special Biological Significance 24 Compliance Plan For The County of Los Angeles and City of Malibu,” dated September 20, 2015.¹³ The ASBS Compliance Plan includes an evaluation of available ASBS stormwater and non-stormwater data for ASBS 24.

To aid the Regional Water Board in understanding my rationale for approving the NSMB EWMP on behalf of the Board, detailed responses to the specific contentions raised in Section III (Argument) of the Petitioners’ Memorandum of Points and Authorities in Support of Petition for Review (Mem. P. & A.) are provided below.

A. Response to Petitioners’ Contention that the NSMB EWMP and RAA Fail to Utilize Applicable ASBS Stormwater Standards

The EWMP utilizes appropriate standards for stormwater from the Ocean Plan. The Receiving Water Limitations contained in Part V.A of the LA County MS4 Permit include the numeric objectives in Table 1 of the Ocean Plan and the Ocean Plan narrative objective that there shall be no alteration of natural ocean water quality in an ASBS due to a discharge.¹⁴ These ASBS stormwater standards are identified and utilized in the data assessments for the ASBS presented in Attachment E of the NSMB EWMP.¹⁵ Further, Part VI.E.5.a of the LA County MS4 Permit, along with Attachment M Part B.2, implements the ASBS Special Protections provision prohibiting the discharge of trash.¹⁶ The application of these standards in the RAA is discussed in Part III.C, below.

B. Response to Petitioners’ Contention that the NSMB EWMP Fails to Consider Relevant, Available ASBS Stormwater Data

For their contention that the EWMP fails to consider relevant available ASBS stormwater data, Petitioners largely rely on a single sentence in the NSMB EWMP that “no MS4 discharge monitoring data were available at the time of this assessment.”¹⁷ The sentence referenced by

¹³ NSMB EWMP, Appendix E.

¹⁴ Per Attachment A of the LA County MS4 Permit, “Receiving Water Limitation” means “[a]ny 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.”

¹⁵ See NSMB EWMP, Appendix E, Tables ES-1-1, 4-1, 4-2, 4-3, 4-4, 5-1, 5-2, 5-3, 5-4, and 5-5 as well as Section 4.2, p. 69.

¹⁶ See Ocean Plan, Attachment B, Part I.A.1.b-c.

¹⁷ NSMB EWMP, p. 43.

the Petitioners is included in Part 2.1.3 “MS4 Discharge Quality” of the NSMB EWMP’s Water Quality Characterization, which states:

Stormwater and non-stormwater discharges have not yet been characterized within the NSMBCW EWMP Area. *No MS4 discharge monitoring data were available at the time of this assessment*, but discharge characterization will occur as part of the implementation of the CIMP (NSMBCW EWMP Group, 2014d). Since outfall monitoring data from the CIMP were not available at the time of EWMP development, information from regional MS4 land use studies (e.g., Los Angeles County, 2000) and/or TMDL technical reports were used in Section 2.2 for the water body-pollutant prioritization.

(NSMB EWMP, p. 43) (emphasis added).

The Petitioners state that the “express language of the NSMB EWMP itself that *no* stormwater or receiving water data for ASBS 24 were considered in the EWMP assessment directly contradicts” Regional Water Board staff’s statement in response to comments that appropriate data were reviewed and considered.

First, a plain reading of the sentence, and in the context of the section in which it is included, does not indicate that “no stormwater or receiving water data for ASBS 24 were considered in the EWMP assessment.” This section only addresses MS4 outfall monitoring data, not receiving water data, which are addressed in Section 2.1.2.¹⁸ Neither is this section specific to ASBS 24 MS4 discharge data, but rather the EWMP area as a whole. Regional Water Board staff has interpreted this as recognition that there are limited MS4 outfall monitoring data for the EWMP area, since outfall monitoring was not previously required for the non-ASBS area of the EWMP. For the ASBS area, recent data on MS4 discharges are limited to only three to four snapshot events in 2013-2014 at only three locations.

Second, the relevant available ASBS stormwater data that the Petitioners assert were not considered are included and evaluated in Appendix E of the NSMB EWMP, which is part of the EWMP. Appendix E is the revised ASBS Compliance Plan that the Permittees prepared pursuant to the ASBS Special Protections in the Ocean Plan. It includes an evaluation of MS4 stormwater discharge data as well as ocean receiving water data for ASBS 24 as compared to ASBS standards.¹⁹

C. Response to Petitioners’ Contention that the RAA Fails to Consider Relevant, Available ASBS Stormwater Data

The Petitioners take issue with the use of generalized land use data to conduct the RAA, and suggest that the RAA should have used the ASBS data described above. The ASBS stormwater data were not used in the RAA for two reasons.

¹⁸ Section 2.1.2 “Receiving Water Quality” lists Bight ‘08 data among the monitoring data reviewed and analyzed to characterize receiving water quality within the EWMP area. The Bight ‘08 monitoring program included sites in ASBS 24. See NSMB EWMP, pp. 36-43.

¹⁹ See NSMB EWMP, Appendix E, Tables ES-1-1, 4-1, 4-2, 4-3, 4-4, 5-1, 5-2, 5-3, 5-4, and 5-5 as well as Section 4.2, p. 69.

First, the ASBS stormwater data collected were not sufficient in terms of the number of sites or sampling events for calibrating or validating the SBPAT²⁰ model used in the RAA. The use of the generalized land use pollutant loading data is consistent with the RAA requirement in Part VI.C.5.b.iv.(5) of the LA County MS4 Permit: “The RAA shall commence with assembly of all available, relevant subwatershed 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.”²¹ In the future, however, MS4 discharge data along with receiving water data collected under the NSMB EWMP Coordinated Integrated Monitoring Program (CIMP) may be used to help with model re-calibration, if necessary.

Second, even if the data were usable in the model for the RAA, it was not necessary to include the data in the model. Part VI.C.5.a.ii of the LA County MS4 Permit specifies the water body-pollutant categories that must be addressed in the RAA. These categories include: (1) water body-pollutant combinations addressed in a TMDL; (2) water body-pollutant combinations listed on the Clean Water Act section 303(d) list; and (3) pollutants which exceed applicable receiving water limitations *and for which MS4 discharges may be causing or contributing to the exceedance*. The category that the Petitioners focus on is category 3. The Permittees did not identify any category 3 pollutants to include in the RAA based on the ASBS data analysis in Appendix E of the NSMB EWMP (i.e., the ASBS Compliance Plan). This is because the 2013-2014 ASBS stormwater data were not found to correlate with the paired ocean receiving water data using the flowchart in **Figure 2**; therefore, MS4 discharges were not found to be contributing to receiving water limitation exceedances in ASBS 24. A summary of this analysis is provided below.

Post-storm ocean receiving water samples from the ASBS indicated an alteration of natural ocean water quality due to selenium, mercury, and polycyclic aromatic hydrocarbons (PAHs). Based on these results, the Petitioners conclude that the Permittees’ MS4 stormwater discharges are the cause of the alteration of natural ocean water quality for these pollutants. However, an evaluation of the paired outfall (“core discharge”) data relative to the applicable Ocean Plan limits in Table 1 found that the Permittees’ MS4 discharges *were not* causing the altered ocean water quality for these pollutants.²² The ASBS Compliance Plan concludes, “[t]he results of the comparison indicate the discharges to the ASBS from point sources (outfalls) are currently achieving, and significantly below, the target levels.”²³

Additionally, while MS4 outfall samples collected by the Permittees demonstrated exceedances of Ocean Plan limits for ammonia, cadmium, chromium, copper, lead, nickel, and zinc,

²⁰ SBPAT means “Structural BMP Prioritization and Analysis Tool.” The SBPAT is one of the models that is identified in the LA County MS4 Permit for the RAA (see Part VI.C.5.b.iv.(5)).

²¹ Much of the data collected in ASBS 24 in support of the Ocean Plan General Exception, which was presented in the Ocean Plan General Exception Program Environmental Impact Report (PEIR) (referred to by Petitioners as the “ASBS Exception EIS”), is older than 10 years (collected in spring 2004 and spring 2006) and was updated by the sampling effort in 2013-2014 for the ASBS Compliance Plan development.

²² See NSMB EWMP, Appendix E, Section 5.0. The EWMP applies the Ocean Plan Table 1 standards in a comparison to MS4 outfall data in Table 5-5 as well as Tables ES-1, 5-1, 5-2, 5-3 and 5-4 of Appendix E. Table 1 does not include instantaneous maximum limits for PAHs; therefore, no comparison is included for PAHs.

²³ NSMB EWMP, Appendix E, p. 81.

monitoring results for the receiving water *did not show alteration of natural ocean water quality* for these pollutants.²⁴

Therefore, no linkage was shown between the MS4 stormwater data and the ocean receiving water quality data collected in 2013-2014 pursuant to the ASBS Special Protections. The pollutants identified as altering natural ocean water quality were not observed in the MS4 stormwater discharge at levels exceeding the Ocean Plan standards; and those pollutants identified as elevated in MS4 stormwater discharges were not observed at levels or a frequency in the receiving water that was deemed as altering natural ocean water quality. Given the outcome of the data evaluation per the ASBS Special Protections flowchart, it was not necessary for the NSMB EWMP's RAA to include these pollutants.

That notwithstanding, the RAA approach is designed to address multiple pollutants. The RAA evaluates the simulated existing load for the priority (or controlling) pollutant for each modeled NSMB subwatershed, then compares this value to the allowable load for the same pollutant.²⁵ The controlling pollutant for most subwatersheds in the NSMB EWMP area is bacteria. The difference between the simulated existing load and the calculated allowable load is the amount of load that needs to be reduced within the modeled subwatershed to reach compliance. The RAA then identifies and evaluates BMP implementation scenarios within the NSMB EWMP area to meet the allowable load. As described in the EWMP, these BMP implementation scenarios maximize stormwater retention and, as a result, are expected to effectively address other pollutants, such as PAHs and metals, which may be elevated in MS4 discharges to ASBS 24.²⁶

Additionally, per the decision framework of the ASBS Special Protections, shown in **Figure 2**, the Permittees are not required to implement additional non-structural and structural controls to address stormwater discharges to the ASBS. Therefore, the outcome of the data consideration in Appendix E of the NSMB EWMP did not require the Permittees to propose additional or different BMPs in the EWMP to protect ASBS 24.

D. Response to Petitioners' Contention that the NSMB EWMP and RAA Fail to Utilize Applicable ASBS Non-Stormwater Standards

The NSMB EWMP also incorporates applicable ASBS non-stormwater standards – namely, the prohibition on non-stormwater discharges to the ASBS. The EWMP implements without modification the prohibition on non-stormwater discharges to the ASBS consistent with the Ocean Plan General Exception and as required by the LA County MS4 Permit. Section 4.1.1 of the EWMP, Non-stormwater Discharge Screening, recognizes this requirement to eliminate 100 percent of non-exempt non-stormwater discharges through the MS4.²⁷ In Section 5.3.2, Reasonable Assurance Analysis – Dry Weather, the Permittees commit to compliance with the

²⁴ See NSMB EWMP, Appendix E, Tables 4-1 to 4-4, pp. 65-70.

²⁵ The concept of a controlling pollutant means the one that requires the most aggressive controls in comparison with other pollutants.

²⁶ See NSMB EWMP, Section 5.1.1.1, p. 97.

²⁷ The Permittees also recognized and stated their commitment to meet this requirement in their EWMP Work Plan, stating “[i]n the ASBS-portion of the NSMBCW EWMP Area and in accordance with the [Ocean Plan] General Exception, non-authorized dry weather discharges have effectively been stopped and responsible agencies will continue to take necessary actions to prevent dry weather discharges” (NSMB EWMP, Appendix B, p. 64).

MS4 Permit's requirement to eliminate 100 percent of non-exempt non-stormwater discharges from the MS4.²⁸

This commitment is consistent with the non-stormwater discharge prohibition in Attachment B Section I.A.1.e of the Ocean Plan General Exception. This prohibition on non-stormwater discharges to the ASBS is also a provision of the LA County MS4 Permit. Parts III.A.1 and III.A.3 impose a prohibition on non-stormwater discharges to ASBS that is the same as the Ocean Plan General Exception. The Ocean Plan General Exception allows six categories of non-stormwater discharges; these same categories are identified in Part III.A.3, Conditional Exemptions from Non-Storm Water Discharge Prohibition within an ASBS, of the Permit. This part of the Permit clearly states, “[c]onditionally exempt non-storm water discharges shall not cause or contribute to an exceedance of applicable receiving water limitations and/or water quality based effluent limitations in this Order or the water quality objectives in Chapter II of the Ocean Plan, or alter natural ocean water quality in an ASBS”.²⁹ This provision regulates the water quality of conditionally exempt non-stormwater discharges from the MS4 to the ASBS. The Permit does not allow customization of the requirements of Part III.A pertaining to the non-stormwater discharge prohibition through a WMP or EWMP. As such, regardless of whether Permittees are implementing a WMP or EWMP, the Permittees must implement these provisions as set forth in the Permit without modification. As stated above, the Permittees have committed to do so in the NSMB EWMP.

The EWMP proposes a program to eliminate all non-stormwater discharges through the MS4 that consists of series of steps that include non-stormwater outfall based screening, source identification, monitoring, and abatement/elimination. These steps are outlined in Table 11 and shown in Figure 6 of the EWMP and are also described in more detail in Section 4 of the CIMP for the North Santa Monica Bay Coastal Watershed EWMP Group.³⁰ These steps implement the requirements of the LA County MS4 Permit as well as the Ocean Plan General Exception to prohibit non-stormwater discharges to the ASBS.³¹

1. Consistency of the NSMB EWMP Dry Weather RAA with ASBS Non-Stormwater Standards

The Petitioners appear to misunderstand the purpose of the dry weather RAA that is presented in Sections 4.1 and 5.3.2 of the EWMP. The Petitioners state that the semi-quantitative conceptual model used in the dry weather RAA “establishes compliance” with the Permit’s non-stormwater discharge prohibition. This is not an accurate assessment as explained below.

²⁸ See NSMB EWMP, pp. 140-145. The Petitioners question the Permittees’ commitment, through this process, to work toward eliminating, diverting or treating significant non-stormwater discharges that are unauthorized and determined to be causing or contributing to receiving water limitation or water quality based effluent limitation exceedances, perhaps taking issue with the Permittees’ statement that they will “*strive* to eliminate, divert or treat significant non-stormwater discharges” (emphasis added). Regional Water Board staff interprets this not as a lack of commitment, but rather an honest acknowledgement of the on-going challenge of controlling all non-stormwater discharges.

²⁹ See LA County MS4 Permit, Part III.A.3.c.

³⁰ See NSMB EWMP, pp. 66-67.

³¹ Relevant provisions of the Los Angeles County MS4 Permit related to these steps include Part III.A.4.c.-d. pertaining to monitoring and abatement of non-stormwater discharges; Part VI.C.5.b.iv.(2) “Non-Storm Water Discharge Measures;” Parts VI.D.4 and VI.D.10 pertaining to the Permittees’ Illicit Connection/Illicit Discharge Elimination Programs; and Attachment E Part IX “Non-Storm Water Outfall Based Screening and Monitoring.”

First, the RAA required by the LA County MS4 Permit was not intended to evaluate the Permittees' planned actions to eliminate all non-exempt, non-stormwater discharges pursuant to the non-stormwater discharge prohibition in Part III.A.1 of the Permit. The models identified in the Permit for use in a RAA are designed to quantitatively evaluate pollutant load reductions – particularly for stormwater discharges – to provide reasonable assurance that the load reductions will achieve the numeric water quality-based effluent limitations and receiving water limitations. The RAA was not intended to evaluate elimination of all non-stormwater discharges, as demonstrated by a reading of Part VI.C.5.b.iv.(5)(a)-(c) of the LA County MS4 Permit:

The objective of the RAA shall be to demonstrate the ability of Watershed Management Programs and EWMPs to ensure that Permittees' MS4 discharges achieve applicable water quality based effluent limitations and do not cause or contribute to exceedances of receiving water limitations.

- (a) Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve *applicable water quality-based effluent limitations and/or receiving water limitations in Attachments L through R* with compliance deadlines during the permit term.
- (b) Where the TMDL Provisions in *Part VI.E and Attachments L through R* do not include interim or final water quality-based effluent limitations and/or receiving water limitations with compliance deadlines during the permit term, Permittees shall identify interim milestones and dates for their achievement to ensure adequate progress toward achieving interim and final water quality-based effluent limitations and/or receiving water limitations with deadlines beyond the permit term.
- (c) For water body-pollutant combinations not addressed by TMDLs, Permittees shall demonstrate using the RAA that the activities and control measures identified in the Watershed Control Measures will achieve *applicable receiving water limitations* as soon as possible.

(Emphasis added).

Second, the purpose of the “four part test” used in the dry weather RAA methodology was not to “establish compliance” as the Petitioners contend, but rather to provide lines of evidence to demonstrate reasonable assurance that MS4 non-stormwater discharges did not appear to be causing or contributing to dry weather receiving water exceedances. The dry weather RAA does not “allow additional exceedances [of the Santa Monica Bay Beaches Bacteria TMDL] to be deemed acceptable” as suggested by the Petitioners.³² The EWMP specifically acknowledges that the dry weather compliance deadlines for the Santa Monica Bay Beaches Bacteria TMDL have passed, and states that the analysis is not intended to support or justify a new compliance schedule.³³

³² See Mem. P. & A., p. 16.

³³ See NSMB EWMP, Section 5.3.2, p. 140.

The Petitioners also seem to contend that the screening criteria in the dry weather RAA are inconsistent with the non-stormwater discharge prohibition. However, criteria 1, 2 and 4 of the “four part test” require documentation of non-existence of MS4 outfalls or elimination of non-stormwater discharges from MS4 outfalls. Criterion 3 requires a demonstration that there have been no exceedances of summer and winter dry weather bacteria limitations per the Santa Monica Bay Beaches Bacteria TMDL permit provisions. Given the stringent requirements of this TMDL, bacteria is considered a controlling pollutant for both stormwater and non-stormwater MS4 discharges for the NSMB EWMP area.³⁴ Additionally, there is a rich shoreline monitoring dataset for bacteria. For these reasons, bacteriological water quality conditions are appropriately used as a criterion in the dry weather RAA.

Finally, notwithstanding the results of this “four part test,” the NSMB EWMP along with its companion CIMP lays out a detailed non-stormwater screening process (as described above), and states that the NSMB EWMP Group’s non-stormwater screening process plays an important role in an on-going demonstration of reasonable assurance of compliance for non-stormwater discharges from the MS4. The EWMP also includes a plan to reevaluate the dry weather RAA with updated data biennially per the adaptive management process where there are any MS4 outfalls (major and minor).³⁵

E. Response to Petitioners’ Claim that the NSMB EWMP and RAA Fail to Consider ASBS Non-Stormwater Data

Many of the Petitioners’ contentions in Part II.B.4.b of the Petition focus on the Draft ASBS Compliance Plan and do not consider the additional inspections of outfalls for non-stormwater discharges presented in the NSMB EWMP. In their discussion, the Petitioners mischaracterize the extent and outcome of the outfall inspections conducted in 2012 and 2013. To clarify, according to the September 2015 revised ASBS Compliance Plan, the Permittees inspected 31 outfalls (not 13 as indicated by the Petitioners) over a two-year period covering eight months. During this period, the Permittees observed non-stormwater discharges on 73 out of 251 occasions. During the 2012 inspections, most of which were prior to the adoption of the ASBS Special Protections in March 2012, there were 59 observations of non-stormwater discharges, 16 of which were unauthorized (i.e., over-irrigation, “sudsy water”). During the 2013 inspections, there were 14 observations of non-stormwater discharges, 3 of which were unauthorized (i.e., over-irrigation, construction site discharge). While there were repeated incidences of undetermined or unauthorized non-stormwater discharges in 2012 at ASBS-001, ASBS-002, and ASBS-004, according to the 2013 inspections, these discharges have either ceased, or have been significantly reduced. In conclusion, of the 251 outfall inspections, unauthorized or undetermined non-stormwater discharges were identified in approximately 10% of inspections.³⁶

The Petitioners express concerns about non-stormwater discharges identified as “hillside dewatering” or “natural stream” flows in the ASBS Compliance Plan, and suggest that additional data are required to support these characterizations. However, there is no requirement in the ASBS Special Protections for Permittees to provide additional data beyond what has already

³⁴ As previously explained, the concept of a controlling pollutant means the one that requires the most aggressive controls in comparison with other pollutants.

³⁵ See NSMB EWMP, Section 5.3.1, p. 137.

³⁶ See NSMB EWMP, Appendix E, Section 3.2.4 and Tables 3-3 and 3-4, pp. 50-53.

been included for the non-stormwater discharge inspections in the ASBS Compliance Plan. They further suggest that Permittees must indicate whether the discharges are permitted or unpermitted. However, this is not necessary, since hillside dewatering and natural stream flows are among the allowed non-stormwater discharges in the ASBS Special Protections and in the LA County MS4 Permit.³⁷

The Petitioners also allege that the draft ASBS Compliance Plan “distinguishes, without basis, between discharges that land on the beach in ASBS 24, and those that flow to the surf line” and state that the draft ASBS Compliance Plan does not adequately address “the numerous dry weather flows that the plan reports as not reaching the ‘surf’.”³⁸ However, as stated above, of the 251 inspections, in only approximately 10% were there observations of unauthorized or undetermined non-stormwater discharges. The remaining non-stormwater discharges that were observed were from sources that are allowed, as described above. For unauthorized and undetermined non-stormwater discharges, the ASBS Compliance Plan outlines a suite of measures that include focused outreach, inspections, and enforcement -- not just outreach as suggested by the Petitioners. Regardless, the Permittees commit to ensuring that discharges of non-authorized, non-stormwater do not occur, whether they reach the surf or not.³⁹

Next, the Petitioners incorrectly state that the RAA for dry weather discharges considers no data. Five years of shoreline bacteria monitoring data were considered in the evaluation presented in Table 31 of the EWMP.⁴⁰ As noted above, there is a rich shoreline monitoring dataset for bacteria. For these reasons, bacteriological water quality conditions are appropriately used in the dry weather RAA.

Lastly, Petitioners take issue with the draft ASBS Compliance Plan for not proposing or reporting additional inspections or monitoring of non-stormwater discharges, while simultaneously taking issue with the EWMP for proposing to repeat the process conducted pursuant to the Ocean Plan General Exception. Additional outfall inspections, and commitments for future inspections and monitoring, are included in the NSMB EWMP. The EWMP actually contains more up-to-date non-stormwater outfall screening data than the ASBS Compliance Plan. These data are from 2014-2015, while the ASBS Compliance Plan non-stormwater discharge inspection data are from 2012-2013. In Table 31 and Appendix F, the EWMP presents the results of additional inspections for non-stormwater discharges for major MS4 outfalls, which were conducted on August 19, October 21, 29, 30, and November 12, 2014, and for minor MS4 outfalls on April 13, 2014, May 19, 2015, and June 19, 2015. As to future commitments, the EWMP and its companion CIMP include a detailed non-stormwater outfall based screening, monitoring, and abatement program.

With regard to concerns about repeating the outfall screening process, continual screening of MS4 outfalls is appropriate due to the highly variable nature of non-stormwater discharges. The Petitioners also misread the EWMP schedule, stating that initial screening of outfalls for non-stormwater discharges will not be complete until December 2017. Actually, source identifications will be completed for 50% of outfalls with significant non-stormwater discharges

³⁷ See LA County MS4 Permit, Part III.A.3.a, p. 30 and State Water Board Resolution No. 2012-0012, Attachment B, Part I.A.1.e.(2), p. 2.

³⁸ Mem. P. & A., p. 8.

³⁹ See NSMB EWMP, Appendix E, Section 3.2.4.2, p. 50.

⁴⁰ See NSMB EWMP, Table 31, p. 141.

by December 28, 2016, and for 100% of outfalls by December 28, 2017.⁴¹ The timing of monitoring and abatement actions related to non-stormwater discharges is consistent with the requirements in the LA County MS4 Permit. Petitioners also express concerns about a delay in implementation. However, many of the measures identified in Appendices B and D of the EWMP address non-stormwater discharges. These measures are currently being implemented, and will continue to be; therefore, there will not be a two-year delay.

In addition, Section 3.0 Dry Weather Compliance of the 2015 ASBS Compliance Plan outlines the measures the Permittees are currently taking to eliminate non-authorized, non-stormwater discharges, how these measures will be maintained over time, and how these measures are monitored and documented.⁴² This was required by the ASBS Special Protections.

F. Response to Petitioners' Concerns Regarding the Status of Revised ASBS Compliance Plan Relative to NSMB EWMP

Regarding the status of the ASBS Compliance Plan itself, as discussed in Part I.C., above, the County of Los Angeles, LACFCD, and City of Malibu submitted a revised ASBS Compliance Plan in September 2015, addressing the State Water Board's comments. Specifically, in response to the State Water Board's concerns regarding ASBS-required sampling, and measures to prevent alteration of natural ocean water quality, or to prevent non-stormwater discharges, the Permittees revised the ASBS Compliance Plan to include additional sampling, monitoring, and reporting of non-stormwater discharges.⁴³ For ocean receiving water monitoring, the ASBS Compliance Plan was revised to include data and discussions resulting from additional sampling at three sites (24-BB-03R, 24-BB-03Z, and 24-BB-02Z) during a December 1, 2014 storm event. Based on these results, and in accordance with the ASBS Exception, there were no exceedances of natural water quality.⁴⁴ Furthermore, the revised ASBS Compliance Plan includes additional future sampling, including sites ASBS-S02 and ASBS-028 for one additional event, and site 24-BB-3-03R and its associated outfall 24-BB-03Z until three sampling events are completed. Results from the additional sampling will be reported in accordance with ASBS Special Protections Section I.A.2.h.

This revised ASBS Compliance Plan is the version that is incorporated into the NSMB EWMP. There is no requirement in the Ocean Plan's ASBS Special Protections that the ASBS Compliance Plan is approved prior to its inclusion in the EWMP. Given the deadlines for submitting the draft EWMP and the revised EWMP, and for receiving approval of the EWMP, it was not possible to align the timing of review and approval of the revised ASBS Compliance Plan with the review and approval timeline for the EWMP. State Water Board staff and Regional Water Board staff have agreed to review the revised ASBS Compliance Plan collaboratively. If, after a final review of the revised ASBS Compliance Plan, there are any inconsistencies between the ASBS Compliance Plan and EWMP, I will require the NSMB EWMP Group to update its EWMP through the adaptive management process to ensure consistency with the ASBS Compliance Plan. For example, Part VI.C.8.a.i.(4) of the LA County MS4 Permit requires that Permittees reevaluate water quality priorities based on more recent water quality data for

⁴¹ See NSMB EWMP, Section 4.1.3, p. 68.

⁴² See NSMB EWMP, Appendix E, p. 38.

⁴³ See NSMB EWMP, Appendix E, Section 3.0, pp. 38-39.

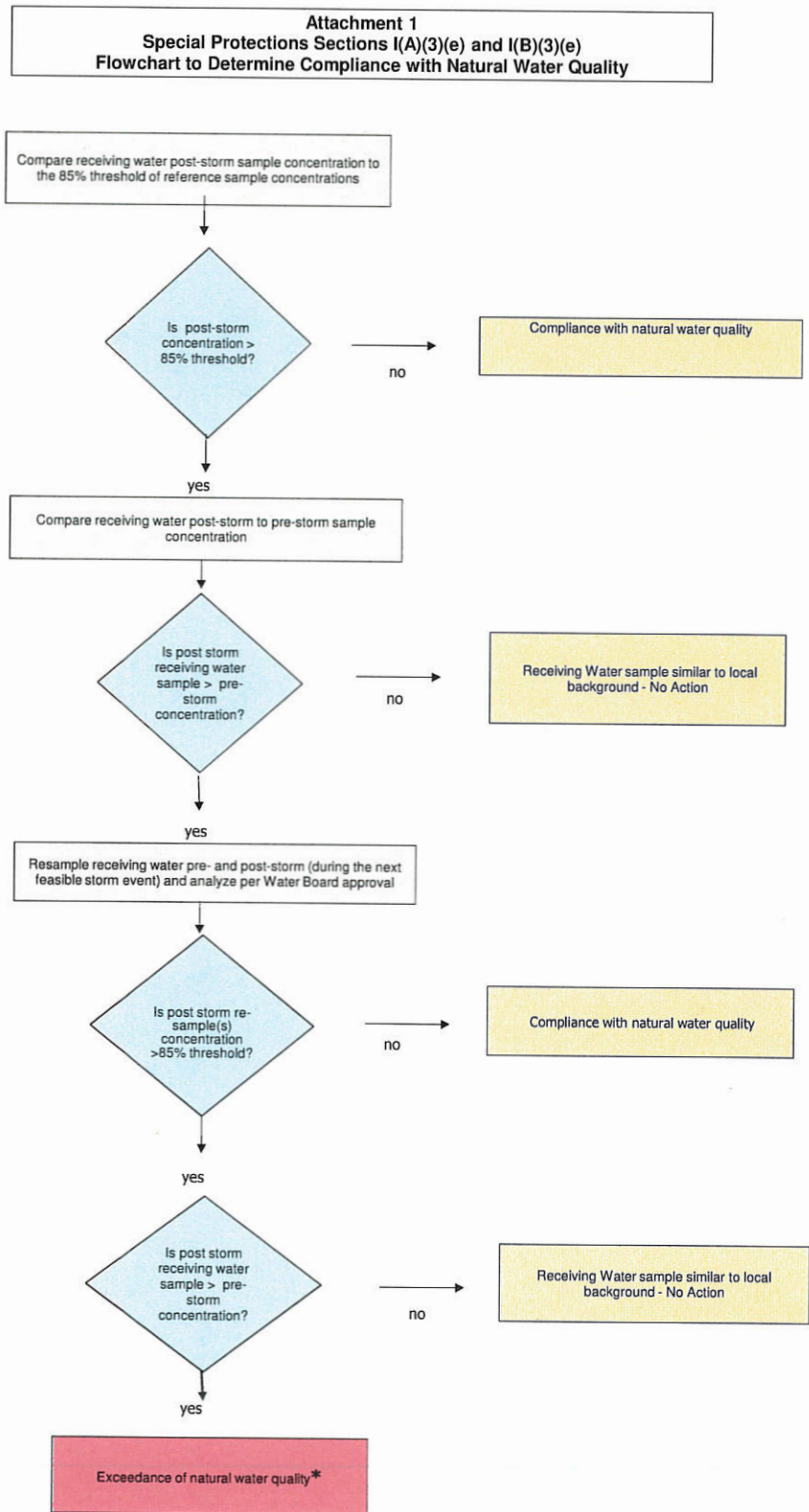
⁴⁴ See NSMB EWMP, Appendix E, Section 4.1.4, p. 69.

MS4 discharges and for the receiving water and reassess sources of pollutants in MS4 discharges, while Part VI.C.8.b.i requires that Permittees must submit an updated EWMP with an updated RAA by June 30, 2021. As such, updates to the NSMB EWMP may include, but are not limited to, incorporation of additional category 3 pollutants based on an evaluation of data from the ASBS monitoring efforts relative to applicable water quality objectives, an update to the RAA to address any such pollutants, and commitments to implement additional structural and/or non-structural BMPs to address the additional pollutants, if necessary.

IV. Conclusion

In conclusion, the NSMB EWMP applies the proper standards from the Ocean Plan's ASBS Special Protections, including the prohibition on non-stormwater discharges; appropriately considers and utilizes available ASBS stormwater and non-stormwater data; and demonstrates reasonable assurance that implementation of the EWMP will meet all applicable standards. As such, in approving the NSMB EWMP on behalf of the Regional Water Board, I determined that the EWMP meets the requirements of the LA County MS4 Permit and the Ocean Plan's ASBS Special Protections provisions for discharges of stormwater and non-stormwater to ASBS 24.

Figure 2



* When an exceedance of natural water quality occurs, the discharger must comply with section I.A.2.h (for permitted storm water) or section I.B.2.c (for nonpoint sources). Note, when sampling data is available, end-of-pipe effluent concentrations will be considered by the Water Boards in making this determination.

Brandes, Deborah@Waterboards

From: Purdy, Renee@Waterboards
Sent: Thursday, September 01, 2016 11:52 AM
To: George, Angela (AGEORGE@dpw.lacounty.gov); JBrown@malibucity.org; arthur@lawaterkeeper.org; bhayat@nrdc.org
Cc: Tracy J. Egoscue; Susilo, Ken (KSusilo@geosyntec.com); Hamamoto, Bruce (BHAMAMO@dpw.lacounty.gov); Paul Alva (PALVA@dpw.lacounty.gov)
Subject: Order of Presentations and Time Allocations for Item 6, Consideration of Petition for Review of the EO's Approval of North Santa Monica Bay EWMP

All,

Having received your requests for time, the Chair, in consultation with the Executive Officer, has made the following order of presentations and time allocations for Item 6 - Consideration of Petition for Review of the EO's Approval of North Santa Monica Bay EWMP.

Order of Presentations	Presenter	Time Allocation
1	Board Counsel/Staff (Intro on Petition, Ocean Plan, and ASBS 24)	Approx. 15 minutes
2	LAWK and NRDC (Joint Presentation)	20 minutes
3	Board Staff Response	Approx. 20 minutes
4	Los Angeles County/LACFCD	10 minutes
5	City of Malibu	10 minutes
6	All other speakers not represented above	3 minutes

If you have any questions, please feel free to contact me at (213) 576-6622 or via email.

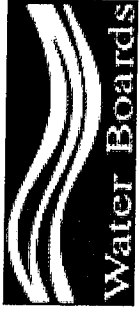
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Environmental Protection Agency
 • State Water Resources Control Board
 Los Angeles Regional Water Quality Control Board

SIGN-IN SHEET
 Regional Board Meeting
 September 7, 2016

Name	Mail Address Company Name/Organization	E-Mail Address or Telephone Number	Add Name to Mail List
Arthur Pugsley	LA Waterkeeper 120 Broadway Suite 105 Santa Monica CA 90401	arthur@lawaterkeeper.org 310-394-6162 x102	
Steven Johnson	HEAL THE BAY 1444 9th St Santa Monica CA 90401	SJohnson@healthebay.org 310 451-1500	X
Tracy Egger	ECG	Tracy@eggerlaw.com	
Amir Mami	Larry Walker Associates	AmirM@LWA.com	X
Chris Wessel	Geosyntec Consultants	Cwessel@geosyntec.com	
Dan Jablonski	CH2M	djablon1@CH2M.com	
Lauren Langer	Melina Jenkins atxjir	Llanger@localgovlaw.com	
Cassandra D. Davis	LA 2000B		



Environmental Protection Agency
 • State Water Resources Control Board
 Los Angeles Regional Water Quality Control Board

SIGN-IN SHEET
 Regional Board Meeting
 September 7, 2016

Name	Mail Address Company Name/Organization	E-Mail Address or Telephone Number	Add Name to Mail List
Chryz Lu	LARWQCB		
Gregorio Amenu	LACPRU	gamenr@lacounty.gov	
Bruce Hamamoto	LACDPW		
Renee Nygaard	Torrance Logistics		
Melissa Snyder	Torrance Logistics		
Barbara Bradley	Advanced Onsite Water		
Rita Kampalath	Head the Bay	r.kampalath@headthebay.org	
Betsy Hayat	NRDC	ts bhayat@nrdc.org	



- Environmental Protection Agency
- State Water Resources Control Board
- Los Angeles Regional Water Quality Control Board

SIGN-IN SHEET
 Regional Board Meeting
 September 7, 2016

Name	Mail Address Company Name/Organization	E-Mail Address or Telephone Number	Add Name to Mail List
CHANCE OSWALD	CITY OF MALIBU		
Jennifer Jacobo-Braun	City of Malibu	jacobob@malibucity.org	
Andrew Sheldon	City of Malibu	asheldon@malibucity.org	
PAUL ALVA	LAC DPW	PALVA@clpw.lacounty.gov	
Armando DiAngelo	LA County DPW	ardangelo@clpw.lacounty.gov	

State of California
Environmental Protection Agency
Water Resources Control Board
Los Angeles Regional Water Quality Control Board

SPEAKER REQUEST CARD

Date: 9/7/16

I wish to speak during the Board Meeting:

- I wish to speak on Agenda Item No. 56
 I wish to speak during Public Forum on a non-agenda item.

I do not wish to speak but I do want to express the following position:

- I support Agenda Item No. _____
 I oppose Agenda Item No. _____

Name: Angela George

- Representing Self
 Representing: County of Los Angeles / Los Angeles

Unless exempted by the Board, comments are limited to three (3) minutes. County Flood Control District

State of California
Environmental Protection Agency
Water Resources Control Board
Los Angeles Regional Water Quality Control Board

SPEAKER REQUEST CARD

Date: 9/7/16

I wish to speak during the Board Meeting:

- I wish to speak on Agenda Item No. 56
 I wish to speak during Public Forum on a non-agenda item.

I do not wish to speak but I do want to express the following position:

- I support Agenda Item No. _____
 I oppose Agenda Item No. _____

Name: ANGELA GEORGE

- Representing Self
 Representing: CITY OF MALIBU

Unless exempted by the Board, comments are limited to three (3) minutes. **RB-AR 6467**

State of California
Environmental Protection Agency
Water Resources Control Board
Los Angeles Regional Water Quality Control Board

SPEAKER REQUEST CARD

Date: 9/7/16

I wish to speak during the Board Meeting:

- I wish to speak on Agenda Item No. 6
 I wish to speak during Public Forum on a non-agenda item.

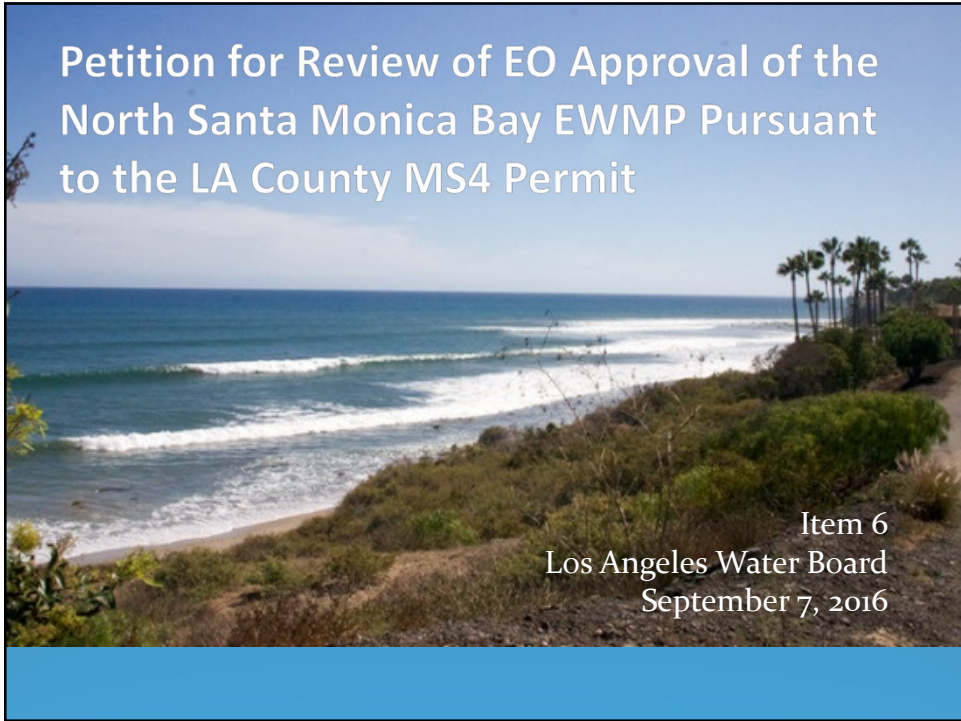
I do not wish to speak but I do want to express the following position:

- I support Agenda Item No. _____
 I oppose Agenda Item No. _____

Name: Andrew Sheldon (CD)
 Representing Self
 Representing: City of Malibu

Unless exempted by the Board, comments are limited to three (3) minutes.

Petition for Review of EO Approval of the North Santa Monica Bay EWMP Pursuant to the LA County MS4 Permit



Item 6
Los Angeles Water Board
September 7, 2016

Part VI.A.6 – Regional Board Review

6. Regional Water Board Review

Any formal determination or approval made by the Regional Water Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Water Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Water Board.

Petition for Review and Summary of Contentions

- May 19, 2016 - Petition for Review of EO's Action to Approve the NSMB EWMP filed
 - *issue with ASBS 24 portion of area only
- Petitioners allege that EO improperly approved the NSMB EWMP despite its failure to:
 - “comply with the relevant terms of the MS₄ Permit,”
 - “comply with the conditions of State Board Resolution No. 2012-0012 (‘ASBS Exception’),” and
 - “consider relevant, available ASBS stormwater and non-stormwater data and to comply with the ASBS Exception’s prohibition against non-stormwater discharges.”
- Remedy Sought - Invalidation of EWMP approval

Options

- The Regional Board may either:
 - Decide to review the petition on its merits at a subsequent meeting; or
 - Decide not to review the petition. In which case, there will be no further Regional Board proceedings.
- Staff are not making a recommendation.

I. Background:

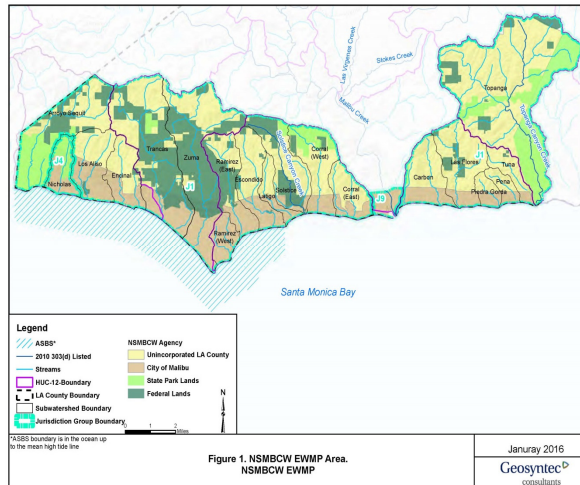
A. NSMB EWMP and ASBS 24 Geography

NSMB EWMP:

- 86 square miles
- tributary to Santa Monica Bay
- 20 subwatersheds, 10 drain to ASBS 24

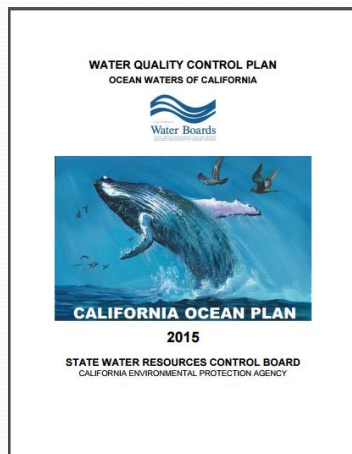
ASBS 24:

- 24 coastal miles
- largest ASBS along mainland of Southern CA



I. Background:

B. Ocean Plan and ASBS Special Protections



- Adopted 1972
- Establishes water quality objectives
- Applicable to both point source and nonpoint source discharges
- Prohibits discharge of waste to ASBS unless exception is granted

I. Background:

B. ASBS Exception, Resolution No. 2012-0012

- Exceptions to discharge prohibition conditionally allowed
- 2004: State Board notified entities that they must cease discharges into ASBSs or request exception
- 27 entities submitted applications for an exception
 - Including City of Malibu, LA County, and LACFCD for their MS₄ discharges

I. Background:

B. ASBS General Exception

March 2012: State Board adopted General Exception to Ocean Plan for 27 applicants, provided:

1. Discharges are authorized (e.g., covered under a MS₄ permit)
2. Authorization incorporates all the “ASBS special protections”

LA County, LACFCD, and City of Malibu MS₄ discharges to ASBS 24 meet these criteria.

I. Background:

C. ASBS Compliance Plans

For point sources, such as MS4 discharges:

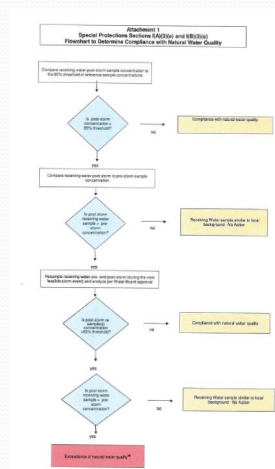
- ASBS Special Protections require a “Compliance Plan” to address:
 - Prohibition of non-stormwater discharges
 - Requirement that stormwater discharges do not alter natural ocean water quality
- Permittees prepared an ASBS Compliance Plan:
 - Draft – 09/2014
 - Revised in response to State Board comments – 09/2015; under review
 - Additional monitoring in winter ’15-’16

I. Background:

C. ASBS Monitoring Data Evaluation

Assessment process:

1. Ocean water quality within the ASBS relative to natural ocean water quality; and, if necessary:
2. Linkage between altered ocean water quality & adjacent MS4 stormwater discharges.



Staff Response to Petitioners' Contentions

II. NSMB EWMP - Development, Review, and Approval Process

- Notification of intent – June 2013
- EWMP work plan – June 2014
- Draft EWMP – June 2015
- Board staff written comments - October 2015
- Revised EWMP - January 2016
- Executive Officer approval - April 19, 2016

II. NSMB EWMP – Stakeholder Input during Review Process

- TAC meetings – July 2013 – Aug. 2014
- 2-month long public review & written comment period – June 29, 2015 - Aug. 30, 2015
- Public workshops - June 29, 2015, Nov. 5, 2015, Mar. 3, 2016
- Opportunity for oral comments at 2nd and 3rd workshops
- Board staff meetings with Petitioners and Heal the Bay – Feb. and Mar. 2016

III. Petitioners' Two Main Contentions

1. Ocean Plan General Exception (ASBS) stormwater standards & prohibition against non-stormwater discharges not applied in EWMP
2. ASBS stormwater and non-stormwater data not considered or utilized in the EWMP, including the Reasonable Assurance Analysis (RAA)

Application of ASBS Standards

- I. ASBS Stormwater Standards
- II. ASBS Non-Stormwater Discharge Prohibition

III.A. NSMB EWMP utilizes ASBS stormwater standards

- EWMP implements Receiving Water Limitations (Permit Part V.A), which include:
 - Numeric objectives, Ocean Plan Table 1
 - No alteration of natural ocean water quality in an ASBS
- Data comparison to ASBS standards - Attachment E, NSMB EWMP
- EWMP implements ASBS Special Protections prohibition on discharge of trash

III.D. NSMB EWMP, including the RAA, utilizes ASBS non-stormwater standards

The EWMP prohibits non-stormwater discharges to the ASBS consistent with Ocean Plan General Exception requirement:

- EWMP Section 4.1.1, Non-Stormwater Discharge Screening *to eliminate 100% of non-stormwater discharges*
- EWMP Section 5.3.2, Reasonable Assurance Analysis – Dry Weather *to evaluate requirement to eliminate 100% of non-exempt, non-stormwater discharges*

III.D.1. The RAA is consistent with ASBS Non-stormwater standards (cont.)

Dry weather RAA does not “establish compliance” with non-stormwater discharge prohibition:

- Purpose of RAA ≠ “establish compliance”
- “Four part test” does provides evidence regarding impact of non-stormwater discharges on receiving water
- Compliance based on outfall screening and monitoring data

III.D.1. The RAA is consistent with ASBS Non-stormwater standards (cont.)

- Dry weather RAA is consistent with SMB Beaches Bacteria TMDL
 - EWMP does not propose a new compliance schedule or new limits
 - 5 years of data used; reevaluate regularly through adaptive management
- Dry weather RAA criteria are consistent with non-stormwater discharge prohibition (“Four part test”)

Consideration & Utilization of Available, Relevant ASBS Data

- I. ASBS Stormwater Data
- II. ASBS Non-Stormwater Data

III.B. NSMB EWMP considers relevant, available ASBS stormwater data

“No MS₄ discharge monitoring data were available at the time of this assessment” is Petitioners’ focus.

1. However, evaluation of ASBS stormwater discharge data and ocean receiving water data in Appendix E.
2. Sentence addresses MS₄ outfall monitoring data only (not receiving water data, which is addressed in Section 2.1.2)
3. Characterizes MS₄ outfall data availability for entire EWMP area

III.C. ASBS Stormwater Data Not Appropriate for RAA

1. ASBS stormwater data not sufficient to modify RAA model inputs
2. No linkage shown between MS₄ stormwater data and ocean receiving water quality data in ASBS; therefore, not considered category 3 pollutants

III.C. Discharges Not Causing Alteration of Natural Ocean Water Quality

Evaluation of Appendix E found:

- Paired outfall data found Permittees' discharges were not causing altered ocean water quality
- Data consideration of Appendix E found additional or different BMPs in the EWMP not needed to protect ASBS 24.

III.E. NSMB EWMP and RAA consider ASBS non-stormwater data

Petitioners mischaracterize extent and outcome of non-storm-water outfall inspections (2012-2013).

- 31 outfalls (not 13) inspected
- of 251 inspections, ~10% unauthorized/undetermined
- discharges ceased or significantly reduced by 2013
- "hillside dewatering" or "natural stream" flows are allowed non-stormwater discharges

III.E. NSMB EWMP and RAA consider ASBS non-stormwater data (cont.)

- Petitioners focus on distinguishing between flows that reach the surf versus the beach; however
 - EWMP commits to eliminating discharges of non-authorized, non-stormwater, whether they reach the surf or not.

III.E. NSMB EWMP and RAA consider ASBS non-stormwater data (cont.)

Petitioners incorrectly state that dry weather RAA considers no data; however

- Five years of shoreline bacteria monitoring data used (NSMB EWMP Table 31), and
- EWMP contains more up-to-date data than Compliance Plan (2014-2015 vs. 2012-2013)

III.E. NSMB EWMP and RAA consider ASBS non-stormwater data (cont.)

Petitioners criticize additional “dry weather screening” pursuant to the Ocean Plan General Exception.

- More data appropriate - highly variable nature of non-stormwater
- Screening schedule is misinterpreted 50% of screening complete by 12/16, not 12/17
- Many measures in Appendices B and D of the EWMP address non-stormwater discharges and are ongoing

III.F. ASBS Compliance Plan Status

- Revised Compliance Plan is under review
 - Revisions included additional sampling, monitoring, and reporting
- Ocean Plan General Exception does not require ASBS Compliance Plan approval prior to inclusion in SWMP/EWMP
 - Adaptive management process can be used if there are additional changes to Compliance Plan

Conclusion

Contrary to Petitioner's contentions, the NSMB EWMP:

- Applies the proper standards from the Ocean Plan's ASBS Special Protections, including the prohibition on non-stormwater discharges
- Appropriately considers and utilizes available ASBS stormwater and non-stormwater data
- Demonstrates reasonable assurance that implementation of the EWMP will meet all applicable standards

North Santa Monica Bay Enhanced Watershed Management Program Petition



Petitioners: Los Angeles Waterkeeper and
Natural Resources Defense Council

September 7, 2016

City of Agoura Hills Council Chambers

Presenting on behalf of LAW: Arthur Pugsley, Staff Attorney

Presenting on behalf of NRDC: Becky Hayat, Staff Attorney

Petitioners Object to Lack of Separation of Advisory and Advocacy Roles by Staff Counsel

- ▶ Counsel must advise board members neutrally on while also advising staff whose approval is subject of the proceedings
- ▶ Especially true because these proceedings today are functioning as proceedings on the merits of Petition to determine whether there will be further proceedings on the merits of Petition
- ▶ Potential conflict inherent in process where Regional Board delegates major approval responsibility to staff but delegated approval can be appealed or referred back to Regional Board
- ▶ Even mere appearance of conflict infringes Due Process rights
- ▶ **Solution:** Provide separate counsel for distinct and potentially conflicting functions

ASBS 24

(looking east across Dome Cove)



ASBS -004 Outfall (Zuma Beach)



ASBS are Critical Coastal Ecological Resources

“ASBS are basic building blocks for a sustainable, resilient coastal environment and economy.”

- *State Water Resources Control Board*

The Regional Board Should Review the Petition on the Merits

- ▶ April 19 Approval was not “appropriate and proper” because EWMP fails to protect ASBS #24 (Laguna Point to Latigo Point) and violates the Ocean Plan/ASBS Exception
- ▶ April 19 Approval was not “appropriate and proper” because EWMP violates MS4 permit conditions

Ocean Plan Prohibits All Discharges to ASBS Waters Subject to Narrow Exceptions in SWRCB Resolution 2012-0012 (“the ASBS Exception”)

- ▶ ASBS Exception prohibits all non-stormwater discharges
- ▶ EWMP fails to prohibit non-stormwater discharges to ASBS #24
- ▶ ABBS Exception forbids any discharge that alters natural ocean water quality
- ▶ City and County data (Draft CP pp.71-75) demonstrate discharges alter natural ocean water quality at a minimum for selenium, PAH, and mercury
- ▶ EWMP fails to apply ASBS Exception standards prohibiting any stormwater discharges altering natural ocean water quality

EWMP Does Not Consider Available, Relevant Stormwater and Non-stormwater Data as the MS4 Permit Requires

- ▶ Stormwater sampling data for metals, PAH, ammonia, other pollutants submitted to SWRCB since 2008
- ▶ 2007-08 stormwater data on receiving water collected by County & Malibu
- ▶ 2013-14 stormwater samples by Malibu and County of 21 outfalls to ASBS #24 *attached as an appendix to the EWMP itself*
- ▶ 2012-2013 Non-stormwater data collected by Malibu and County as part of ASBS Compliance Plan Monitoring at numerous outfalls and *attached as an appendix to the EWMP itself*

NSMB EWMP Denies Existence of Any Relevant Discharge Data, But Some Such Data is Attached to the EWMP Itself

- ▶ EWMP P. 43: “No MS4 discharge monitoring data were available” at the time of EWMP preparation
- ▶ RB Responses to Comments issued after approval includes assertion that available data “were reviewed” and were “incorporated by reference” into the EWMP (Response to Comments p. 30)
- ▶ Assertion in Response to Comments contradicts plain language of the EWMP that no discharge data were reviewed or considered
- ▶ Data “incorporation by reference” fails to meet MS4 permit requirements for RAA because “incorporation by reference” is not an input into the RAA- must actively consider data to calibrate model

Regional Board Staff Argue:

- ▶ The NSMB EWMP Does Not Fail to Consider Available, Relevant Stormwater Data
- ▶ The NSMB EWMP Does Not Fail to Consider Available, Relevant Non-Stormwater Data
- ▶ The NSMB EWMP and RAA do Not Fail to Apply ASBS Stormwater Standards
- ▶ The NSMB EWMP and RAA Does Not Fail to Apply ASBS Non-Stormwater Standards

However, these are post hoc arguments- the EWMP fails on all four counts

The EWMP States that No Discharge Data was Considered. None Was Considered.

- ▶ Relevant Stormwater Data From Discharges to the ASBS Were Collected in 2013-14. This Data Was Not Considered.
- ▶ Staff “interprets” the EWMPs statement that no data was considered as meaning that the data was rejected as limited—but nothing in the EWMP itself indicates that the ASBS Data was evaluated in any manner- no explicit or even implicit rejection as limited or irrelevant.
- ▶ Attaching a Plan that includes the data as an exhibit to the EWMP is not equivalent to consideration of that data in the EWMP.

Available, Relevant Non-Stormwater Data Were Not Considered

- ▶ 59 Non-Stormwater Discharges to the ASBS—many repeat Discharges-- Were Observed and Documented in the ASBS Compliance Plan.
- ▶ Staff Response to Petition Admits That None of this Visual Observation Data Was Considered in the EWMP.
- ▶ The EWMP Proposes to Repeat the Visual Observation Process—rather than building on data already collected. Thus:
- ▶ The resources expended under the ASBS Program are effectively wasted, and compliance is again delayed.

ASBS Exception Standards for Stormwater Discharges were Not Applied in the EWMP

- ▶ The ASBS Exception Requires a Compliance Plan for BMPs that either:
 - ▶ A. Reduces pollutants by 90%, or
 - ▶ B. Meets Ocean Plan Instantaneous Max Limits
- ▶ The EWMP Applies ONLY FIB and Nutrient Limits in its modeling exercise and BMP plan.
- ▶ Attaching the ASBS CP that references Ocean Plan Standards as an exhibit to the EWMP is Not Equivalent to Modeling using those Standards

Staff Argues that Ocean Plan Limits are Irrelevant unless “Correlated” to “Paired” Receiving Water Sampling

This is the position adopted by dischargers. Problems with the approach:

- ▶ Neither the ASBS Exception’s Language Nor the Attached Flow Chart Require, or even Mention, Correlation with Paired Receiving Water Sampling
- ▶ The Exception Requires a CP that Meets Ocean Plan Standards or Reduces Pollution Loads by 90% without Conditions or “Correlation” or “Pairing”
- ▶ Staff’s Interpretation Allows Continued Discharges Violating Ocean Plan Standards to the ASBS

The ASBS Prohibition on Non-Stormwater Discharges is Not Applied in the EWMP

- ▶ The ASBS Exception Has Flatly Prohibited NSW Discharges Since 2012.
- ▶ The EWMP, and Specifically the RAA, Apply TMDL standards to determine dry weather compliance—including allowed exceedance days.
- ▶ The EWMP Modeling Does Not Apply the ASBS Prohibition, and Does Not Propose BMPs to Comply with that Standard- because the modeling allows dry weather exceedances based on TMDL standards- not ASBS standards

EWMP Fails to Comply with the Ocean Plan and MS4 Permit Requirements

- ▶ EWMP Failed to Apply ASBS Exception Requirements- Violates Ocean Plan
- ▶ EWMP Failed to Consider Readily Available, Relevant Data- Violates MS4 Permit
- ▶ Regional Board Should Therefore Review Merits of the Petition

MEETING
THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of)
)
Regular Board Meeting)
_____)

CITY OF AGOURA HILL
(COUNCIL CHAMBERS)
30001 LADYFACE COURT
AGOURA HILL, CALIFORNIA 91310

Wednesday, September 7, 2016

12:30 P.M.

Reported by: Mason Booker

APPEARANCESBOARD MEMBERS

Irma Munoz, Chair

Francine Diamond

Madelyn Glickfeld

Charles M. Stringer

Lawrence Yee

STAFF

Samuel Unger, Executive Officer

Ronji Moffett, Secretary

Jennifer Fordyce

Frances McChesney

Renee Purdy

Dr. Eric Wu

Rebecca Chou

Anna Townsend

Deborah Brandes

Beth Payne

Ivar Ridgeway

Deborah Smith

Paula Rasmussen

APPEARANCES CONTINUED:

ALSO PRESENT:

Arthur Pugsley, Los Angeles Waterkeeper

Becky Hyat, Natural Resources Defense Council

Angela George, L.A. County Flood Control District

Craig George, City of Malibu

Dr. Andrew Sheldon, City of Malibu

Steve Dahlberg, Paradise Cove Land Company

Barbara Bradley, PE, Advanced Onsite Water

Steven Johnson, Heal the Bay

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| 2. | Order of Agenda. Note that the agenda items are numbered for identification purposes and may not necessarily be considered in this order. | 9 |
| 3. | Board Member Communications. | 10 |
| | 3.a. Ex Parte Disclosure. Board Members will identify any discussions they may have had requiring disclosure pursuant to Government Code section 11430.40. | |
| | 3.b. Board Members Reports. The Board Members may discuss communications, correspondence, or other items of general interest relating to matters within the Board's jurisdiction. | |

UNCONTESTED ITEMS

(Items marked with an asterisk are expected to be routine and noncontroversial. The Board will be asked to approve

*these items at one time without discussion. Any Board member or person may request that an item be removed from the Uncontested calendar. **Items removed from the Uncontested calendar may be heard at a future meeting.***)

Waste Discharge Requirements that Serve as Individual NPDES

Permits

Termination-

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- *4. Consideration of termination of Waste Discharge Requirements for Torrance Logistics Company, LLC (Previous Owner: ExxonMobil Oil Corporation) - Southwestern Terminal Area 1, Terminal Island; NPDES No. CA0003689. (Comment submittal deadline was July 29, 2016) [Mazhar Ali, (213) 576-6652]

Renewal-

- *5. Consideration of tentative Waste Discharge Requirements for SFPP, L.P., Norwalk Pump Station, Norwalk; NPDES No. CA0063509. (Comment submittal deadline was August 15, 2016) [Ching Yin To, (213) 576-6695]

PUBLIC FORUM

9. Christine Rowe

15

CONTESTED ACTION ITEMS

Petition

- | | | |
|----|--|----|
| 6. | <p>Consideration of Petition for Review of the Executive Officer's Action to Approve the Enhanced Watershed Management Program for the North Santa Monica Bay Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175. (The deadline to submit responses to the Petition was August 18, 2016).
[Renee Purdy, (213) 576-6622]</p> | 23 |
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Waste Discharge Requirements/Water Reclamation Requirements and Cease and Desist Order

Renewal -

- | | | |
|----|---|-----|
| 7. | <p>Consideration of tentative Waste Discharge Requirements (WDRs) and Water Reclamation Requirements (WRRs), and a tentative Cease and Desist Order (CDO) for The Kissel Company, Inc. and the Paradise Cove Land Company, LLC - Paradise Cove Wastewater Treatment Plant including systems at Paradise Cove Mobile Home Park and the Paradise Cove Beach Café, City of Malibu (File No. 01-083). (Comment submittal deadline for the tentative WDRs/WRRs was May 23, 2016, and comment</p> | 107 |
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submittal deadline for the tentative CDO was June 13, 2016) [Mercedes Merino, (213) 620-6156]

7.1 Waste Discharge Requirements/Water Reclamation Requirements

7.2 Cease and Desist Order

8. **Adjournment of Day One of current meeting.** 159

(Day Two of the current meeting will be held on September 8, 2016 at the City of Santa Clarita, Council Chambers, located at 23920 Valencia Boulevard, Santa Clarita, CA 91355, beginning at 9:00 a.m.)

P R O C E E D I N G S

12:37 p.m.

1
2
3 CHAIR MUNOZ: I'd like to call this meeting to
4 order. Good afternoon and welcome to Agoura Hills and
5 we're grateful and thankful to the City of Agoura Hills for
6 allowing us to have our meeting here this afternoon.

7 Welcome to the 599th meeting of the Los Angeles
8 Regional Water Quality Board, which means I guess, tomorrow
9 is our 600th? Or that's 599 and a half? Okay, so I'll be
10 here for the 600th, which --

11 UNIDENTIFIED SPEAKER: (Indiscernible)

12 VICE CHAIR MUNOZ: -- I'll have to send my
13 apologies, because I won't be here tomorrow. I'm on my way
14 to Washington D.C. I don't like missing board meetings,
15 but I will not be here tomorrow.

16 So why don't we start with the Pledge of
17 Allegiance if you could please stand. And Mr. Larry, if
18 you can lead us in the Pledge?

19 (Whereupon, the Pledge of Allegiance
20 was recited in unison.)

21 VICE CHAIR MUNOZ: Thank you. Ms. Ronji, if you
22 can do roll call, please?

23 MS. MOFFETT: Yes. Ms. Camacho?

24 BOARD MEMBER CAMACHO:

25 MS. MOFFETT: Ms. Diamond?

1 BOARD MEMBER DIAMOND: Here.

2 MS. MOFFETT: Ms. Glickfeld?

3 BOARD MEMBER GLICKFELD: Here.

4 MS. MOFFETT: Ms. Munoz?

5 CHAIR MUNOZ: Here.

6 MS. MOFFETT: Mr. Stringer?

7 BOARD MEMBER STRINGER: Here.

8 MS. MOFFETT: And Mr. Yee?

9 BOARD MEMBER YEE: Here.

10 CHAIR MUNOZ: Mr. Unger, Order of Agenda, as is?

11 EXECUTIVE OFFICER UNGER: Yes, Chairman. There's
12 one slight change to the order of the agenda. Tomorrow we
13 are planning the public comment period, but we have one
14 public commenter here today who cannot make the meeting
15 tomorrow, Christine Rowe. And my suggestion is, is that we
16 hear her testimony under public comment after the
17 Uncontested Items Calendar. So we'll go 1, 2, 3, 4, 5, and
18 a brief -- and I understand that she has agreed to five
19 minutes of public comment and then we'll get into the Items
20 6 and 7.

21 CHAIR MUNOZ: I don't have a card for her.

22 MS. ROWE: Well, I didn't want (indiscernible) --

23 EXECUTIVE OFFICER UNGER: Okay. So we'll --
24 Ronji, can you help Ms. Rowe get a card together please,
25 for us?

1 CHAIR MUNOZ: Okay. Thank you.

2 MS. ROWE: Thank you.

3 CHAIR MUNOZ: Board Member Communications, why
4 don't we start with Mr. Larry?

5 BOARD MEMBER YEE: Thank you, Madame Chair. No
6 ex parte communications to report, but I should mention
7 that independent of my role on this Board I have been
8 working with an ad hoc group of citizens in the Ojai
9 Valley.

10 Looking at our very dire water supply situation
11 Lake Casitas, which supplies the Valley and part of Ventura
12 is down to 38 percent now. And so this citizen's group is
13 becoming more active in building fires under our elected
14 officials and water agency folks. And to really raise the
15 level of awareness amongst the citizens for much greater
16 water conservation and efficiency, so I've been kind of
17 working in that realm with this group.

18 BOARD MEMBER DIAMOND: I have nothing to report
19 in terms of communications.

20 I will say I was just prompted by what Larry
21 said, I happened to be on a family vacation in Catalina
22 last month. And, of course, Catalina has been before us a
23 number of times and the good news is that the water quality
24 is very good there. People are swimming safely in the
25 ocean. The difficulty there is that there is tremendous

1 water supply issues there. I mean, everybody there is
2 really suffering from the drought. And all of the
3 restaurants are not allowed to serve water to customers
4 even if you ask. All the water that is served there is
5 bottled water.

6 And as you may have seen in the paper just today
7 they've been restricted down even more than they have been
8 before, so it was just an interesting and somewhat
9 upsetting to see the effects of the drought in the
10 community. Like Catalina has actually done a lot to
11 improve their water quality issues, but the drought is
12 making things really, really difficult and that's just one
13 part of our state. Of course, there's so many other parts
14 of our state that are suffering even more.

15 But I just thought it would be interesting to
16 report what's happening on the ground there.

17 CHAIR MUNOZ: Great, thank you.

18 BOARD MEMBER STRINGER: I've got nothing to
19 report. Thank you.

20 CHAIR MUNOZ: Nothing, okay.

21 I have a few things to report. I've had two
22 meetings with Mr. Pistroff (phonetic) from the County to
23 talk about my agenda for the next couple of years. And I
24 focused on foreseeing (indiscernible) collaboration and
25 partnership. And it was a very good meeting, so we could

1 have a good understanding.

2 As you know for over a year we have heard from
3 many of the smaller cities, and all cities, about MS4
4 compliance. And I initiated what I'm calling the Chair's
5 Listening Sessions where we're going to small cities or any
6 cities who want to sit with me, so I can listen to what the
7 concerns are.

8 And we've had already one. We had one in San
9 Gabriel Valley. We had about (indiscernible) cities. Our
10 Executive Officer and Ms. Renee from the staff came to
11 listen and to and verify what was a lot of
12 misunderstandings and confusion about the MS4 Permit.

13 For me it was really very important, for me to
14 listen to mayors, city council members, and city managers,
15 about their worries. As I've told them, "This is our issue
16 and we need to work together." So if there's anybody here
17 that would like to be next on our agenda I'd be more than
18 happy to have that meeting scheduled, so that we can meet
19 in your area. We're not asking you to come downtown,
20 because the point is that we come to you, so that we can
21 sit and listen to what your concerns are.

22 I know that Mr. Wu, probably in his report is
23 going to talk about another meeting we had with some folks
24 last week from various groups as well.

25 But we were received very well. I was expecting

1 actually a beat down, but we had no beat downs there. It
2 was a lot of good communication that we exchanged and good
3 information. So I'm very proud of initiating this and I'm
4 hoping to do more.

5 BOARD MEMBER GLICKFELD: Madame Chair?

6 CHAIR MUNOZ: Yes?

7 BOARD MEMBER GLICKFELD: Wrong thing, okay. I
8 have to hit this. Thank you.

9 So I wanted to thank you for doing this. You
10 know, I've been increasingly alarmed by the newspaper
11 reports and, of course, reality often doesn't match the
12 newspapers and I'm glad to hear that. Anything that I can
13 do or other members can do, if you need somebody to sit in
14 for you when you're on your business schedule I would be
15 happy to volunteer to do that.

16 CHAIR MUNOZ: You know, and actually I would
17 encourage other Board Members to join in on one of these
18 sessions, because it really gives you a perspective that
19 sometimes we've not heard here and for them to see us in a
20 different light where we're sitting listening and trying to
21 understand and have a good exchange of communication.

22 So my apologies for not extending the invitation
23 sooner, but the first one was kind of a pilot to see how we
24 were going to -- how it was going to be. And I think it
25 went really well. And I think if it doesn't go well it's

1 still a good learning for us, because it's not always going
2 to be positive, but it'll always be productive.

3 BOARD MEMBER GLICKFELD: So you'll let us know?

4 CHAIR MUNOZ: Absolutely.

5 BOARD MEMBER GLICKFELD: Thank you.

6 CHAIR MUNOZ: Okay. Uncontested Items, is there
7 a motion for approval unless someone is going to pull an
8 item?

9 BOARD MEMBER STRINGER: So moved.

10 BOARD MEMBER YEE: Second.

11 BOARD MEMBER GLICKFELD: Second.

12 CHAIR MUNOZ: Roll call vote?

13 MS. MOFFETT: Ms. Diamond?

14 BOARD MEMBER DIAMOND: Yes.

15 MS. MOFFETT: Ms. Glickfeld?

16 BOARD MEMBER GLICKFELD: Yes.

17 MS. MOFFETT: Ms. Munoz?

18 CHAIR MUNOZ: Yes.

19 MS. MOFFETT: Mr. Stringer?

20 BOARD MEMBER STRINGER: Yes.

21 MS. MOFFETT: And Mr. Yee?

22 BOARD MEMBER YEE: Yes.

23 MS. MOFFETT: The motion carries.

24 CHAIR MUNOZ: Thank you.

25 Next is Item 6 with the consideration of a

1 petition for review of Executive Officer action to approve
2 the Enhanced Watershed Management Program for the North
3 Santa Monica Bay, pursuant to the L.A. --

4 (Off mic colloquy interrupts.)

5 CHAIR MUNOZ: I'm sorry. I went ahead of myself.
6 For public comment, Ms. Christine Rowe, please approach.

7 I understand she has five minutes; is that
8 correct?

9 EXECUTIVE OFFICER UNGER: That's correct. Chair,
10 can you keep time for us please?

11 MS. ROWE: Thank you, Chair and Honorable Board
12 Members. Each of you should have a copy of my letter and
13 I'm going to skip parts of it, due to time.

14 I would like to thank the Chair and the Executive
15 Director for making it possible for me to be heard on the
16 issue of my appeal as stated above. I have an important
17 medical appointment tomorrow, and my chronic health
18 problems prevent me from attending early morning Water
19 Board meetings.

20 I live within one mile of the UTC Rocketdyne
21 site. I work with the Woodland Hills-Warner Center
22 Neighborhood Council on this project with their within
23 their new Environment Committee

24 Last year, in December the Regional Board
25 circulated their Mitigated Negative Declaration and Soil

1 Management Plan for this project site, UTC Rocketdyne.
2 Within the constraints of the winter holidays I read what I
3 could to prepare our committee to take action on this
4 project. But as a Brown Act required body, when we lost a
5 quorum, the Board could not vote on the letter I had
6 drafted for them. As a result, six of the twelve comments
7 on the MND and SMP were from me.

8 This year, the WHWCNC held elections and we have
9 a new Committee in which only one member was around during
10 that public comment process.

11 On July 21st, 2016 the approvals of the MND and
12 SMP was circulated by the Regional Board staff. However,
13 the large files of these documents were not uploaded until
14 about July 26th.

15 As I began to read these documents, I found
16 errors of substances related more to my community than to
17 Water Board-related issues. I decided that I needed to
18 appeal that Final Initial MND and SMP, and it took me until
19 August 22, 2016 to complete that appeal.

20 At that time I was not aware that the L.A.
21 Department of Building and Safety had already issued a
22 demolition permit on August 9th. On about August 25th, I
23 learned that the demolition had already begun and a
24 considerable amount of demolition had already occurred.
25 That evening I took my first of three walks around the UTC

1 site. And I have provided over 600 photos to the Executive
2 Director, two copies of them on a CD.

3 This historic project site has been allowed to
4 become an urban blight. If this project were in a
5 residential area, neighbors would be complaining to code
6 compliance regarding the lack of maintenance on the project
7 site particularly on the north and west sides of the
8 property, and most specifically in the area of the former
9 Building 38, which was a North American nuclear facility.

10 While the Water Board references the release of
11 Building 38 for unrestricted use, and that the NRC
12 inspected this facility before it was demolished in around
13 2005-2006, this is what a White Paper stated -- I'm not
14 going to spell out what it says.

15 My point to the Regional Board, to the California
16 Department of Health Radiological Health Branch, and others
17 has been that surveying a room for unrestricted use at an
18 industrial site in the 1990s does not clear the property
19 below that facility as being clean.

20 References have been made to accidents and spills
21 in this structure including a uranium fire. Former
22 employees that I have interviewed that worked there were
23 concerned about what went down the drains.

24 Furthermore, this site is due for end use as a
25 mixed commercial and residential construction. It is

1 extremely important to all of the elected officials, in my
2 opinion, that they can say that the appropriate sampling
3 has been done in both the structures and the soil based on
4 end use.

5 Therefore, I had proposed the use of EPA guidance
6 which is based upon risk to future residents. In the
7 meantime, I have been contacting all of the appropriate
8 agencies for guidance on this project. I have many
9 unanswered questions related to this project.

10 And I reference the historical aspects that are
11 supposed to be doing a video. Why did the Regional Board
12 issue an NMD and SMP, when, in my opinion, the UTC site is
13 non-compliant in terms of federal, state, and local laws
14 regarding the Clean Water Act, the Porter Cologne Water
15 Quality Control Act, local and national NPDS requirements,
16 and possibly the MS4 permits for the State of California.

17 It is my opinion that the project site lacks Best
18 Management Practices around its full perimeter in terms of
19 dust mitigation fencing, and waddles to protect against
20 storm water runoff. Trash in the inside the fence line and
21 on the outside of the fence line, which will allow the
22 sediment to reach the storm drains in the next rain event.
23 Therefore, the project could be in violation of TMDLs for
24 trash, sediment, and potential main metals.

25 In a photo by the *Los Angeles Daily News*, two

1 workers are standing next to a crane and a stockpile of
2 debris. They are not even wearing masks. Shouldn't these
3 employees be wearing HAZMAT gear since all of these debris
4 are going to landfills designed for hazardous waste?

5 In my search for information, I have learned that
6 there should be a dust mitigation plan that has been
7 approved by the South Coastal Air Quality Control District
8 for asbestos remediation and for lead paint. Yet to date,
9 I am unable to put my hands on that document. It is my
10 understanding that the removal of the paint and asbestos is
11 considered soft demolition. I do not know how these
12 structures could have had their soft mitigation done when
13 their demolition permits were just issued on August 9th.

14 References are made in the SMP to pile height.
15 What are the regulations regarding how large stockpiles can
16 be onsite?

17 In summary, these are the 12 points that I have
18 submitted to the elected officials for this project site.
19 It is my opinion that we need the appropriate contacts
20 posted at the site, the workers need to be in the
21 appropriate protective gears, there may be -- (timer
22 sounds)

23 I'm sorry. Thank you for your time.

24 CHAIR MUNOZ: Thank you.

25 EXECUTIVE OFFICER UNGER: Okay. Chairman, if

1 you'd like, the Project manager for this cleanup, which is
2 the Water Board that was handling the cleanup is here today
3 if there's any questions. As is Frances McChesney who has
4 been supplying legal advice to our team at this site that's
5 going under redevelopment. So if not, we can handle these
6 some other time, but if there are any direct questions?

7 CHAIR MUNOZ: Are there any questions for the
8 Board?

9 BOARD MEMBER GLICKFELD: Well, I'd like you to --
10 Sam, if you could -- just summarize what the concerns are a
11 little bit. She had a lot of information there and a lot
12 of concerns. And I think what our role is and whether
13 we're doing what we need to be doing, I think focus on
14 that.

15 MS. MCCHESENEY: I could (indiscernible) --

16 EXECUTIVE OFFICER UNGER: Yeah, I'm going to let
17 Frances --

18 BOARD MEMBER GLICKFELD: Oh, welcome back
19 Frances.

20 MS. MCCHESENEY: So the site, the action that the
21 Board took was an action (indiscernible) And what this
22 involved is there's a site that has several parcels, one of
23 which is Building 38. And that parcel has been
24 (indiscernible) cleanup, the soil was cleaned up and the
25 staff issued no further action for that property.

1 This site, the recent approval, was called
2 (indiscernible) and associated building. And this
3 property, the company submitted a request for approval of a
4 Soil Management Plan, which is basically to test the soil,
5 remove the soil. This (indiscernible) appropriate place
6 and then they had to get permits from the city to demolish
7 buildings.

8 So the Regional Board in coordination with the
9 Applicant did a CEQA review and approved the Mitigating
10 Negative Declaration. And in talking over the facts of the
11 situation, but some of -- Ms. Rowe was talking about
12 Building 38 quite a bit in her comments -- and Building 38
13 was not the subject of this action. This action was just
14 specifically to the property that has Building 1 on it.

15 And in reviewing all of the materials involving
16 the site we understand there's already the health standards
17 to protect the uses that are expected to occur. There's
18 (indiscernible) planning going on associated with the site,
19 but that wasn't the subject of this action.

20 So this action is specifically about a Soil
21 Management Plan to approve removal of the soil. And the
22 (indiscernible) it was permitted. It didn't involve
23 (indiscernible) there aren't stormwater issues and there
24 aren't other issues that she's raised and in my opinion
25 involving another property, but that's not the subject of

1 this action.

2 And then Ms. Rowe filed a petition with the State
3 Water Board and the State Water Board has that petition and
4 (indiscernible) if they decide to review that petition,
5 they'll direct the Regional Board to provide
6 (indiscernible).

7 BOARD MEMBER GLICKFELD: Thank you.

8 CHAIR MUNOZ: Any other comments or questions?

9 EXECUTIVE OFFICER UNGER: I would just add one
10 other comment. Our Project Manager Anna Townsend, is here
11 today, and she was at the site yesterday. It was her
12 impression -- I don't think the report is written up yet,
13 but that the mitigation measures in the MND, in the EIR,
14 were being followed. And both the AQMD and the City of
15 L.A. Fire Department have been out there inspecting the
16 demolition of these buildings, so that the soil can be
17 accessed and removed in the property terms of release
18 later.

19 BOARD MEMBER GLICKFELD: Okay. Thank you.

20 MS. MCCHESENEY: And it wasn't in the negative
21 declaration (indiscernible) property.

22 CHAIR MUNOZ: Thank you. And yes, welcome back.
23 I'm glad you're here.

24 Ms. Rowe, thank you for spending the time and
25 giving us your briefing. Thank you.

1 MS. ROWE: Thank you.

2 CHAIR MUNOZ: Okay. Let's now move on to Item 6,
3 which is the consideration of a Petition for Review of
4 Executive Officer's action to approve the Enhanced
5 Watershed Management Program for the North Santa Monica Bay
6 pursuant to the Los Angeles County Municipal Separate Storm
7 Sewer System MS4 Permit.

8 We are going to have our Counsel, Jennifer
9 Fordyce, who will be speaking. We'll have Ms. Rene will be
10 speaking for 10 minutes. The Los Angeles Waterkeeper and
11 NRDC will be giving a joint presentation of 20 minutes,
12 Board staff responses, the L.A. County Flood Control ten
13 minutes, City of Malibu ten, and then we have speaker
14 cards.

15 So we'll start with Ms. Jennifer.

16 BOARD MEMBER GLICKFELD: Jennifer, do we have
17 your presentation here? Is this the staff presentation.

18 MS. FORDYCE: Exactly.

19 BOARD MEMBER GLICKFELD: This is it, right?

20 MS. FORDYCE: Yeah.

21 BOARD MEMBER GLICKFELD: That's yours?

22 MS. FORDYCE: Yes.

23 BOARD MEMBER GLICKFELD: Okay. Thank you.

24 MS. FORDYCE: Good afternoon Chair Munoz and
25 Members of the Board. As you know, I am Jennifer Fordyce,

1 Legal Counsel for the Board. Item 6 is a consideration of
2 a petition for review of the Executive Officer's approval
3 of the North Santa Monica Bay Enhanced Watershed Management
4 Program pursuant to the Los Angeles County MS4 Permit.

5 I am introducing this item as this type of
6 proceeding is different than others you have experienced.
7 You may recall that this Board first considered a petition
8 for review pertaining to approval of nine watershed
9 management programs almost exactly one year ago today.

10 CHAIR MUNOZ: Can you speak up a little bit
11 faster, I mean speak up a little bit.

12 EXECUTIVE OFFICER UNGER: Speak a little bit
13 slower.

14 CHAIR MUNOZ: There's a great echo.

15 MS. FORDYCE: Sorry, my voice is lower.

16 BOARD MEMBER DIAMOND: Keep the microphone close.
17 Speak close to it.

18 MS. FORDYCE: Like that?

19 BOARD MEMBER DIAMOND: Yeah. There you go.
20 Thank you.

21 MS. FORDYCE: So I'm going to start by briefly --
22 so the process that we're first going to be using for
23 today's consideration of the petition will follow a similar
24 format. I'm going to start by briefly introducing this
25 item to provide you with some background and context for

1 what led us here today, summarize the contentions that were
2 raised in the petition, and explain what your options are
3 in your consideration today.

4 For additional context, Renee Purdy will then
5 briefly provide you with the background on the relationship
6 of the North Santa Monica Bay Enhanced Watershed Management
7 Program, or what we call the NSMB EWMP area. So the Laguna
8 Point to Latigo Point ASBS, which is also called the ASBS
9 24 as well as on the Ocean Plan and the ASBS special
10 protections and discharge requirements it contains,
11 including preparation of ASBS compliance plans.

12 This background is needed, because of the
13 centrality of the Ocean Plan and its ASBS provisions to the
14 petition.

15 The Petitioners will then make their presentation
16 on their petition, since that is the item the Board is
17 considering. After the Petitioners conclude with their
18 presentation, responses to the petition will follow,
19 starting with Board staff. Board staff will provide a
20 brief recap of the NSMB EWMP development, review, and
21 approval process that was undertaken by Board staff,
22 including the Executive Officer, and then provide Board
23 staff's responses to the specific contentions raised in the
24 Petition. The NSMB EWMP Permittees will then make their
25 presentations responding to the petition, followed by any

1 interested persons.

2 So I'm going to start by providing a very brief
3 background and context to explain the purpose of this item.

4 On April 19, 2016, the Executive Officer, on
5 behalf of the Board, approved the NSMB EWMP pursuant to the
6 L.A. County's M4 Permit. If you recall, Part VI.A.6 of the
7 Los Angeles County M4 Permit, which has provisions on the
8 screen, provides that, "Any formal determination or
9 approval made by the Executive Officer pursuant to the
10 Permit may be reviewed by the Regional Board." A Permittee
11 or member of the public may request such review by filing a
12 petition with the Regional Board within 30 days of the
13 notification of the Executive Officer's decision.

14 This provision was included in the permit to
15 address input received during permit development in light
16 of the new watershed based paradigm for permit
17 implementation. And I want to say that it's at the
18 Regional Board's discretion whether to review a petition
19 and, if so, how to resolve it.

20 So about 30 days after the Executive Officer's
21 approval of the EWMP, on the On May 19, 2016, pursuant to
22 the permit provision I just discussed, Los Angeles
23 Waterkeeper and Natural Resources Defense Counsel -- who I
24 will refer to collectively as the Petitioners -- filed a
25 petition for the Regional Board to review the Executive

1 Officer's action to approve the North Santa Monica Bay
2 EWMP. The Petitioners did not challenge the Executive
3 Officer's approval of any other EWMPs; it's only North
4 Santa Monica Bay EWMP.

5 So the main contentions raised in this Petition
6 center around the fact that a substantial portion of the
7 coastal zone in the North Santa Monica Bay EWMP area has
8 special status as an "Area of Special Biological
9 Significance," also called an ASBS. Discharges to ocean
10 waters in California are governed by not only the Regional
11 Water Boards' Basin Plans, but also by the Water Quality
12 Control Plan for Ocean Waters of California, also known as
13 the Ocean Plan.

14 That statewide plan includes special protections
15 for ASBSs and includes additional requirements for
16 discharges to ASBSs including MS4 discharges. These ASBS
17 special protections and additional requirements contained
18 in the Ocean Plan are the focus of many of the Petitioners'
19 contentions. As with the requirements in our Los Angeles
20 Basin Plan, the requirements of the Ocean Plan are
21 implemented through various permits and other regulatory
22 orders, issued by the Regional Board, including the L.A.
23 County MS4 Permit.

24 So specifically, the Petitioners allege that the
25 Executive Officer improperly approved the North Santa

1 Monica Bay EWMP despite its failure to 1) comply with the
2 relevant terms of the MS4 Permit, 2) comply with the
3 conditions of State Board Resolution No. 2012-0012, also
4 known as the ASBS Exception, and 3) consider relevant,
5 available ASBS stormwater and non-stormwater data and to
6 comply with the ASBS Exception's prohibition against non-
7 stormwater discharges.

8 What the Petitioners are seeking through their
9 petition is an order by the Regional Board to invalidate
10 the Executive Officer's April 19, 2016 approval of the
11 North Santa Monica Bay EWMP and an order remanding the
12 matter with instructions for staff to require compliance
13 with Permit requirements.

14 It is important to note that while the
15 Petitioners seek an order invalidating the Executive
16 Officer's approval of the North Santa Monica Bay EWMP as a
17 whole, the Petitioners only specifically take issue with
18 how the EWMP addresses MS4 discharges to the ASBS portion
19 of the EWMP area.

20 So I know the Board is accustomed to seeing
21 options slide at the end of a presentation. But I wanted
22 to include it upfront, so that you know what options you
23 have today as you hear from the Petitioners, the
24 Permittees, and any interested persons.

25 So I want to first note that there are no legal

1 requirements or established procedures for a Board's review
2 of its Executive Officer's actions. As such you have a lot
3 of flexibility in your consideration of the petition.

4 If you recall from a few slides ago concerning
5 Part VI.A.6 of the Permit, the purpose of the petition is
6 to request that the Regional Board review the Executive
7 Officer's approval. Thus, after hearing from the
8 Petitioners, Board staff, the Permittees, and any other
9 interested persons, the Board is only expected to decide
10 whether to 1) either review the petition on its merits at a
11 subsequent meeting, or 2) not review the petition on its
12 merits. And if the Board decides not to review the
13 petition on its merits, there's not going to be any further
14 Regional Board proceedings on the petition.

15 To aid the Board in making an informed decision
16 as to whether to review the petition or not, responses to
17 the petition and documents pertaining to the North Santa
18 Monica Bay EWMP were provided to you in advance of this
19 Board meeting. Responses to the petition include written
20 responses by Board staff to the contentions raised in the
21 petition, as well as responses prepared by the City of
22 Malibu, the County of Los Angeles and Los Angeles County
23 Flood Control District in a joint letter, and from
24 Geosyntec Consultants who worked on the North Santa Monica
25 Bay EWMP with the Permittees.

1 Lastly, in a typical Board proceeding, Board
2 staff normally make a recommendation to you as your
3 advisors. In this matter, staff and legal counsel remain
4 as your advisors. However, as it is staff's action that
5 you are reviewing, staff are not going to make a separate
6 recommendation to you on this matter. The purpose of
7 staff's presentation and written responses is to explain
8 the EWMP review and approval process and why the Executive
9 Officer determined that approval of the North Santa Monica
10 Bay EWMP, in light of the contentions raised in the
11 Petitioners, was appropriate.

12 I will now turn it over to Renee to discuss more
13 about the Ocean Plan and ASBS coming forward who has some
14 comments for discussion.

15 CHAIR MUNOZ: Thank you. That's good.

16 BOARD MEMBER GLICKFELD: Hey, Madame Chair?

17 CHAIR MUNOZ: Yes, Ms. Madelyn?

18 BOARD MEMBER GLICKFELD: Well, this is rather
19 unusual. We've had one of these before, but I want to make
20 sure I understand completely what the Board is -- has to
21 focus on in making this decision. We don't have a staff
22 recommendation on this. So basically what we're deciding
23 is whether the petition has merit, or doesn't have merit;
24 is that true? When you say decide to review the position
25 on its merits, we have to decide whether it has any merit

1 in the first place.

2 MS. FORDYCE: Yes.

3 BOARD MEMBER GLICKFELD: So we wouldn't be
4 deciding anything about what to do with the petition. We
5 would be deciding whether it has merits and then do what,
6 direct the staff to do what?

7 MS. FORDYCE: So to provide some comments about
8 why what we're doing is a little bit different than last
9 time is the last we had a petition that challenged nine
10 watershed management programs and obviously you couldn't
11 have nine separate Board proceedings, so we did address
12 them together.

13 And we did feel like the State Board had -- when
14 the State Board adopted the Water Quality Order addressing
15 the petitions on the permit, there were certainly some
16 statements from certain State Board Members that basically
17 insinuated that the Regional Board, "You're expected to
18 take on this petition," so really (indiscernible) process.

19 Here we're only talking about one EWMP, so with a
20 very narrow focus. And due to the timing on the petition,
21 and I think as I mentioned to your before, the petition
22 (indiscernible) as a State Board petition. And that
23 petition for the State Board is ambiguous (indiscernible),
24 so the reason why we did this is we wanted to invite
25 certainly both Petitioners and the State Board as to is the

1 Regional Board going to review this petition or not? And
2 there wasn't enough time to be able -- this originally was
3 a one-day Board meeting and so we'd had this half-day for
4 all things we were trying to get done.

5 What we're asking today is just to focus on
6 whether you guys want to review the petition or not review
7 it. The (indiscernible) is does the petition have merit
8 and you would like to review it, are there things that
9 you'd want to hear more about? Or do you have questions
10 that can't be answered today.

11 So those are the types of considerations that
12 we're looking at today. And if you guys do want to review
13 the petition then likely it will probably be brought either
14 in November or December. And we can focus on more details
15 if you guys want to hear about that.

16 BOARD MEMBER GLICKFELD: During the interim, if
17 we decide we want to review, does it have any impact on the
18 standing of this particular Water Management Plan? What's
19 the status, do they go out of compliance?

20 MS. FORDYCE: No. Until you guys have made a
21 determination -- until you affirmatively make an action
22 overturning the Executive Officer's action the EWMP is
23 still in place.

24 BOARD MEMBER GLICKFELD: And then the last
25 question, which is assuming a lot. Assuming we do all of

1 this, which is a big assumption, what happens if we find
2 for the Petitioner in this appeal? If we accept it and
3 find for the Petitioner, does the Board simply direct the
4 discharger to ameliorate the problems? Or do they fall
5 into the -- do you go back to the TMDLs situation, which is
6 it? Do we have to basically push them off the cliff or do
7 we have a way of fixing this.

8 MS. FORDYCE: So there's no one answer. And this
9 is probably those types of question probably would be
10 better for us if the (indiscernible) like I said there's no
11 process for this. So we're kind of making it along the
12 way, trying to provide (indiscernible) for everybody.

13 So in terms of what ultimately could happen, it
14 might be like I said the EWMP has part of it. There's ASBS
15 portions and there's non-ASBS portions, so theoretically if
16 you find that the petition has merit and you conclude that
17 the Executive Officer's approval was inappropriate, perhaps
18 there's a way to separate the ASBS portion from the non-
19 ASBS portion directing the Permittees to go back and revise
20 the EWMP according to the instructions that you guys
21 provide and (indiscernible).

22
23 BOARD MEMBER GLICKFELD: So that would be
24 something we would decide in a subsequent meeting?

25 MS. FORDYCE: I'd recommend that (indiscernible)

1 in order to focus the issues.

2 BOARD MEMBER GLICKFELD: All right so today we're
3 just isolated the issue of do we want to go ahead and bring
4 those people in the Board in a more detailed way?

5 MS. FORDYCE: That's my recommendation.

6 BOARD MEMBER GLICKFELD: Yeah. Okay.

7 CHAIR MUNOZ: Mr. Stringer?

8 BOARD MEMBER STRINGER: While we're on this
9 procedural note, we delegated the authority to Sam to make
10 this decision, right? And so in my mind I think about
11 what's our standard of review here? And what is our real
12 role in reviewing a decision that was made pursuant to our
13 delegated authority. We delegated it because these plans
14 are incredibly technical and we set the policy side boards
15 for them, and it's staff's job to carry out the technical
16 aspects of them.

17 So I guess I view it a little bit differently. I
18 don't know that I'm not thinking about it so much as the
19 decision on the merits if you will, because I don't think
20 anyone here has the technical expertise to second guess
21 staff on these things. And so it's a little bit of a weird
22 place that we're in. And without any standard of review
23 and I -- we just have to kind of fumble our way through it,
24 I guess. But my perspective is that our role is not so
25 much to review something on the merits, but just to take a

1 look at the issues and decide whether any obvious mistakes
2 were made.

3 MS. FORDYCE: Yes, and I mean I would agree with
4 that. And you're only seeing the sort of dirty details at
5 this point.

6 BOARD MEMBER STRINGER: Right. And I guess, you
7 know, I'm comforted by the fact that there is a process
8 already in place that Petitioners have commenced, which was
9 the process that is laid out in a tour, which is the appeal
10 to the State Board, which is a more formal part of the
11 appeal process --

12 MS. FORDYCE: It's more formal as a written
13 standard of appeal --

14 BOARD MEMBER STRINGER: Yeah. Yeah.

15 MS. FORDYCE: This is not a formal hearing
16 (indiscernible) possible.

17 BOARD MEMBER STRINGER: I wouldn't know, like if
18 a court were to review whatever it is that we're doing
19 today, I don't know -- if I put myself in the shoes of a
20 judge I wouldn't know what standard to apply. And so I
21 view it as were there any obvious mistakes?

22 MS. FORDYCE: I think maybe we're
23 (indiscernible), but really it's whether you think the
24 Executive Office action was inappropriate in light of
25 contentions raised in the petition, but also recognizing

1 what kind of information was forwarded to the Executive
2 Officer at the time he made a decision. Obviously we're
3 always going to get more information (indiscernible) --

4 BOARD MEMBER STRINGER: In an appropriate
5 standard of review --

6 MS. FORDYCE: Yes.

7 BOARD MEMBER STRINGER: -- we might call it an
8 obvious mistake.

9 MS. FORDYCE: Yes. Yeah, and that's
10 (indiscernible)

11 BOARD MEMBER GLICKFELD: I certainly don't want
12 to have --

13 BOARD MEMBER STRINGER: Anyway, so we're counting
14 angels on a pin here.

15 BOARD MEMBER GLICKFELD: -- our decisions reflect
16 on the Executive Officer, it's an issue with us.

17 CHAIR MUNOZ: Okay. Why don't we proceed unless
18 there's any other questions?

19 MS. MCCHESENEY: This is Frances over here waving
20 her arms around, I'm sorry.

21 I just want to add in that the Executive -- the
22 Board has delegated the authority to the Executive Officer
23 to make many actions. And those actions, whatever the
24 Executive Officer has, are considered by law the actions of
25 the Board and are petitionable to the State Water Board.

1 But the Regional Board in most circumstances, not all,
2 could reconsider an Executive Officer's actions on any of
3 the things that are delegated, mostly but not all.

4 And so I get calls more on the nature of
5 reconsideration of what the Executive Officer did and not,
6 you know -- and then you're just acting as a Board
7 reconsidering this. So it's not even a sense of a -- if
8 you choose to review you would just choose to review it on
9 the power of you reviewing any decisions on any actions.

10 So this is more of just a reconsideration. It's
11 not really a petition or an appeal. It's more like
12 reconsidering what your Executive Officer did after he was
13 delegated authority, and decide if you took an action and
14 you decide you want to reconsider your own action you can
15 do that. And you're essentially reconsidering an action of
16 the Board the Executive Officer (indiscernible) on your
17 behalf.

18 So does that maybe help some?

19 CHAIR MUNOZ: I think it brought us a little more
20 clarity, so thank you.

21 Okay. Well, on that note thank you so much. On
22 that note let's bring up Ms. Renee from our staff who'll
23 give us a presentation.

24 MS. PURDY: Yes. Good morning, everybody. Can
25 you hear me okay? Now, you can. It's loud from up here.

1 My name is Renee Purdy and I'm going to be now
2 giving you some background before we turn it over to the
3 Petitioners for their presentation. And so the brief
4 presentation that I'm providing now and the one I'm going
5 to provide after the Petitioners basically mirrors Board
6 staff's August 29th, 2016 memorandum that responded to the
7 Petitioners' contentions.

8 We generally organized it the same way, so that
9 might be helpful. If you see numbering at the top of the
10 slides the numbering refers to the same numbering in the
11 memorandum that we gave you.

12 And before I go on, I do want to acknowledge the
13 work of Deborah Brandes and Beth Payne and also Ivar
14 Ridgeway. They're in the back of the room. And they've
15 been tremendously helpful in preparing the written
16 memorandum as well as the presentation for you today.

17 The North Santa Monica Bay EWMP area is the
18 westernmost coastal area in Los Angeles County. It
19 encompasses 86 square miles, including 20 sub-watersheds
20 and 28 freshwater coastal streams. All of these receiving
21 water bodies in the EWMP area are ultimately tributary as
22 you all probably know to Santa Monica Bay, and thus the
23 regulations from the California Ocean Plan in addition to
24 those in our Regional Basin Plan, are applicable.

25 And I did want to note I really enjoyed that

1 we're starting at 12:30, because I had a nice drive right
2 along the North Santa Monica Bay EWMP area this morning.
3 And I actually went to the watersheds that lead to that
4 area and actually stopped at the beach at Latigo Point as
5 well. So it really put me in the mood for the meeting
6 today. (Laughter.)

7 But so this figure shows the overall North Santa
8 Monica Bay EWMP area as well as the portion that drains to
9 the Laguna Point to Latigo Point ASBS, also referred to as
10 ASBS 24 as Jennifer mentioned. That's shown in the blue
11 hatched area. Half of the EWMP area drains to the ASBS.

12 ASBSs are designated by the State Water Board and
13 protected through the Ocean Plan. ASBS 24 was actually
14 designated in 1974. It stretches 24 miles, spanning the
15 westernmost portion of Los Angeles County and the
16 southeastern part of Ventura County. It's actually the
17 largest ASBS along the mainland of Southern California.
18 Approximately 12.8 miles border the North Santa Monica Bay
19 EWMP area in Los Angeles County. You can see that the
20 southeastern boundary of the ASBS is at Latigo Point, which
21 is about three miles west of Malibu Pier.

22 So in 1972, the State Water Board adopted the
23 California Ocean Plan. It's been revised numerous times
24 with the latest revision in 2015. The Ocean Plan
25 establishes water quality objectives for California's ocean

1 waters. And it provides the basis for regulation of wastes
2 discharged into California's coastal waters.

3 It's applicable to the point sources, such as MS4
4 discharges, as well as non-point source discharges.

5 Importantly, the Ocean Plan prohibits the discharge of
6 waste to designated ASBSs unless an exception is granted by
7 the State Water Board.

8 The Ocean Plan authorizes the State Water Board
9 to grant inspection into the Ocean Plan provisions,
10 including the prohibition of discharges to ASBSs, where the
11 exception will not compromise the of beneficial uses of
12 ocean waters and the public interest will be served.

13 In 2004, the State Water Board notified a number
14 of entities that they must cease the discharge of
15 stormwater and nonpoint source discharges into ASBSs or
16 request an exception to the Ocean Plan's Discharge
17 prohibition.

18 The State Water Board received 27 applications
19 for an exception to the Ocean Plan prohibition including
20 from the City of Malibu, the County of Los Angeles, and the
21 Los Angeles County Flood Control District, which I'll refer
22 to from here on collectively as Permittees. And this
23 request was for an exception for MS4 stormwater discharges
24 to ASBS 24.

25 In March, 2012, through Resolution Number 20120-

1 12, the State Water Board adopted a general exception to
2 the Ocean Plan prohibition against waste discharges to ASBS
3 for these discharges of stormwater and non-point source
4 waste by the 27 applicants. And this was with the criteria
5 for a provision that these discharges are covered under an
6 appropriate authorization to discharge waste to the ASBS.
7 And such authorizations include the L.A. County MS4 permit.

8 And second, that the authorization or permit
9 incorporates all of the ASBS special protections that are
10 contained in Attachment B to the Ocean Plan, which are
11 applicable to that discharge.

12 So MS4 discharges from the City of Malibu, the
13 County of Malibu, and the Los Angeles County Flood Control
14 District meet these two criteria. The discharges are
15 covered under the L.A. County MS4 permit and the L.A.
16 County MS4 incorporates all the ASBS requirements from the
17 Ocean Plan.

18 The ASBS special protections require MS4
19 Permittees to specifically address the prohibition of non-
20 stormwater discharges and a requirement that MS4 stormwater
21 discharges may not alter natural ocean water quality. And
22 they need to address these in what is referred to as an
23 ASBS Compliance Plan. The ASBS Compliance Plan is subject
24 to approval by the Executive Director of the State Water
25 Board or Executive Officer of the Regional Water Board.

1 The ASBS Compliance Plan is to be included in the
2 Permittees' Stormwater Management Plan or SWMP. And in the
3 case of the L.A. County MS4 Permit, for Permittees that opt
4 to develop a Watershed Management Program or an EWMP
5 Watershed Management Program, the Permittees' SWMP is their
6 Watershed Management Program or Enhanced Watershed
7 Management Program.

8 In September of 2014, the City of Malibu, the
9 County of Los Angeles and the Flood Control District
10 submitted a draft ASBS Compliance Plan to the State Water
11 Board. Then in March, 2015, the State Water Board provided
12 comments on the draft ASBS Compliance Plan and required the
13 Permittees to make some revisions and re-submit the Plan by
14 September of 2015. In September of 2015, Permittees
15 submitted a revised ASBS Compliance Plan to the State Water
16 Board and is currently under review by the State Water
17 Board.

18 I also did want to note that said submission of
19 the revised Compliance Plan in September 2015, additional
20 sampling has been conducted by Permittees pursuant to some
21 of these ASBS requirements and will be submitted to the
22 State and the Regional Board in the near future.

23 Finally, I want to briefly cover the data
24 evaluation requirements in the ASBS Special Protections.
25 These require dischargers to collect ocean water samples at

1 a site within the ASBS, paired with stormwater samples from
2 a nearby MS4 outfall, in order to evaluate compliance with
3 the Ocean Plan's narrative objective regarding alteration
4 of natural ocean water quality.

5 And I know the diagram on the right in the slide
6 is not really very legible, but it is included in your
7 Board package. It's page 6-68. It's up on your screen,
8 but if you look in your Board package on 6-68 you should be
9 able to see a better version of that. It's the old
10 version.

11 The assessment has three steps. The first is an
12 evaluation of what we call post-storm ocean water quality
13 within the ASBS relative to natural ocean water quality.
14 And natural ocean quality was pre-determined through
15 sampling of various reference sites through the
16 (indiscernible) monitoring program.

17 And then where post-storm water quality is worse
18 than pre-storm or excuse me, the natural ocean water,
19 quality, then there's a comparison of post-storm and pre-
20 storm ocean water quality within the ASBS.

21 And then finally, if that post-storm ocean water
22 quality within the ASBS is altered from the pre-storm
23 conditions, then the Permittees look to their MS4 discharge
24 to see if the quality of the quality of the discharge might
25 have caused or contributed to that alteration of natural

1 water quality.

2 Again, it's on page 6-68 if you are able to find
3 that in your Board package. It's a somewhat complicated
4 process, so the flow chart helps someone in understanding
5 that.

6 So in summary, there are four sets of data that
7 are used in this data evaluation. There's reference ocean
8 water quality that's considered, then there's pre-storm and
9 post-storm water quality and then MS4 stormwater discharge
10 data quality.

11 So I will probably be touching on this again in
12 my response, but that concludes my overview of the North
13 Santa Monica Bay EWMP relative to the ASBS 24 and the Ocean
14 Plan and ASBS Special Protections and requirements.

15 So I'm now going to invite the Petitioners to the
16 podium to present their contentions. And then following
17 their presentation, I will return to provide Board staff's
18 response.

19 CHAIR MUNOZ: Thank you.

20 MR. PUGSLEY: Thank you. My name is Arthur
21 Pugsley. I'm here today with Becky Hayat. I'm with the
22 L.A. Waterkeeper and Becky's with NRDC.

23 Before we begin on the substance of our petition,
24 I would just like to put on the record we have received the
25 Chair's denial of our request to appoint separate counsel

1 for the Board and for staff. And we continue to lodge our
2 objections to that, because counsel is -- he has to advise
3 the Board Members neutrally while also advising the staff,
4 whose approval is the subject of the proceedings.

5 And this is especially true in these proceedings
6 today, because their functioning as a proceeding sort of on
7 the merits of the petition to determine whether there will
8 be further proceedings on the merits of the petition.

9 So we think that some sort of advocacy role is
10 almost inherent in such a structure and wish to just lodge
11 those objections.

12 I will now turn it over to Becky who will --

13 MS. MCCHESENEY: Hi, Mr. Pugsley. This is Frances
14 over here. Let me just clarify and tell the Board what I
15 did or what the Chair did, just so they know.

16 So the Board Chair issued a ruling that I've
17 given you copies of that denies the request and lays out
18 the concerns you've raised and then the basis for the
19 denial of the request. So you have that and I think
20 (indiscernible) I don't think we have to contest it
21 anymore, but I just wanted to let you know that you have
22 that.

23 CHAIR MUNOZ: Thank you

24 MS. HAYAT: Good afternoon Chairman Munoz and
25 Members of the Board, Becky Hayat with the Natural

1 Resources Defense Council. On this matter we would just
2 like to thank the Board staff for all their hard work in
3 helping and working with the Permittees to do all their
4 EWMPs. The staff contributions have not gone unnoticed as
5 evidenced by the fact that most of the EWMPs that were
6 approved were fairly robust and were accepted. And that
7 only one of the EWMP approvals was challenged.

8 NRDC, we work daily to protect and enhance the
9 waters that our members swim, fish, surf and boat in so
10 that they are clean, healthy and safe. And because of
11 polluted runoff now threatens these water bodies our
12 organizations work closely with this Board staff to ensure
13 effective control of stormwater pollution and compliance
14 with requirements of the L.A. County MS4 water permits.

15 We appreciate the opportunity today to provide
16 you with the addition of our petition for review of the
17 Executive Officer's approval of the North Santa Monica Bay
18 EWMP. And as Arthur will discuss in more detail the
19 Executive Officer approved the EWMP that does not protect
20 ASBS 24 and fails to comply with the terms of the MS4
21 Permit. A review by this Board is needed to correct these
22 serious flaws.

23 The North Santa Monica Bay EWMP as you've heard
24 by now includes areas of special biological significance
25 within the proceeding waters. The California Ocean Plan

1 protects those areas with piping (phonetic) standards in
2 order to preserve the special habitat, species and
3 biological medians that exist in these ocean areas.

4 According the State Water Resource Control Board
5 areas of special biological significance are the basic
6 building blocks for a sustainable, resilient, coastal
7 environment and economy. In other words, they are the
8 ecosystem gem of the Coast and they are a critical part for
9 any MS4 Permit to be extended (indiscernible) stormwater
10 discharge to an ASBS.

11 Given the (indiscernible) pressures on the
12 California's Coastline, pollution control officials must
13 provide continual and adequate protections for areas of
14 special biological significance. And dischargers must be
15 held accountable for posing harmful impact in these special
16 coastal areas.

17 To give a sense of the quality of resources
18 involved here is a view of ASBS 24. As Renee mentioned
19 ASBS 24 spans 24 miles of California Coast and is home to
20 many of the precious marine species. And to just get a
21 sense of the worst ASBS 24 here is a slide of an outfall
22 showing the discharges of polluted runoff into the waters
23 of Zuma Beach.

24 In 2012 the North Santa Monica Bay EWMP
25 Permittees received an ASBS exception from the requirement

1 applicable to dischargers to areas of special biological
2 significance. However, the North Santa Monica Bay EWMP
3 fails to apply the standards of the ASBS exception. The
4 EWMP also fails to consider relevant non-stormwater data
5 for dischargers for ASBS as required by the MS4 Permit.

6 This Board must correct these flaws, because the
7 Dischargers permit provides them with a safe harbor. The
8 permit deems the Permittee to be in compliance while
9 implementing an approved EWMP. Thus the permit approval
10 process represents a last opportunity to protect these
11 special biological locations or else risk worsening them
12 while dischargers face few repercussions or penalties.

13 These are all the reasons why it is especially
14 concerning to us that the Executive Officer approved the
15 North Santa Monica Bay EWMP. Even if the permit is fully
16 implemented it will not viably protect ASBS 24, because the
17 approved permit fails to apply the exception standards and
18 fails to consider all relevant data as required by the
19 permit.

20 Given the significance of the North Santa Monica
21 Bay EWMP and the implications for aquatic resources we
22 strongly urge this Board to review our petition on the
23 merits. And now I will turn it over to Arthur who will
24 explain the shortcomings in more detail.

25 MR. PUGSLEY: And some of this was actually done

1 in the staff presentation, so I'll skip through it in the
2 interest of time.

3 As you know, the ASBS prohibits all discharges to
4 the ASBS waters subject to narrow exceptions contained in
5 the ASBS exceptions.

6 The EWMP fails to prohibit non-stormwater
7 discharges to ASBS Number 24. And it also fails to apply
8 the exception standards prohibiting any stormwater
9 discharges altering natural ocean water quality. The rest
10 of these slides are just sources for that contention, so
11 again in the interest of time I'll continue further.

12 The EWMP does not consider all of the available
13 relevant stormwater and non-stormwater data as required by
14 the MS4 Permit. Here is a list of various types of that
15 data. And as you see several the data including the 2013-
16 14 stormwater samples of 21 outfalls for the ASBS are
17 actually attached as an appendix to the EWMP itself.

18 Despite this the EWMP denies the existence of any
19 relevant discharge data. It says on page 43, "No MS4
20 discharge monitoring data were available," at the time of
21 EWMP preparation. Now, in responses to comments issued
22 after the staff approval the responses to comments asserted
23 that the available data were reviewed and were incorporated
24 by reference into the EWMP.

25 However, this assertion contradicts the plain

1 language of the EWMP itself that says, "No discharge data
2 were reviewed or considered." Furthermore, even if they
3 were incorporated by reference, data incorporation by
4 reference fails to meet the MS4 Permit requirements for a
5 Reasonable Assurance Analysis, because the incorporation by
6 reference is not an input into the RAA. It must be
7 actively inputted to the properly calibrate the models.

8 At this point what I'd like to is just run
9 through the Regional Board staff responses to our petition.
10 As you can see the claims that the responses make are
11 basically just the negative of ours -- that they did apply
12 the current standards and consider all relevant data.

13 However, the EWMP itself says that no discharge
14 data was considered. Now, the staff response interprets
15 the EWMP's statement that no data was considered as meaning
16 that the data were rejected as limited or irrelevant. But
17 nothing in the EWMP itself indicates that the ASBS data was
18 evaluated in any manner. There's no explicit or even
19 implicit rejection as limited or irrelevant.

20 And I don't think the point has been answered
21 yet, but attaching a plan that includes data as an exhibit
22 to the EWMP is not equivalent to consideration of that data
23 in the EWMP, in particular in the Reasonable Assurance
24 Analysis.

25 Now, there were 59 non-stormwater discharges to

1 the ASBS, many repeat discharges, that were observed and
2 documented in the ASBS Compliance Plan. The staff response
3 to the petition includes the admission that none of this
4 visual observation was considered in the EWMP and that the
5 EWMP proposes to repeat the visual observation process
6 rather than building on the data that's already available.
7 So the resources expended under the ASBS Program are
8 effectively wasted and compliance is being delayed, because
9 of this failure to consider relevant data.

10 Now the ASBS exception requires a compliance plan
11 for BMPs that does one of two things, it reduces pollutants
12 by 90 percent, or meets the Ocean Plan instantaneous max
13 limits for the effluents question. However, the EWMP only
14 applies bacterial and nutrient limits in its modeling
15 exercise and BMP Plan. So basically what this means is the
16 ASBS standards were never applied.

17 Attaching the ASBS Compliance Plan that
18 references Ocean Plan standards was done, and that was
19 attached as an exhibit to the EWMP. But that's not
20 equivalent to modeling in particular in the RAA in using
21 those standards.

22 Staff is also arguing that Ocean Plan limits are
23 irrelevant unless correlated or paired to receiving water
24 sampling. However, neither the ASBS exception language nor
25 the attached flow chart require, or even mention,

1 correlation with repeat paired receiving water sampling.

2 The exception requires a Compliance Plan that
3 meets Ocean Plan standards or reduces pollution loads by 90
4 percent without conditions or correlations or pairing. The
5 staff interpretation will allow continued discharges
6 violating the Ocean Plan standards into the ASBS.

7 And finally, the ASBS prohibition on non-
8 stormwater discharges in not properly applied in the EWMP.
9 The exception has flatly prohibited non-stormwater
10 discharges since 2012. But the EWMP, and specifically the
11 RAA, apply TMDL standards to determine dry weather
12 compliance. Those TMDL standards include allowances for
13 exceedance days. Hence, the EWMP modeling does not apply
14 the ASBS prohibition, and does not propose BMPs to comply
15 with that standard. Its modeling allows dry weather
16 exceedances based on TMDL standards, but not circular ASBS
17 standards.

18 So for these reasons we believe that the EWMP
19 fails to apply ASBS exception Requirements and thereby
20 violates the Ocean Plan. And its failure to consider
21 readily available, relevant data also violates the MS4
22 Permit. And therefore the Regional Board should therefore
23 review merits of the petition. Thank you.

24 MS. PURDY: All right. So, again, Renee Purdy.

25 And so now what I am going to do is I am going to

1 respond to the Petitioners' contentions after hearing this
2 presentation based on the Petitioners' written petition
3 that they submitted to us. However, to the extent that I
4 just heard things from the presentation now, I'll try to
5 revisit it as best as I can. But I don't think that we've
6 already covered (indiscernible) presentation and, of
7 course, I'm going to be available to answer any questions
8 that you have afterwards.

9 Can you go back to the presentation Jerry, to
10 slide -- let's see -- well, wherever I left off. Right
11 after the -- oh, there, go down right there. Yeah, that
12 would be great. All right, thank you.

13 So before I replied to those staff responses to
14 the contentions you just heard, I did think it would be
15 helpful to just take two slides to briefly go over the
16 development to review public participation in the process
17 that was undertaken for the North Santa Monica Bay EWMP.

18 The City of Malibu, L.A. County, and the L.A.
19 County Flood Control District, as you know collaborated on
20 the development of this EWMP for the North Santa Monica Bay
21 sub-watersheds. And as required by the permit, the three
22 Permittees first submitted a Notification of Intent to
23 develop an EWMP to the Regional Board in June 2013. The
24 Regional Board reviewed and approved the Permittees
25 Notification of Intent as well as the proposed Early Action

1 Projects that they were required to complete. And actually
2 two of these Early Action Projects addressed discharges
3 into the ASBS 24, which I think was notable.

4 Following this the three Permittees submitted an
5 EWMP Work Plan as well as their coordinated integrated
6 monitoring program in June 2014 and then submitted their
7 complete Draft EWMP in June 2015.

8 The North Santa Monica Bay EWMP was extensively
9 reviewed using the same process that was used for the other
10 11 EWMPs. Board staff provided written comments on the
11 Draft North Santa Monica Bay EWMP in October of 2015. And
12 those comments detailed the revisions that needed to be
13 addressed prior to approval of the EWMP.

14 And then the Permittees submitted their Revised
15 EWMP to the Board in January of this year. Both before and
16 after submittal of the revised draft EWMP, Board staff
17 participated in meetings, phone calls, and email exchanges
18 with the Permittees.

19 After reviewing the revised draft North Santa
20 Monica Bay EWMP in relation to the Board's written
21 comments, Board staff concluded that the EWMP satisfied the
22 requirements of the L.A. County MS4 Permit and on April 19,
23 2016, the Executive Officer approved the NSMB EWMP.

24 A number of opportunities for stakeholder input
25 on the EWMP were provided. The Petitioners and Heal the

1 Bay participated in TAC meetings between July 2013 and
2 August 2014. Additionally, between May 2014 and May 2015,
3 the Permittees held three local public workshops just
4 focused on the development of the NSMB EWMP.

5 The Regional Board then provided a two-month long
6 public review and written comment period on the draft
7 EWMPs. And held 3 public workshops on the draft and
8 revised EWMPs including the North Santa Monica Bay EWMP.
9 Additionally, stakeholders were provided opportunities to
10 meet with Regional Board staff to discuss the draft and
11 revised EWMPs. And Board staff met with Petitioners and
12 Heal the Bay in February and March 2016 regarding the
13 revised EWMPs.

14 So you've heard from the Petitioners regarding
15 their concerns. And to organize staff's response we've
16 grouped Petitioners into two specific areas of concern.
17 The first concern is whether North Santa Monica Bay EWMP
18 applies the proper ASBS standards, both for stormwater
19 discharges as well as for non-stormwater discharges from
20 the MS4 to the ASBS.

21 The second area concerns whether the North Santa
22 Monica Bay EWMP considers and utilizes available and
23 relevant stormwater and non-stormwater data for discharges
24 to ASBS 24 that have been generated by the Permittees.

25 So the first area related to standards, those

1 sets of concerns, and the second set of concerns relate to
2 the utilization of available data.

3 To aid the Regional Board in understanding the
4 rationale behind the Executive Officer's approval of the
5 North Santa Monica Bay EWMP, on behalf of the Board, I will
6 provide responses to the specific contentions in each of
7 these areas.

8 So first starting the application of ASBS
9 standards, regarding the Petitioners' concern about the
10 application of the ASBS stormwater standards, the EWMP
11 utilizes appropriate standards from the Ocean Plan for
12 stormwater discharges. The EWMP was developed to implement
13 the requirements of the L.A. County MS4 Permit. And the
14 L.A. County MS4 Permit's receiving water limitations
15 included the numeric objectives from Table 1 of the Ocean
16 Plan, as well as the narrative objective that natural ocean
17 water quality cannot be altered by MS4 discharges to an ASBS.

18 These ASBS stormwater standards are specifically
19 identified and addressed in Attachment E of the North Santa
20 Monica Bay EWMP. And as you've heard Attachment E is the
21 Permittees' ASBS Compliance Plan, which they have
22 incorporated as part of their overall Enhanced Watershed
23 Management Program. This part of their EWMP includes a
24 number of data tables that provide a comparison of recent
25 monitoring data to these ASBS stormwater standards.

1 The EWMP also implements the ASBS prohibition on
2 trash discharges. You haven't heard much of that from the
3 Permittees, but it is another stormwater standard that is
4 in the Ocean Plan and applies to discharges to the ASBS.
5 And it does this by implementing the requirements of the
6 L.A. County MS4 Permit to implement the Santa Monica Bay
7 Debris TMDL, which you adopted several years ago.

8 For non-stormwater discharges, the ASBS standard
9 is, as you've heard, a prohibition on non-stormwater
10 discharges to the ASBS with some limited exceptions. The
11 EWMP implements the prohibition on non-stormwater
12 discharges to ASBS 24 consistent with the Ocean Plan
13 general exception requirement.

14 In particular, I wanted to point out two places
15 in the EWMP where this is addressed. One is in Section
16 4.1.1, which addresses "Non-Stormwater Discharge
17 Screening." And this addresses the requirement to
18 eliminate in the words of the EWMP 100 percent of non-
19 stormwater discharges. And then in Section 5.3.2, which
20 deals with the Reasonable Assurance Analysis for Dry
21 Weather, the EWMP commits to compliance with permit's
22 requirement to eliminate 100 percent of non-exempt non-
23 stormwater discharges.

24 This commitment is consistent with the non-
25 stormwater discharge prohibition that's in Attachment B of

1 the Ocean Plan General Exception.

2 To comply with the Ocean Plan -- and the L.A.
3 County MS4 Permit -- to prohibit the non-stormwater
4 discharges to ASBS 24, the EWMP proposes a program that
5 consists of non-stormwater outfall-based screening, source
6 identification, monitoring, and then abatement or
7 elimination of any non-stormwater discharges. And the
8 steps are identified in Table 11 and shown in Figure 6 of
9 the Enhanced Watershed Management Program. And then
10 they're also described in more detail in the Permittees'
11 Coordinated Integrated Monitoring Program that applies to
12 this EWMP area.

13 Next with regard to the RAA-related issue of ASBS
14 non-stormwater standards, the Petitioners seem to
15 misunderstand the purpose of the dry weather RAA that is
16 presented in the EWMP. The model that's used in the EWMP's
17 dry weather RAA does not establishes compliance with the
18 non-stormwater discharge prohibition. The purpose of that
19 semi-quantitative conceptual model or what they refer to as
20 a four-part test, which was the basis for the dry weather
21 RAA, is to provide evidence regarding the impact of MS4
22 non-stormwater discharges on the receiving water.

23 And then the findings of that RAA are used to
24 determine the extent to which BMPs are needed to address
25 non-stormwater discharges. However, as I just mentioned in

1 the case of the non-stormwater discharges the North Santa
2 Monica Bay EWMP already addresses the requirement to
3 eliminate 100 percent of these non-stormwater discharges
4 for basically establishing this program that I just
5 mentioned, a screening, monitoring and then abatement or
6 elimination program. And then compliance with the
7 requirement to eliminate 100 percent of non-stormwater
8 discharges will be assessed based on the data from the
9 Permittees' non-stormwater outfall screening and monitoring
10 program.

11 More specifically, Petitioners incorrectly state
12 that the dry weather RAA allows additional exceedances and
13 particularly they're concerned about the Santa Monica Bay
14 beaches bacteria TMDL. And they think that it's allowing
15 these expositional (phonetic) exceedances to be deemed
16 acceptable. And I just wanted to make sure it's clear that
17 this is the case.

18 First, the EWMP acknowledges the dry weather
19 compliance deadlines for the Santa Monica Bay beaches
20 bacteria TMDL have passed, and states that the analysis is
21 not intended to support or justify any new compliance
22 schedules for the TMDL requirements.

23 Second, three of the criteria in this four-part
24 test require documentation of either non-existence of MS4
25 outfalls or the elimination of any non-stormwater

1 discharges from MS4 outfalls.

2 And then the third criterion requires
3 demonstration of no exceedances of the bacteria
4 requirements per the bacteria TMDL provisions.

5 And I also want to point out, and I think I'll
6 touch on this again a little bit later on, that
7 bacteriological water quality conditions are appropriately
8 used in this case as a criterion in the dry weather RAA,
9 because bacteria is considered a controlling pollutant for
10 MS4 discharges in this EWMP area. And by controlling
11 pollutant, what I mean is it is the most difficult
12 pollutant to address and is going to require the greatest
13 controls to address.

14 Furthermore there is also an extensive shoreline
15 monitoring dataset as you all know, for bacteria. Bacteria
16 monitoring is done very frequently and has been done for
17 many, many years along this part of the coast.

18 So to conclude with regard to the non-stormwater
19 standards the North Santa Monica Bay EWMP, and its
20 companion monitoring program include detailed non-
21 stormwater screening process, which plays an important role
22 in complying with the ASBS prohibition on non-stormwater
23 discharges.

24 And I also wanted to point out that I heard that
25 there was concern that the work that was done through the

1 ASBS Compliance Plan screening for non-stormwater
2 discharges was wasted effort. The one thing that I want to
3 point out about non-stormwater discharges is it really
4 takes a lot of vigilance. You may screen one once and go
5 and take some actions to eliminate those discharges, but
6 non-stormwater discharges are highly variable. And it
7 takes rescreening and continual monitoring of these
8 discharges.

9 So the work that was done through the ASBS
10 Compliance Plan resulted in eliminating some of those non-
11 stormwater discharges. But it's necessary to continue to
12 be vigilant about screening for these should new non-
13 stormwater discharges begin.

14 The next thing that I want to do is talk about
15 the concerns regarding the consideration and utilization of
16 available and relevant ASBS data, both data under
17 stormwater or wet weather conditions and also non-
18 stormwater data.

19 So first of all for their contention that the
20 EWMP fails to consider relevant available ASBS stormwater
21 data, the Petitioners largely rely on a single sentence in
22 the North Santa Monica Bay EWMP that, "...no MS4 discharge
23 monitoring data were available at the time of this
24 assessment." On the basis of this sentence the Petitioners
25 state that the, "...express language of the North Santa

1 Monica Bay EWMP...contradicts" the Regional Water Board
2 staff's statement in response to comments that appropriate
3 data were reviewed and considered.

4 And as you read in our memorandum, based on
5 staff's review of the North Santa Monica Bay EWMP in its
6 entirety, staff found that relevant available ASBS
7 stormwater data are included and evaluated in Appendix E of
8 the North Santa Monica EWMP. And again, Appendix E is the
9 revised ASBS Compliance Plan that the Permittees prepared
10 pursuant to the ASBS requirements.

11 I do want to note here that it's not just
12 included by reference. It is a part of the North Santa
13 Monica Bay EWMP. To give you an example, perhaps is, if
14 you think of our L.A. County MS4 Permit, we have many, many
15 attachments. They are part of the permit requirements and
16 in the same manner Attachment E is part of the overall
17 Santa Monica Bay EWMP Program that must be implemented by
18 (indiscernible).

19 And I think you probably recall that I mentioned
20 that ASBS Compliance Plan, actually the Ocean Plan even
21 contemplates that the becoming a part of the Permittees'
22 SWIP or the Stormwater Management Plan. And in this case
23 the EWMP serves as the Permittees' Stormwater Management
24 Plan.

25 Second, with regards to this sentence, the

1 sentence doesn't indicate that, "No stormwater or receiving
2 water data for ASBS 24 were considered in the EWMP
3 assessment." The section that they're referring to only
4 addresses MS4 outfall monitoring data, not receiving water
5 data. Receiving water data are actually presented in a
6 separate subsequent section, actually I think it's a
7 previous section of the EWMP, Section 2.1.2.

8 And it's also notable that this section is not
9 specific to ASBS 24 MS4 discharge data, but is rather
10 addressing the availability of MS4 outfall data for the
11 EWMP area as a whole. And as you heard the Petitioners
12 reiterate, our interpretation of that statement is a
13 recognition that there are limited MS4 outfall monitoring
14 data for the EWMP area as a whole. And in part, that's
15 because under the old permit as you all probably recall
16 there was not outfall monitoring data required.

17 Basically what we had was seven mass emission
18 stations and then some rotating tributary monitoring. So
19 we anticipate with the new permit and requirements for
20 outflow monitoring data we are going to be having a lot
21 more outflow data that can be considered during the adapted
22 management process for the EWMPs including this one.

23 The next thing I want to touch on is you did hear
24 concerns about the utilization and the lack of utilization
25 of the data in the RAA, specifically speaking about the RAA

1 that was conducted for the stormwater conditions in this
2 case. And the Petitioners took issue in their written
3 petition with the use of generalized land use data to
4 conduct the RAA, and suggested that the RAA should have
5 used the ASBS data instead. And I want to just discuss the
6 two reasons that the ASBS stormwater data, were not used in
7 the Reasonable Assurance Analysis.

8 The first is that the ASBS stormwater data that
9 have been collected to-date are not sufficient to modify
10 the inputs of the model used in FB (phonetic) RAA. And
11 then the RAA used the model in its SBPAT. It was
12 acknowledged by a number of agencies and is one of the
13 models that was identified in the permit as an acceptable
14 model for doing a Reasonable Assurance Analysis.

15 The use of the generalized land use pollutant
16 loading data is consistent with the RAA requirement of the
17 L.A. County MS4 Permit, as well as staff's RAA guidance
18 that we put out for Permittees. And we discussed the use
19 of this generalized land use data in several of the TAC
20 meetings that we had before submission of the Watershed
21 Management Programs and Enhanced Watershed Management
22 Programs. The ASBS stormwater data could potentially be
23 used in the future however with the additional sampling
24 data to further calibrate and validate the Permittees'
25 Reasonable Assurance Analysis.

1 Second, with regard to use of the data it wasn't
2 necessary to include the data in the model. And I want to
3 just take a minute to explain what I mean by that. The
4 L.A. County MS4 Permit specifies the water body-pollutant
5 combinations that need to be addressed in the RAA. And
6 these include basically pollutants that are being addressed
7 by the TMDL. It also includes any pollutants that are
8 identified on the 303(d) list of impaired water bodies.
9 And then finally, any pollutants that exceed applicable
10 receiving water limitations, and for which MS4 discharges
11 may be causing or contributing to the exceedance, in the
12 receiving water.

13 The category that the Petitioners focus on is
14 this Category 3. The Permittees did not identify any
15 Category 3 pollutants to include in the RAA based on the
16 ASBS data analysis that's in Appendix E of the North Santa
17 Monica Bay EWMP. This is because the 2013-2014 ASBS
18 stormwater data were not found to correlate with the paired
19 ocean receiving water data.

20 And what I mean by that is basically that the MS4
21 discharges were not found to be causing or contributing to
22 receiving water limitation exceedances in ASBS 24 for any
23 pollutants other than those that had already been
24 identified by the Permittees in Categories 1 and 2.

25 And the Ocean Plan does lay out a process by

1 which it's only considered an exceedance of receiving water
2 limitations if there is that erring. I think there's a
3 difference clearly between the Petitioners and staff with
4 regard to how the Ocean Plan requirements are being
5 evaluated. But we have to assess this with the State Board
6 staff who have written the Ocean Plan.

7 And there is this requirement that I tried to
8 describe in the background section that you first look at
9 ocean water quality and then if ocean water quality is
10 altered at that point you do look at the outfall data to
11 determine whether the quality of the discharge could have
12 been the cause of that alteration of natural water quality.
13 And it's only if the answer to that question is yes, only
14 then does the Ocean Plan consider that to be a pollutant
15 that needs to be addressed by the MS4 dischargers, which I
16 think I just basically covered with you over on this slide.

17 So if you have questions I'm happy to go into
18 more detail about that at the end, but I'm going to just
19 skip on to my next slide here.

20 So moving on to consideration of the Petitioners'
21 concerns that ASBS non-stormwater were not considered.
22 Many of the Petitioners' concerns in this area focused on
23 the draft ASBS Compliance Plan. And don't consider the
24 additional inspections of outfalls for non-stormwater
25 discharges that was presented in the North Santa Monica Bay

1 EWMP, in the main body of the EWMP.

2 And this is because as I mentioned, this is not
3 only is there the ASBS requirement for the elimination of
4 the non-stormwater discharges and for some monitoring, but
5 there's also a corresponding set of requirements consistent
6 with that in the L.A. County MS4 Permit. And Permittees
7 have been conducting this non-stormwater outfall-based
8 screening for the last couple of years under the
9 requirements of the L.A. County MS4 Permit.

10 So the other thing that I wanted to talk about is
11 that the Petitioners mischaracterized the extent and the
12 outcome of the outfall inspections that were conducted in
13 2012 and 2013. According to the September 2015 revised
14 ASBS Compliance Plan, the Permittees inspected 31 outfalls
15 in the ASBS area -- not 13 as indicated in the petition.
16 And this was done over a two-year period covering a total
17 of eight months.

18 During this period, the Permittees observed non-
19 stormwater discharges on 73 out of 251 occasions. Of these
20 outfall inspections, unauthorized or undetermined non-
21 stormwater discharges were identified in approximately 10
22 percent of these inspections. Meaning the rest of them
23 were authorized for condition exempts types of discharges
24 that were occurring. And those are allowed under the Ocean
25 Plan and under the L.A. County MS4 Permit.

1 By the 2013 inspections, these discharges had
2 either ceased, or had been significantly reduced through
3 outreach and enforcement efforts on the part of the
4 Permittees.

5 The Petitioners did express concern about some of
6 the non-stormwater discharges identified as hillside
7 dewatering and natural stream flows in the ASBS Compliance
8 Plan. And they suggest that additional data are required
9 to support these characterizations. They further suggested
10 that Permittees must indicate whether the discharges are
11 permitted or unpermitted. But as I said those types of
12 discharges are allowed both under the Ocean Plan as well as
13 under the L.A. County MS4 Permit.

14 So the Petitioners also expressed concern that
15 the draft ASBS Compliance Plan distinguishes, without
16 basis, between discharges that land on the beach in the
17 ASBS 24, and those that flow to the surf line. And state
18 that the draft ASBS Compliance Plan does not adequately
19 address the numerous dry weather flows that the Plan
20 reports as not reaching the surf zone.

21 For unauthorized and undetermined non-stormwater
22 discharges I want to just point out that the ASBS
23 Compliance Plan outlines a suite of measures that include
24 outreach, inspections, and enforcement -- not just
25 outreach. And regardless, in their EWMP as I mentioned

1 earlier, the Permittees commit to ensuring that discharges
2 of non-authorized, non-stormwater discharges do not occur,
3 whether they reach the surf zone or not.

4 Next, the Petitioners incorrectly state that the
5 RAA for dry weather discharges considers no data. Five
6 years of shoreline bacteria monitoring data were considered
7 in the evaluation that's presented in Table 31 of the EWMP.
8 As noted earlier, this is appropriate as there is an
9 extensive shoreline bacteria monitoring dataset. And like
10 I said bacteria is considered a controlling pollutant for
11 these MS4 discharges. For these reasons, bacteriological
12 water quality data are appropriately used in the dry
13 weather RAA.

14 Additionally, the EWMP actually contains more up-
15 to-date non-stormwater outfall screening data than the ASBS
16 Compliance Plan. These data are from 2014-2015, while the
17 ASBS Compliance Plan non-stormwater discharge inspection
18 data are from 2012-2013. And as I mentioned that's
19 important, because of the primary (indiscernible) non-
20 stormwater discharges. So it is permissible to continue to
21 conduct screening of these outfalls for these types of
22 discharges.

23 So that's what I just was talking about here.
24 And one of the things I do want to touch on though is with
25 regards to the schedule, because you have heard some

1 concerns that there could be some delay in the
2 implementation as a result of this ongoing screening for
3 non-stormwater discharges. Actually, the screening is
4 happening simultaneously with the implementation of
5 measures to eliminate these non-stormwater discharges. And
6 also the screening will actually be completed much earlier
7 I think than the Petitioners anticipate.

8 Right now the source identifications are not just
9 the screening, but then the next step in that process,
10 which is identifying the sources of those non-stormwater
11 discharges will be complete for 50 percent of the outfalls
12 with significant discharges by December 28th of this year.
13 And then for over 100 percent the source identification
14 will be complete by December 28th of 2017.

15 So again while concerns have been expressed about
16 a delay in implementation the screening and the
17 implementation are going on simultaneously. And that is
18 made clear both in the ASBS Compliance Plan as well as in
19 the main body of the EWMP with current measures that are
20 being taken to eliminate non-stormwater discharges.

21 The last thing that I want to do is touch on the
22 status of the ASBS Compliance Plan, so that completes my
23 response to the contentions. But I do want to just update
24 the Board on where the ASBS Compliance Plan stands at this
25 point.

1 As I mentioned in September of 2015 the
2 Permittees submitted a revised ASBS Compliance Plan to the
3 State Water Board in response to the State Board's comments
4 on the draft plan. And it's that revised version is
5 included as part of the North Santa Monica Bay EWMP.

6 The Revised ASBS Compliance Plan is currently
7 under review by the State Water Board and we're
8 collaborating with the State Board staff on that review of
9 the revised Compliance Plan.

10 I did also mention again just to reiterate in
11 terms of revisions to the draft Plan one of the things that
12 the State Board did request or require that the Permittees
13 do is additional sampling within the ASBS area. And there
14 has been, I think, some difficulty and you might hear from
15 the Permittees about this in terms of doing all of these
16 monitoring events during wet weather conditions. But it
17 sounds as though that was completed this past winter and we
18 will be getting this data in the near future.

19 Because of this timing of the EWMP approval
20 process that was laid out in the L.A. County MS4 Permit it
21 wasn't possible for us to align the review and approval
22 process of the ASBS Compliance Plan with exactly that of
23 the North Santa Monica Bay EWMP. There's also not a
24 requirement in the Ocean Plan.

25 However, as I said the State Board and the

1 Regional Board staff were working to collaboratively review
2 the revised ASBS Compliance Plan. And if there are any
3 inconsistencies between the final ASBS Compliance Plan and
4 the EWMP, then the L.A. County MS4 Permit lays out a
5 process for adaptive management process. And any changes
6 to anyone can then be addressed through that adaptive
7 management process for the EWMP.

8 So that concludes my presentation on the Board
9 staffs responses to the contentions. And then I'm going to
10 turn it over to Sam, actually, for a brief conclusion
11 before we invite up the Permittees.

12 EXECUTIVE OFFICER UNGER: Thank you, Renee.

13 I would just like to say that the approval of
14 North Santa Monica Bay EWMP relied heavily on staff's work
15 and also Petitioner comment. In conclusion, I found that
16 the North Santa Monica Bay EWMP applied the proper
17 standards and requirements through the Ocean Plan,
18 including the prohibition on non-storm water discharges.

19 In addition, we also included TMDL standards as
20 appropriate. I found that it also appropriately considered
21 to utilized the ASBS stormwater and non-stormwater data.
22 Despite the assertion that no data were considered I
23 believe they were, and we looked at the analysis and the
24 staff looked at the analysis it was very clear that all the
25 data were considered.

1 And it also demonstrated a reasonable assurance
2 that implementation of the EWMP would meet all applicable
3 standards. I think there was a comment earlier that we
4 weren't normally taking an approach of looking at the
5 controlling pollutant. That's our approach to be taken the
6 entire time with the Watershed Management Programs as well
7 as the Enhanced Watershed Management Program.

8 Now, this is to say that it did not loop the
9 analysis to a controlling pollutant, which hasn't been
10 detected (indiscernible) modeling today, with great
11 expense, with no additional technical value.

12 And so in approving the North Santa Monica Bay
13 EWMP, on behalf of Regional Board, I determined that the
14 EWMP meets the requirements of the L.A. County MS4 permit
15 and the Ocean Plan's ASBS special protection provisions for
16 discharges of stormwater.

17 We had comments that were laid out in a letter
18 from me in October of 2015. Responses to all of those
19 comments were provided, many of which we brought up the
20 details today and the basis of those responses and
21 revisions that were made to the EWMP. And especially the
22 adaptive management process that Renee just mentioned, we
23 felt very concerned that possibly the State Board might
24 approve a Compliance Plan that was different from our EWMP.
25 And as Renee has told you, there is a method and a process

1 within the program of which we came up with those two
2 plans.

3 So based on standards and limits, appropriate
4 data analysis, and reasonable assurance analysis, I
5 approved the North Santa Monica Bay Enhanced Watershed
6 Management Program on your behalf.

7 CHAIR MUNOZ: Thank you.

8 I believe the L.A. County Flood Control has ten
9 minutes. Ms. Angela, welcome.

10 MS. GEORGE: Thank you. Good afternoon, Chairman
11 Munoz and Members of the Board. I think you can hear me.

12 My name is Angela George. And I am the Assistant
13 Deputy Director of Los Angeles County Flood Control, Los
14 Angeles County Department of Public Works. Excuse me.

15 I want to thank you for allowing me to speak to
16 you today. We won't need ten minutes. Instead, I wanted
17 to just to tell you that I am here representing the Los
18 Angeles County Flood Control District and the County of Los
19 Angeles.

20 And we want to commend the Regional Board and its
21 staff for a very thorough review of the North Santa Monica
22 Bay Coastal Watershed EWMP and its subsequent by Mr. Unger,
23 your Executive Officer.

24 The approval, for the reasons set forth in our
25 written comments as well as everything that you've heard

1 today from Ms. Purdy as well as Mr. Unger, are really the
2 basis that we want to say that those are our own comments.
3 We won't stand here today and reiterate the comprehensive
4 that Ms. Purdy provided. Instead we're going to say we
5 worked real hard on that EWMP. We feel that it speaks for
6 itself. We provided written comments to your Board. And
7 we are working diligently with the City of Malibu to
8 implement the EWMP and we remain committed to continue
9 doing so.

10 So I'm not going to take any more of your time,
11 by reiterating things. If you have questions I will be
12 glad to answer those, but I just wanted to say we committed
13 to implementing the EWMP. And we're really appreciative
14 for the comprehensive reviews done by your staff and Mr.
15 Unger. Thank you.

16 CHAIR MUNOZ: Thank you. We have the two
17 gentlemen from the City of Malibu, Mr. George and Mr.
18 Sheldon.

19 MR. GEORGE: Chairman Munoz and the Board, Craig
20 George from the City of Malibu. I have with me Dr. Andrew
21 Sheldon, also from the City of Malibu.

22 Briefly, I just have a couple of comments and
23 then Dr. Sheldon will make some other comments. But mostly
24 I just wanted to thank the Board for everything we have
25 heard on the City's commitment to water quality, and the

1 City's commitment really to water.

2 We have a number of programs and we've spent tens
3 of millions of dollars in water conservation, water reuse,
4 and innovating in water quality. And we really think
5 we've done an incredible job and we support everything that
6 your staff has done to help ensure that.

7 So with regards to the EWMP we think you've
8 devoted a lot of time, a lot of money, a lot of effort.
9 And I think that we have developed over many years of work
10 and collaboration with the Board, a great program. And I
11 applaud your staff for doing that.

12 I heard a couple of things I just want to comment
13 real quick on and to Chair Munoz about the MS4 reaching out
14 to some of the Permittees. I think this was a
15 collaborative, cooperative effort and I really appreciate
16 the Board and the County of L.A.'s help in doing that. I
17 also think what Mr. Stringer said, this is a very, very
18 complex issue and it's very complicated, but I think the
19 amount of time and the amount of staff effort that was done
20 for this project just demonstrates how much work and
21 cooperation and everything else was done on that. So I
22 just applaud the Board and L.A. County and the staff from
23 the City of Malibu and am grateful for everything they do.

24 And with that, I'd like to turn it over to
25 Dr. Andrew Sheldon. Thank you.

1 DR. SHELDON: Chairman Munoz and Members of the
2 Board. Again, I'm Andrew Sheldon, City of Malibu
3 Environmental Sustainability Manager. And I'm not going to
4 go into the technical presentation either. It should just
5 take a couple of minutes to get through our remarks to you,
6 but I just wanted to give to you sort of the City's
7 perspective on the process we went through. And all that
8 work that we put in and why we stand by the Regional Board
9 staff's work in reviewing our EWMP. And it took about six
10 decisions to improve our EWMP.

11 In 2013 the City of Malibu partnered with L.A.
12 County and Flood Control District to form the North Santa
13 Monica Bay Coastal Watershed's EWMP group. The group hired
14 a review (indiscernible) consultant to assist us in
15 developing a sound EWMP. Between 2013 and 2015, the group
16 and its consultant performed a monumental effort to prepare
17 this EWMP to meet the requirements set forth by the
18 Regional Board staff.

19 While working on the EWMP the City, Los Angeles
20 county and the Flood Control District worked on a parallel
21 track to complete the Compliance Plan for the ASBS. From a
22 project management perspective the EWMP Work Plan and the
23 EWMP (indiscernible) were not aligned in a way that allowed
24 for a very simple merging of the data along both project
25 tracks. The EWMP started with an early analysis of the

1 data to identify water body pollutant combinations whereas
2 the ASBS Program was collecting the data stream from
3 February '13 through December 2014, all this after the 2008
4 investigations.

5 And simply put, I just wanted to say that we
6 stand by Ms. Purdy's remarks on this. That the data was
7 considered and it did later hash out, although it was not
8 integrated in the way the Petitioners would have liked, it
9 was considered. So again the EWMP and the ASBS Compliance
10 Plan from the City's project management perspective, two
11 projects on separate tracks that eventually came together
12 in the final review mode.

13 So the delivery deadline for this EWMP Work Plan
14 was June '14 as you saw and we did meet that deadline.
15 Subsequently during preparation of the EWMP the group did
16 communicate to some Board staff about the 2013-14 ASBS
17 data. And it was agreed to include the ASBS data in the
18 EWMP by way of incorporating it as an appendix
19 (indiscernible) the ASBS Compliance Plan.

20 The Compliance Plan analyzed the existing water
21 quality data and developed a suite of activities for
22 meeting water quality standards in the ASBS. And these
23 activities are incorporated in the EWMP. The EWMP is a
24 living document that will be periodically updated and its
25 implementation programs adapted to new data and information

1 in the future.

2 The City of Malibu believes the level of water
3 quality protections set forth in the EWMP is comprehensive
4 and is stringent. The Petitioners suggested modifications
5 to the (indiscernible) procedures documented in the EWMP
6 are unnecessary and really they afford no additional
7 protections to water quality.

8 In summary, the City of Malibu believes that
9 everything needed to meet the requirements of the permit
10 including compliance with the conditions of the ASBS
11 (indiscernible) were included in the EWMP. And we support
12 the Executive Officer's approval of this EWMP. Thank you.

13 If you have any questions we have staff here with
14 whatever detail you might want to know about this process.

15 CHAIR MUNOZ: We don't have any additional
16 speaker cards, so do we have any questions or comments from
17 the Board?

18 We'll start with Mr. Larry.

19 BOARD MEMBER YEE: Well, I've been trying to
20 imagine what kind of additional information would be
21 presented in a subsequent hearing, if we were to go through
22 some kind of reconsideration of the approval process. In
23 my mind, we have more than sufficiently satisfied this
24 approval. And I think the process was very thorough. The
25 review was quite rigorous. And the approval appropriate

1 related to what we've heard from today.

2 CHAIR MUNOZ: Okay.

3 Well, Ms. Fran?

4 BOARD MEMBER DIAMOND: Well, I guess I'd like to
5 ask a couple of questions, maybe to the Petitioners to
6 start. Sorry, Randy. Would the two representatives of
7 NRDC and Waterkeeper come forward, please?

8 What I did -- so after listening to you and staff
9 I'm a little puzzled by what, if any, water quality
10 standards you believe will be not upheld or how water
11 quality is not being protected under the EWMP that was
12 approved by our Executive Director?

13 MR. PUGSLEY: For us it's a concern with
14 robustness of the Reasonable Assurance Analysis. And that
15 the -- that effect of including the data that we think
16 should have been included would be that there should be
17 more BMPs applied in the (indiscernible).

18 BOARD MEMBER DIAMOND: My understanding is that
19 the EWMP and the stormwater permit are very dynamic. And
20 because we have adaptive management new data and BMPs over
21 the period of time will be applied according to the
22 analysis of the data that will be gathered. Is that
23 correct or incorrect?

24 MR. PUGSLEY: That is true although the permit
25 itself says as an initial matter that the RAA shall

1 commence with assembly of all the available relevant sub-
2 watershed data collected within the last ten years
3 including land use and pollutant loading data. So although
4 it's an iterative process there needs to be some baseline
5 level of sort of robustness to the RAA.

6 BOARD MEMBER DIAMOND: But then --

7 MS. HAYAT: Yeah, just to -- sorry -- just to add
8 that, while there is adaptive management process, because
9 there's also going to be additional data information
10 available, the permit requires that in order for an EWMP to
11 be approved initially, it has to provide a reasonable
12 assurance that the BMPs and the control measures proposed
13 in the EWMP will actually achieve the water quality
14 standards, which is the ultimate goal of the permit and of
15 the EWMP.

16 And because the RAA in the EWMP that initially
17 approved fails to apply the applicable data and to apply
18 the necessary standards, the required standards. It
19 doesn't even provide an initial assurance that is required
20 by the permit.

21 MR. PUGSLEY: I mean, this data was available, so
22 it's our contention that it should have been used. And it
23 may be that in the end when it is incorporated there isn't
24 much change, but we need to know that further to ensure
25 that the RAA itself was robust.

1 BOARD MEMBER DIAMOND: So, I wanted to ask a
2 couple of questions of staff too, but before -- so the
3 presentation by staff, which Ms. Purdy and Sam Unger just
4 concluded, seemed to me to be pretty comprehensive and to
5 address much if not all of the items that you brought up in
6 your presentation. And so I'm wondering what -- did you
7 feel that they answered the issues that you wanted us to
8 consider? Because it seemed to me that it was pretty
9 comprehensive.

10 MR. PUGSLEY: I don't think all of them -- and I
11 think it would be useful to delve in deeper, so that we can
12 have more of a -- it's hard in the context of a two-hour
13 hearing to go through and flip through all of the pages of
14 the EWMP to see what matches up with what.

15 But I think it would be helpful to check what
16 they're saying against what we're saying and then see if
17 there needs to be adjustments made to the initial RAA in
18 particular.

19 BOARD MEMBER DIAMOND: Well, that was the purpose
20 of my question, because you had some issues you brought up.
21 And then we heard from our staff and I thought they
22 addressed most of the issues that you brought up, so I was
23 hoping that you might be able to comment.

24 MR. PUGSLEY: Well (indiscernible) and she
25 referred to several specific sections of the EWMPs, so we

1 have go back and look at those to see to what extent I
2 agree with those characterizations.

3 BOARD MEMBER DIAMOND: Okay, then. Thank you.

4 I'd like to ask Renee a couple of questions. One
5 of the things that they did raise, and I just wondered if
6 you might be able to -- I think you did, but I would like
7 you to just maybe briefly in a sentence or two answer how
8 their contention that this EWMP failed to apply the
9 exception standard. You did answer that, but can you just
10 point that out again?

11 MS. PURDY: Yeah so they do raise that with
12 regard to two different types of standards, one is the
13 standards that pertain to stormwater and one that pertains
14 to non-stormwater. So let me start with the non-
15 stormwater, which is the ASBS standard for non-stormwater.
16 It is that basically non-stormwater discharges from the MS4
17 are prohibited. And the L.A. County MS4 Permit has that
18 same prohibition. In fact, it is copied essentially
19 verbatim from Ocean Plan, what that requirement is.

20 And the EWMP in several places including in the
21 dry weather reasonable assurance analysis, RAA, makes a
22 commitment and lays out a program to ensure that non-
23 stormwater 100 percent eliminated. So that's the standard
24 for non-stormwater is basically a prohibition on non-
25 stormwater discharges from the MS4. And that is

1 implemented through the EWMP.

2 For stormwater, the standards are basically --
3 it's kind of a two-part standard. One is that the Ocean
4 Plan says there can be no alteration of natural water
5 quality that is caused or contributed to by MS4 discharge.
6 And then if there is an alteration then there are certain
7 objectives that the MS4 dischargers have to comply with.
8 And so that's -- and actually it's a standard for both non-
9 stormwater and stormwater discharges, that no alteration of
10 natural water quality.

11 And that's incorporated in the L.A. County permit
12 through our receiving water limitations and the non-
13 stormwater discharge prohibitions. And it's also included
14 in the EWMP as part of the Attachment E in the ASBS
15 Compliance Plan. And I think we're -- and I do think where
16 part of the disagreement is coming is that inherently that
17 objective of not altering natural ocean water quality based
18 on our evaluation of the data, that was considered by
19 Permittees and included in the EWMP including Attachment E,
20 the MS4 discharges do not appear to be causing any
21 alternation of natural water quality with the exception of
22 those pollutants that are already being addressed by TMDLs
23 or are already listed on BMP list, which have been
24 addressed through their Reasonable Assurance Analysis.

25 So I think hopefully that answers your question,

1 but I guess the one other thing that I do want to say with
2 regards to the RAA, because I hear that that's a big focus
3 of concern of the Petitioners is I want to just return to
4 this idea of controlling a pollutant. And as Sam mentioned
5 that's a very typical approach that we've used to ensure
6 that these EWMPs are meant to address multiple pollutants
7 in these stormwater retention projects.

8 That was kind of the whole goal of focusing on
9 stormwater retention is you don't address just one
10 pollutant with a certain type of treatment, but you need to
11 address a whole host of pollutants. And so the idea in the
12 RAA is to find what that most difficult pollutant is that's
13 going to require the largest volume of stormwater retention
14 or treatment. And design your BMP Program around that
15 pollutant, because then you know you'll address the other
16 pollutants as well. And so that's what they've done here.

17 And as I mentioned, the data that were collected
18 under the ASBS were simply not sufficient. We had to
19 session with Dr. C.P. Lai, and I didn't drag him out here
20 today, but he basically looked at the data that were
21 collected. And he said that the data were not sufficient
22 to modify the inputs to the RAA model at this point. But
23 that they could be used in the future through adaptive
24 management to recalibrate and validate the RAA and make any
25 adjustments as necessary.

1 BOARD MEMBER DIAMOND: And I guess that basically
2 is my last question, because I think that our staff and the
3 Petitioners and all of us have the same thing in mind,
4 which is to be as protective of this special area as
5 possible.

6 And I have great admiration, I always have, for
7 NRDC and Waterkeeper and all the advocates. And for the
8 work that you are doing on our permit and I wish that you
9 were more in agreement, but I do believe that we need to
10 move forward. And that we are being as protective as
11 possible. And I do feel that the dynamic process of this
12 EWMP and the stormwater permit is what allows us, using
13 adaptive management to look at the data as it comes in, and
14 to move forward in the best possible way to protect the
15 water quality.

16 And I think that's what we're doing, looking at
17 the data as it comes in and adapting the permit as we go
18 forward. So I want to thank everybody for their work and I
19 would agree that this permit was appropriately decided by
20 our Executive Officer with our direction. Thank you.

21 CHAIR MUNOZ: Do you have any question Mr.
22 Stringer?

23 BOARD MEMBER STRINGER: I don't have too much to
24 add, thank you.

25 I guess if you could just respond to one comment

1 by the Petitioners. It was something along the lines of
2 even if the EWMP was fully implemented it wouldn't protect
3 water quality. And that's a broad and pretty damning
4 statement. I'm just wondering if you can just provide your
5 perspective on that?

6 MS. PURDY: Absolutely. So I agree that that's
7 an important consideration. And as Board staff having
8 looked at this EWMP and considered everything in the EWMP
9 and the proposal in terms of the BMPs, the stormwater
10 retention projects that will be implemented, we do believe
11 it will fully protect the ASBS area and the ASBS standards.

12 And part of that speaks to the response that I
13 gave to Board Members on that earlier, in that the way that
14 the RAA was conducted it was conducted in a way that was
15 designed to address multiple pollutants. Though in this
16 case we, with the data that we currently have available, it
17 does not appear based on the data evaluation that the MS4
18 discharges are causing or contributing to an alteration of
19 natural ocean water quality.

20 But regardless, if they are the projects that
21 have been identified will address multiple pollutants. And
22 further, as I said, we will be getting more data. And if
23 there's a need to require modification to the EWMP to add
24 additional BMPs at that time then we have a mechanism
25 through the permit for doing that.

1 BOARD MEMBER STRINGER: Great, thank you. I
2 mean, obviously that's all we're here to do and I just want
3 to make sure we haven't lost sight of our primary mission
4 here.

5 MS. PURDY: Uh-huh, right.

6 BOARD MEMBER STRINGER: And frankly, our only
7 mission here. So as I said earlier, I don't feel like it's
8 necessarily our job in this particular instance with this
9 sort of awkward cause a review process, to step in and
10 second guess all of the highly-nuanced technical judgments
11 that have been made.

12 It sounds like there's some factual sort of
13 disagreements on what's actually in and out. That's a bit
14 confusing to me, but again my perspective is one of great
15 deference to staff in this particular kind of role where we
16 have delegated authority and where this is another level of
17 more formal review. And so I'm very comfortable moving
18 forward or not moving forward. (Laughter.) However you
19 want to interpret that, I'm very comfortable with the
20 decision that has been made.

21 CHAIR MUNOZ: The permitting decision that's been
22 made. Thank you.

23 Ms. Madelyn?

24 BOARD MEMBER GLICKFELD: I have a little
25 different perspective and I am absolutely with my

1 colleagues in complimenting everyone. This has been --
2 just the EWMPs have been an enormous amount of work. This
3 is the County, especially not to denigrate the City, the
4 City had to do one, the County was in every one of these
5 EWMPs. Our staff dealt with every one of these EWMPs and
6 so did the NRDC and the Waterkeeper and Heal the Bay.

7 And so there was a huge amount of work, much more
8 than any of us ever dreamed when we approved these permits,
9 a huge amount of work. I'm not sure, Renee would have
10 recommended this permit if she'd known how much work it
11 was.

12 So what we didn't know though is -- and I didn't
13 know and I'm not sure the rest of the Board didn't know --
14 that the ASBS exception rule would be written, so that the
15 ASBS exception compliance plans had to be put into the MS4.
16 I think it was done about the same time we were working on
17 the MS4 Plan. And if we had known it I think you would
18 have had some provisions in there making sure that the
19 process was more seamless.

20 So I took your time schedule for the EWMPs, which
21 are over on page 5 and time schedule for the ASBS that you
22 have on page -- excuse me -- the EWMPs is on page 6 and the
23 background for the ASBS Compliance Plans are on page 5.
24 And they're really disjointed schedules in terms of for
25 instance the EWMP Work Plan is approved in June of 2014.

1 The Draft Compliance Plan for ASBS comes out on 9/14. Then
2 the Draft EWMP is submitted in June 2015, but just three
3 months before that there came back from the State Board
4 some very considerable serious comments by the State Board
5 about the Draft Compliance Plan.

6 So in the a lot of the things that the State
7 Board talked about -- and this was in our CD, I actually
8 have the CD player still or DVD player -- and I pulled out
9 the letter. It says a lot of the same things that the NRDC
10 and Bay Keeper (sic) were saying about the inconsistency of
11 the Draft Plan with the standards. Particularly it says
12 that they were using the Table B Instantaneous Maximum
13 Water Quality Objectives and not the standard that is in
14 the ASBS requirements, which is the 85th percentile.

15 And they also talk about the fact that there is a
16 lack of additional structure with BMPs, which is that's
17 more important to me. Is that there was a lack of
18 structural BMPs included in the Draft Plan to meet some of
19 the problems that were addressed. And they asked for those
20 -- they asked for more mapping. They asked for more
21 monitoring. They asked for more documentation and
22 proposals for additional structure with BMPs.

23 So the staff, I understand that sometime after
24 that -- I think it was 9/15 that the County and the City
25 submitted a new Compliance Plan to the State Board. And no

1 one has still heard from the State Board what they think
2 about that. And we're here today having had our plans
3 approved several months ago. So it's not an ideal
4 situation, you know?

5 But the question I have for you is in their
6 resubmittal of the Compliance Plan are you familiar with
7 the letter, the 3/17 letter? Is there somebody from the
8 staff that's familiar with that letter? You know, are you
9 familiar with the page 2 where they talk about the things
10 that they're concerned about? I just highlighted a couple
11 of them. Was the standard of review, the monitoring
12 standard of review changed? Were the new structural
13 standards included?

14 I want to make sure and I'm just saying I'm sure
15 that there are ways for us to do this. But I want to make
16 sure that eventually we get put into the EWMP the correct
17 standards. It's not clear to me that the ones that you
18 have that are attached to the EWMP now are going to be the
19 final ones at all.

20 So I'd like you to talk a little bit about --
21 you've done it a little bit already -- whether or not I
22 would feel more comfortable if I knew that you already knew
23 that the Revised Compliance Plan was going to meet the
24 concerns of the State Board made in their own letter. If
25 you knew that then everything is fine.

1 MS. PURDY: So, I do -- and it looks like
2 (indiscernible) okay, thank you. I was going to attempt to
3 pull it out of my brain, which it partly is in my brain --

4 BOARD MEMBER GLICKFELD: Well, that's why I asked
5 for a staff person.

6 MS. PURDY: But can you -- let's see, let me just
7 look --

8 BOARD MEMBER GLICKFELD: I'm looking at the map
9 of the stormwater runoff portion at the top of page 2.

10 MS. PURDY: On the top of page 2? That's what I
11 wanted to know, right at the top of page 2.

12 BOARD MEMBER GLICKFELD: Yeah, and I'm looking at
13 it --

14 CHAIR MUNOZ: Are you talking about page 2?

15 BOARD MEMBER GLICKFELD: This is something that's
16 on our CD.

17 BOARD MEMBER YEE: It was a letter, yeah --

18 BOARD MEMBER GLICKFELD: It was a letter. I went
19 to this letter, because I saw that this was a Draft Plan.
20 And then there was some discussion of the letter by the
21 NRDC, so I went and found it.

22 CHAIR MUNOZ: Okay.

23 BOARD MEMBER GLICKFELD: So it had to do with the
24 85th percentile, not the Ocean Plan, Table B which was used
25 in the Draft Compliance Plan.

1 MS. PURDY: Right. So I can tell you that in the
2 Revised Compliance Plan I know that there was a comparison
3 to the 85th percentile in terms of -- and that comparison
4 is of the ocean water quality. So the 85th percentile is
5 basically the reference condition that was developed
6 through the Bight '08 and the Bight '13 programs. And they
7 figured out what is the natural water quality, what should
8 it look like based on some reference sites throughout
9 Southern California. And then they compared the data in
10 the ocean water for ASBS 24 to that 85th percentile
11 threshold. And they did that in the Revised 2015
12 Compliance Plan that they submitted to us.

13 And so that particular issue, I think has been
14 addressed through the 2015 Compliance Plan. I think that
15 the confusion was in comparison of that with the Table B,
16 which now is actually Table 1 in the Ocean Plan, is then
17 what you use to compare the actual and support discharge
18 quality to. So the 85th percentile you use for the
19 receiving water quality and then the Table B or Table 1
20 objectives in the Ocean Plan are what you need to look at
21 for the actually quality of the discharge.

22 BOARD MEMBER GLICKFELD: So then that's great
23 thank you very much.

24 There's two more issues, which is that the staff
25 -- the State Board staff contends that core discharge area

1 ASBS 0828 should be identified as a priority discharge
2 location. And that the Final Compliance Plan should
3 describe additional structural BMPs for that site. Was
4 that included in the Revised Draft that was sent to the
5 State Board.

6 MS. PURDY: So at this point I do not believe
7 that any additional structural BMPs are being proposed at
8 ASBS 28. And the reason for that is the three constituents
9 that they found that were elevated in the ocean, which was
10 Mercury, Selenium and PAHs, they did not find that the MS4
11 discharge from that site, Outfall 28, had levels of those
12 constituents that were above what was in the Table 1 or
13 Table B of the Ocean Plan.

14 So at this point they're not proposing additional
15 BMPs there. However, I think what I'm waiting to see is
16 the data that they've collected from the winter, this past
17 winter '15-'16, because it's my understanding -- and I
18 don't think the County spoke to this -- but it's my
19 understanding that they did do another sampling event at
20 the receiving water site S02 and then compared Outfall Site
21 28. And that will give us some more information as to
22 whether there need to be additional structural measures in
23 that area to address the discharge.

24 BOARD MEMBER GLICKFELD: Great, and then the last
25 thing is that the Draft Compliance Plan shows actions being

1 taken to eliminate flows that reach the surf, but not those
2 that don't reach the surf. And the staff asked how dry
3 weather flows would be eliminated as well as how those
4 measures would be maintained over time.

5 These are very much again the same kinds of
6 issues I read in the Petitioners' brief. So how is that
7 resolved in the Revised Compliance Plan?

8 MS. PURDY: So first of all with regard to the
9 question of did it -- or the distinction between did it
10 reach the surf or did it not reach the surf -- the EWMP
11 commits to eliminating all non-stormwater discharges,
12 whether they reach the surf or not. In fact, part of -- I
13 know the City of Malibu didn't take much time to talk about
14 the programs that they have in place, but one of the
15 programs that they've had in place is designed and they
16 talk about how it's designed to eliminate all non-
17 stormwater discharges to the MS4 period. So that's I think
18 the answer to that question.

19 And then with regard to how the measures will be
20 maintained over time and how they'll be monitored and
21 documented, basically they have a suite of methods that do
22 involve public outreach and ongoing inspections of the
23 outfalls, enforcement if necessary. And they talk about
24 those programs and the ongoing nature of those programs.

25 The other thing with regard to the monitoring and

1 documentation is basically a program that I describe, which
2 is the Non-Stormwater Outfall Base Screening Program, which
3 they are required to do the screening. Then they have to
4 do the source identification. If they can't identify the
5 source and eliminate the source then they have to do
6 monitoring and they have to document all of that and report
7 it.

8 And continue to either, if they can't eliminate
9 the non-stormwater discharge then they need to somehow
10 either treat it, divert it, somehow address it. So that's
11 how the monitoring and documentation will happen.

12 BOARD MEMBER GLICKFELD: So how will eventually,
13 I don't know when, but how will eventually you take what's
14 now a not-approved Compliance Plan when it gets approved by
15 the State Board. And hopefully you'll be working with them
16 on this --

17 MS. PURDY: We will.

18 BOARD MEMBER GLICKFELD: -- because you seem to
19 know a whole lot more about it than they do, how will we
20 integrate that better than just sticking it into an
21 appendix? Because I think that certainly I do believe that
22 the County met the standards of the MS4 Permit and in their
23 Enhanced Management Plan. And the City did too, but I'm
24 not -- I'm still a little bit concerned as to the way it's
25 been -- the ASBS Compliance Plan has not been timed well

1 with our work. And that ultimately as of right now we
2 don't really know what the final requirements are going to
3 be.

4 So I would hope that in the future as they're
5 doing this adaptive management that they are able to make
6 some revisions and fully incorporate the ASBS Compliance
7 Report into this, so there are not misunderstandings. I
8 think the separations and the different deadlines have
9 really made a lot of confusion for everybody.

10 No, I have a little bit different take on the
11 role of the Board than my colleague does, Charlie Stringer.
12 I think of ourselves in a very small-scale version of how
13 the Legislature, which is now very intent on taking a
14 strong oversight role. They developed the legislation, the
15 administration, and all of the other entities that they
16 rule, that they have jurisdiction over implemented. Now,
17 they want to take on a role to make sure that everything is
18 working the way that they set it.

19 So I really feel happy that the Board was wise
20 enough to allow ourselves the chance to hear this kind of
21 an appeal before it goes up to the State Board. It was our
22 doing with you, it was our plan, we know it better, we
23 understand how you developed it better. And I really
24 appreciate the opportunity to hear this and raise questions
25 that since you have your nose so deep into these things you

1 might not think of it in the same way.

2 MS. PURDY: No, I (indiscernible) --

3 BOARD MEMBER GLICKFELD: Sam, could you talk
4 about what you might do hence forward considering some of
5 the issues that I talked about?

6 EXECUTIVE OFFICER UNGER: It is --

7 MS. PURDY: After Sam does I'd like to say
8 something --

9 BOARD MEMBER GLICKFELD: Maybe I should let Renee
10 do it while you think about it.

11 MS. PURDY: Well, I (indiscernible) him first,
12 because I think you're right. The timing of these things
13 was not in perfect alignment as I said in our presentation.
14 And I think that now we're getting to the point where there
15 will be a final ASBS Compliance Plan that gives us that
16 opportunity for possible additional integration.

17 And the one thing I just wanted to point out is
18 there's -- the permit actually envisions this, so you guys
19 were very insightful. As we were working on the permit
20 there was a lot to think about, but we ended up covering a
21 lot of those things that could come up during the course of
22 implementing these programs.

23 And there's a section within the Watershed
24 Management Program provisions, you probably remember when
25 we talked about different buckets and different types of

1 pollutants that fell into different buckets. And there was
2 one bucket that was basically for newly identified
3 pollutants, meaning not new pollutants but ones that we
4 hadn't thought were a problem with the EWMPs when they were
5 initially done and it was found that they were a problem
6 later on through monitoring data. And there's a specific
7 process whereby when those are identified then the
8 Watershed Management Program provisions of the permit
9 require the Permittee to then incorporate those pollutants
10 into the EWMP.

11 And the provisions specifically talk about, and
12 it's in Part IV.C.2.a.iii (phonetic), sorry we want to just
13 reference this, but the permit talks about watershed
14 control measures or structural BMPs to address the
15 contribution of that pollution from MS4 discharges to
16 modify the RAA to address that pollutant that needs to
17 modified. And then to identify enforceable requirements
18 and milestones with dates to control the discharge, so that
19 it doesn't contribute to exceedances of receiving water
20 limitations.

21 So if at some point there's new data through the
22 ASBS monitoring or through the monitoring that's being done
23 under the Permittees' coordinated monitoring program that
24 shows that there are additional pollutants that are causing
25 the problem in terms of the ASBS area then there's specific

1 provisions that speak to that and require that then the
2 EWMP needs to be modified to address those pollutants.

3 So the alternative is similar --

4 BOARD MEMBER GLICKFELD: Yeah, I think the bigger
5 frame is I want to make sure that we do eventually get this
6 Compliance Plan written into the EWMP. And it's something
7 that we can't require to have done until we -- but I think
8 it's something that ought be done. And I hope that you
9 would work with the City and the County and the NRDC to
10 make sure that when it's finally approved that either staff
11 is very actively involved with that, and that everyone is
12 engaged in doing this.

13 I can't emphasize enough to my colleagues, there
14 were a million people in this area recreating over the
15 Labor Day weekend. It is one of very few marine-managed
16 areas that are set up for protection of incredible
17 diversity of species. The reason that we have the Ocean
18 Plan with no discharge is to protect those things. And so
19 we have a higher order requirement in this area than we do
20 elsewhere. And I want to make sure that it's implemented.

21 I think everyone has good will here, but I want
22 to make sure that it is treated differently than areas
23 where we have exactly the opposite problem, which is
24 horrendous problems of over-pollution that would need to be
25 mitigated. So thank you.

1 EXECUTIVE OFFICER UNGER: Yeah. I really don't
2 think I have much to add other than sort of a view from
3 what is probably an obvious (indiscernible) if you will. I
4 just think that the idea that the State Board and Regional
5 Board are going to land on the same priorities and the same
6 schedule is not going to happen.

7 Basically, I mean you have essentially 2,000
8 staff to regulate water quality in a city of 35 million
9 people and our priorities are going to be different. In
10 fact, I'm impressed how close the ASBS Compliance Plan is
11 to this EWMP. But it's not exactly there, so the only
12 thing I think we have pre-built in is this adaptive
13 management, if you will. And (indiscernible) already
14 active and --

15 BOARD MEMBER GLICKFELD: But can the wording of
16 the Plan be adjusted if necessary when the Final Compliance
17 Plan is done?

18 EXECUTIVE OFFICER UNGER: Well, then that one you
19 might want to ask Jennifer to (indiscernible) --

20 BOARD MEMBER GLICKFELD: I just want to make
21 sure, when I hear about an appendix I hear about something
22 that you used to make a decision that's reflected in the
23 Plan itself.

24 EXECUTIVE OFFICER UNGER: I'm not sure I'm
25 following you?

1 BOARD MEMBER GLICKFELD: Right now this second
2 Draft Compliance Plan is an appendix that's referenced in
3 the text. It doesn't sound like it actually influenced the
4 Plan in any way; it was done afterwards. And so I want to
5 make sure that it's integrated into the EWMP and made a
6 part of it the way that both the ASBS law required and our
7 Plan required.

8 CHAIR MUNOZ: Ms. Madelyn, I'm now confused by
9 what you just said. I was under the impression that it has
10 been -- that it was approved. We gave approving authority
11 to our Executive Officer who approved this one.

12 BOARD MEMBER GLICKFELD: Oh no, I'm talking about
13 the ASBS Plan is not yet approved. And when it is approved
14 -- it has not yet been approved. And he said -- he's
15 right, it's getting our work and the State Board's work --
16 because they're in charge of these plans, not us -- but
17 their Plan has to be implemented through the MS4 Plan. And
18 I want to make sure that it's really part of the MS4 EWMP
19 and I'm asking whether or not if changes need to be made
20 can we under the MS4 Permit, that this Board approved, get
21 those changes made?

22 BOARD MEMBER YEE: But is that not a separate
23 issue from what is before the Board today?

24 BOARD MEMBER DIAMOND: Is that's what's before us
25 today? I'd say that's what --

1 BOARD MEMBER YEE: Today is just the simple issue
2 to grant re-consideration.

3 BOARD MEMBER GLICKFELD: Well, we'll never see it
4 again if we decide never to grant re-consideration. This
5 is the only time to address this.

6 BOARD MEMBER YEE: Well, we have the adaptive
7 management as well --

8 BOARD MEMBER GLICKFELD: What?

9 BOARD MEMBER YEE: We have the adaptive
10 management process.

11 BOARD MEMBER GLICKFELD: I think that I'm asking
12 for something quite different. Adaptive management is
13 taking an action to say, "Okay, this didn't work. We're
14 going to try something else." This is if the ASBS Plan
15 requires some change in the basic MS4 EWMP can they do it
16 and can we do it? It's very different than adaptive
17 management in terms of the actions that would be required.

18 I'm talking about a Plan where everybody can be
19 looking at it and reading the same thing as opposed to the
20 kinds of things that we've heard about today. "Well, this
21 is in the appendix. And we didn't use this data and this
22 is the standard, but that's not the standard." There's a
23 lot of inconsistency in terms of how different people are
24 viewing this process. And how, particularly because of the
25 problem that the ASBS Plan is not something we're really

1 controlling.

2 MS. PURDY: Yeah. I hear what you're saying and
3 what you're asking. I would say that I mean we actually --
4 and I failed to mention this, I don't know if it was even
5 in the written memorandum, but we actually did comment on
6 the ASBS Compliance Plan. We asked them to ensure that the
7 measures that were being implemented into the ASBS
8 Compliance Plan were integrated into the EWMP.

9 And so any of the measures that are being
10 implemented, the actual BMPs, the structural projects,
11 things like that, there is consistency between the ASBS
12 Compliance Plan and the EWMP. Because the EWMP has all the
13 things that they proposed as a condition of the issuance of
14 the Compliance Plan -- are also at issue in the main body
15 of the EWMP.

16 I think the main difference really is where they
17 considered the data. And the data, because they're linked
18 to the ASBS area, were presented and considered in Appendix
19 E. And so I can't impart there's -- because this is a
20 unique EWMP where we -- as I started out with we have half
21 this. Outside the ASBS we have half what's in the ASBS.
22 They have a separate plan, because of the timing as well,
23 it turned out the way it did.

24 But all of the measures that they're actually
25 going to be implementing are in the EWMP as well as the

1 ASBS Compliance Plan.

2 BOARD MEMBER GLICKFELD: And so you have some
3 knowledge that the ASBS Compliance Plan is going to be
4 approved as written by the State?

5 MS. PURDY: No, I don't. I mean, I don't have
6 that --

7 BOARD MEMBER GLICKFELD: I think that's what
8 you're not -- maybe I'm just not being very clear.

9 MS. PURDY: No. I think that it --

10 BOARD MEMBER GLICKFELD: What I'm being clear --
11 what I'm asking, if there's some changes that the staff
12 requires that would also require changes in the EWMP
13 itself, can those be done?

14 MS. PURDY: Yes, they can be.

15 BOARD MEMBER GLICKFELD: Okay. That's all I need
16 to know.

17 MS. PURDY: Okay.

18 BOARD MEMBER GLICKFELD: I'm sorry, but I thought
19 I was being clear about that.

20 MS. PURDY: Yeah, and I'm sorry, I think I
21 thought I was (indiscernible). But yes, they can
22 absolutely be addressed in the EWMP, any changes. And
23 that's what I definitely wanted to convey that point and so
24 I'm glad you asked the question, because that is our
25 intention. Is if there are changes to the ASBS Compliance

1 Plan that then would require BMPs or would require
2 additional work in the EWMP then the EWMP can be modified
3 and will be modified to address those changes.

4 BOARD MEMBER GLICKFELD: Okay. I would just want
5 to conclude then that while I thought that some of the
6 issues that the Petitioners raised had merit. I think our
7 staff has addressed them all, and especially with their
8 willingness to continue to follow this process through and
9 make any changes necessary.

10 CHAIR MUNOZ: Thank you.

11 Are there any additional comments or questions?

12 BOARD MEMBER STRINGER: I'd like to move to
13 support the staff -- Sam's decision on this matter.

14 BOARD MEMBER YEE: Second

15 CHAIR MUNOZ: Okay. We have a first and second,
16 roll call vote Ms. Ronji?

17 MS. FORDYCE: Chair I'm sorry, just for
18 clarification, so the options (indiscernible).

19 So the first issue that the staff had added today
20 was either to review the petition or not review the
21 petition. So I think (indiscernible) for making a motion
22 for the Board not to review the petition is
23 (indiscernible)?

24 BOARD MEMBER STRINGER: That's correct.

25 MS. FORDYCE: Okay

1 BOARD MEMBER STRINGER: The motion as stated by
2 Jennifer.

3 CHAIR MUNOZ: A second on that?

4 BOARD MEMBER YEE: Yes, second.

5 CHAIR MUNOZ: Roll call vote, please?

6 MS. MOFFETT: Ms. Diamond?

7 BOARD MEMBER DIAMOND: Yes.

8 MS. MOFFETT: Ms. Glickfeld?

9 BOARD MEMBER GLICKFELD: Yes.

10 MS. MOFFETT: Ms. Munoz?

11 CHAIR MUNOZ: Yes.

12 MS. MOFFETT: Mr. Stringer?

13 BOARD MEMBER STRINGER: Yes.

14 MS. MOFFETT: And Mr. Yee?

15 BOARD MEMBER YEE: Yes.

16 CHAIR MUNOZ: Okay. We're going to take a 15
17 minute break and we'll be back at 3:15.

18 (Off the record at 3:02 p.m.)

19 (On the record at 3:17 p.m.)

20 CHAIR MUNOZ: Okay folks, Board Members please
21 take your seats and we'll get started. We're about five
22 minutes late.

23 We are now on our last item, Item Number 7, which
24 is the consideration of the tentative Waste Discharge
25 Requirement, WDRs, and Water Reclamation Requirements and

1 tentative Cease and Desist Order for the Kissel Company and
2 the Paradise Cove Land Company.

3 Staff Report please, Mr. Wu?

4 BOARD MEMBER STRINGER: Doctor Wu.

5 CHAIR MUNOZ: Dr. Wu, if you've gone to school
6 and you've got the doctorate you are plainly a doctor, so
7 my apologies.

8 DR. WU: Thank you, Chairman Munoz. Good
9 afternoon Chairman Munoz and Members of the Board. My name
10 is Eric Wu, I'm Chief of Groundwater Permitting Unit. With
11 me today is the Section Chief Dr. Rebecca Chou and I wanted
12 the chance to acknowledge the Project Manager, Mrs.
13 Mercedes Merino who is over Region 5 Fresno Office.

14 Item 7.1 in today's agenda are Waste Discharge
15 Requirements and Water Reclamation Requirements, which
16 pertain to both the existing Paradise Cove Mobile Home Park
17 and Beach Café wastewater treatment systems. And the
18 future Paradise Cove Wastewater Treatment Plant, which will
19 consolidate both the wastewater treatment systems, add an
20 additional filtration and a disinfection, and treat the
21 wastewater to Title 22 Recycled Water treatment
22 requirements.

23 There is also a companion Cease and Desist Order,
24 Item 7.2, for the Discharger, the Kissel Company and
25 Paradise Cove Land Company, to regulate effluent water

1 quality from the two existing systems before the upgrade is
2 complete, and it allows time for the construction of
3 combined system to meet the recycled water standards.

4 The Kissel Company and the Paradise Cove Land
5 Company own and operate the Paradise Cove Mobile Home Park
6 and the Paradise Cove Beach Café located at 28128 Pacific
7 Coast Highway in Malibu, California. The site is
8 approximately six miles west from the Malibu Civic Center
9 prohibition area.

10 Here is an aerial view of the Paradise Cove
11 Mobile Home Park and the Beach Café. The red line defines
12 the boundary of the Mobile Home Park, and the beach café is
13 on the beach, highlighted in yellow.

14 To the north of the park is the Pacific Coast
15 Highway, the Pacific Ocean to the south, and the Ramirez
16 Canyon Creek to the east. The park occupies 68 acres on
17 which there are 256 mobile homes. Homes on the south edge
18 of the bluff are approximately 80 feet above the beach.
19 The Mobile Home Park and the disposal area overlie the
20 groundwater basin at the southern slope of Santa Monica
21 Mountains at the Point Dume area.

22 This groundwater aquifer is designated with
23 beneficial uses of municipal and domestic water supply, and
24 agricultural supply.

25 The Beach Café located on a flat arc-shaped

1 beach, is approximately 150 feet from the Pacific Ocean,
2 and 70 feet from the Ramirez Creek culvert. The Beach Café
3 is a single-story building with seating for 300 persons.
4 Because the Beach Café and the treated wastewater disposal
5 area are right on the beach, and the groundwater underneath
6 the beach café disposal area is under the ocean water's
7 influence, the California Ocean Plan standards are
8 applicable.

9 There are no domestic water supply wells down
10 gradient or within the premises of the Mobile Home Park and
11 the Beach Café. Both the park and café receive their water
12 supply from the Los Angeles County Waterworks District 29.

13 Currently, there are two separate wastewater
14 treatment systems that treat wastewater from the Paradise
15 Cove Mobile Home Park and the Beach Café. The next two
16 slides will explain these two systems, because the planned
17 upgrades will continue to use these existing systems for
18 the effluent, which will be combined and further treated to
19 recycled water standards in the new treatment system.

20 This slide presents some history on the current
21 regulations for the existing wastewater treatment system at
22 the Paradise Cove Mobile Home Park. On May 23, 2002 the
23 Regional Board adopted Waste Discharge Requirements, Order
24 No. R4-2002-0108, for the discharge of wastewater from the
25 Mobile Home Park Wastewater Treatment System. The 2002

1 WDRs for the mobile home park prescribed effluent
2 limitations for total dissolved solids, BOD5, total
3 Coliform and Enterococcus. The only groundwater limit was
4 for total nitrogen.

5 In order to have time to meet the effluent
6 limitations, the discharger was also issued Time Schedule
7 Orders. The time schedule orders allowed time for the
8 discharger to abandon and remove the old septic tanks, and
9 install an advanced onsite wastewater treatment system,
10 which was the very first one in the Malibu area. The
11 Advanced Onsite Wastewater Treatment System, or the AOWTS,
12 provides secondary treatment including nitrification and
13 de-nitrification to reduce nitrogen-related compounds in
14 the wastewater and followed with a disinfection process to
15 remove bacteria such as Enterococcus, total Coliform and
16 fecal Coliform.

17 The construction include 18 primary treatment
18 tanks, two underground recirculation tanks, a packed bed
19 treatment system, and a chlorination dosing tank. In
20 addition, an ultraviolet system was installed to provide
21 tertiary treatment for disinfection. The treated
22 wastewater was then discharged to seepage pits. The
23 advanced onsite wastewater treatment system was completed
24 on August 13, 2007 and is still operational. The current
25 Paradise Cove Mobile Home Park wastewater treatment system

1 has a design capacity for an average flow of about 40,000
2 gallons per day and a peak flow rate of 60,000 gallons per
3 day. The existing seepage pits for the park have a total
4 design capacity for disposal of 73,464 gallons per day.

5 This slide presents the regulatory history of the
6 Beach Café. On December 29, 2003 the Regional Board
7 enrolled Paradise Cove Beach Café under the State Water
8 Resources Control Board General WDRs, Order No. 97-10-DWQ,
9 titled, "General WDRs for Discharges to Land by Small
10 Domestic Wastewater Treatment Systems," which regulated the
11 discharge from the Beach Café onsite wastewater treatment
12 system.

13 On April 24, 2012, the Discharger submitted a
14 work plan to upgrade the existing system with the addition
15 of an equalization tank to mitigate peak flows and two
16 aerators, which could further enhance the nutrient
17 reduction during treatment. A chlorination tank was also
18 added to provide disinfection. The advanced onsite
19 wastewater treatment system was completed in 2014.

20 The current Beach Café advanced wastewater
21 treatment system has a treatment capacity of 25,000 gallons
22 per day. After primary treatment in the tanks underneath
23 the parking lot of Beach Café, wastewater is then pumped to
24 the secondary treatment system on the bluff approximately
25 800 feet northeast of the restaurant, and for chlorination.

1 The disinfected effluent is then discharged to seepage
2 pits, which are also on the bluff. The disposal area is
3 approximately 80 feet above the beach and 250 feet away
4 from the Pacific Ocean. The total disposal capacity for
5 these seepage pits is 23,159 gallons per day.

6 Due to the discharge location where the receiving
7 groundwater has a hydrologic connection with the Ocean, the
8 California Ocean Plan standards are applicable, and in use
9 as the groundwater limitations.

10 When the mobile home park advanced treatment
11 system was completed in 2009, the Discharger struggled with
12 the turbidity problem, which resulted into the dysfunction
13 of the disinfection process. After the efforts of
14 adjusting the biological treatment process, and increasing
15 the cleaning frequency of the ultraviolet lamp, the mobile
16 home park treatment system became in compliance with the
17 effluent limitations. The last exceedance of Enterococcus
18 and total Coliform was in November of 2014. Because there
19 were no groundwater quality objectives prescribed except
20 the nitrogen compounds, the discharger has no groundwater
21 quality violations.

22 The Beach Café wastewater treatment is regulated
23 by a State Board General permit. There are no effluent
24 water quality limits, except a limit for discharge volume.
25 During major holiday weekends such as the Labor Day weekend

1 the discharge volume would exceed the discharge limit of
2 20,000 gallons per day. The groundwater samples collected
3 in the down-gradient well indicated that the groundwater
4 was infected with Enterococcus. Multiple notices of
5 violation were issued in 2006, 2008 and 2011.

6 To correct the problem, in 2012, Discharger
7 proposed to the addition of an equalization tank, a
8 recirculation tank for nutrient reduction, and a
9 chlorination tank for disinfection. The upgrade then was
10 completed in 2014. The chlorination process successfully
11 removed Enterococcus, fecal Coliform and total Coliform in
12 the effluent during summer of 2015, and up to March of this
13 year only.

14 Because the existing permits for Mobile Home Park
15 and Beach Café are obsolete and need to be updated with
16 additional effluent and groundwater limitations in order to
17 be consistent with all current requirements and to be more
18 enforceable to ensure compliance, the revised WDRs/WRRs
19 have been prepared.

20 The Discharger needs time to construct the
21 connections between the two current systems as well as
22 upgrades to meet the recycled water standards and to
23 address any current treatment issues. And because of the
24 history of the inconsistent reliability of the treatment
25 system and its operation, and violations that have

1 occurred, a tentative Cease and Desist Order is proposed to
2 manage this transition.

3 Given the need to the future upgrade of the WDRs
4 for these facilities to include more protective
5 requirements that are more enforceable, staff prioritized
6 this site for renewing WDRs. On October 2, 201, the
7 Regional Board issued a 13260 Directive requiring the
8 Discharger to submit a report of waste discharge for the
9 Mobile Home Park. The ROWD was subsequently received on
10 November 2, 2015.

11 To verify information provided in the ROWD, staff
12 conducted an inspection on January 26, 2016. During the
13 inspection both Discharger conveyed their interests in
14 combining the effluent from both systems and recycling the
15 wastewater.

16 On February 1st, 2016, a report titled,
17 "Conceptual Plan and Timeline for Improving Effluent
18 Quality, Blending Effluent and Installing Subsurface Drip
19 Reuse at Paradise Cove," was submitted to Regional Board
20 and to the Division of Drinking Water. This Conceptual
21 Plan includes keeping and optimizing existing treatment
22 systems at both the Mobile Home Park and Beach Café. And
23 it provides additional treatment for recycling.

24 The Plan was approved by Division of Drinking
25 Water on June 14, this year.

1 This flow chart explains the treatment train for
2 the future Paradise Cove Wastewater Treatment Plant.

3 The treatment systems separately at the Mobile
4 Home Park and Beach Café will remain in place, and will be
5 optimized. Treated effluents from both systems will be
6 combined, and further treated by filtration and
7 chlorination. The final effluent, after meeting the Title
8 22 recycled water requirements, will be used for subsurface
9 drip irrigation. The seepage pits will only be used as a
10 backup system in case the treated wastewater cannot be
11 recycled due to weather conditions.

12 Based on records, the average discharge from
13 Mobile Home Park was about 40,000 gallons per day, and
14 about 18,400 gallons per day from Beach Café, which had
15 total volume of 58,400 gallons per day. Therefore, the
16 treated wastewater can be 100 percent recycled during the
17 normal discharge of average flow.

18 And this is the map showing the location of the
19 future combined system. Beach Café, marked with the brown
20 color, is at the upper right of the map where the primary
21 treatment is located at the parking lot area. The effluent
22 from primary treatment is pumped to the bluff over here to
23 what is a secondary treatment disinfection. And moving
24 down to lower PCH, the yellow highlighted area, is the
25 advanced treatment system for the Mobile Home Park.

1 When both systems are combined the discharged
2 effluent from Beach Café over here will be pumped along the
3 PCH over to the Mobile Home Park area and combined with
4 effluent from the Mobile Home Park -- combined with the
5 Mobile Home Parks' effluent then treated with filtration
6 and disinfection, in the read area over here.

7 The treated effluent will be piped to the area
8 over here, the shaded green, for the subsurface strip
9 irrigation. The recycled water area is about 1.5 acres and
10 can use up to 60,000 gallons per day of treated wastewater.
11 All existing seepage pits at Mobile Home Park area or at
12 Beach Café area will only be used as the backup system when
13 the treated wastewater cannot be recycled for landscape
14 irrigation when it rains.

15 This combined wastewater treatment system will be
16 referred to as the Paradise Cove Wastewater Treatment
17 Plant. The treated wastewater, after meeting the more
18 protective effluent limitations based on the Basin Plan and
19 the Title 22 Recycled Water Standards, will be recycled to
20 offset the volume of potable water needed for vegetation
21 maintenance.

22 The improved effluent water quality from Paradise
23 Cove Wastewater Treatment Plant and the reduction of the
24 discharge volume to groundwater will protect the
25 groundwater quality, public health and beneficial uses for

1 underlying groundwater and adjacent coastal waters.

2 The Existing Mobile Home Park WDRs only have a
3 limitations for BOD5, total suspended solids, oil and
4 grease, turbidity, total dissolved solids, total Coliform
5 and Enterococcus. For Beach Café there are no effluent
6 limitations in the general WDRs

7 The new WDRs/WRRs in front of you today include
8 revised and more stringent effluent limitations,
9 highlighted in yellow, to ensure that the treated effluent
10 meets recycled water standards for subsurface irrigation,
11 and are protective of surface and groundwater, and public
12 health. These limits are based on Title 22 and the Basin
13 Plan.

14 In addition, conditions specified in the Division
15 of Drinking Water's approval letter and water reclamation
16 requirements for the use of recycled water are incorporated
17 in this permit.

18 At the bottom of the table, the Enterococcus
19 limit only applies to the for Beach Café's discharge at
20 current location before the upgrade is completed. Title 22
21 recycled water requirements do not have any limitation for
22 Enterococcus.

23 The existing permit for Mobile Home Park did not
24 prescribe groundwater quality limitations except for the
25 nitrogen-related compounds. And the applicable groundwater

1 quality limits for Beach Café disposal area only referenced
2 the California Ocean Plan. This revised permit adds more
3 stringent requirements on the receiving water quality and
4 that the groundwater shall meet the Basin Plan groundwater
5 quality objectives.

6 The Dischargers cannot immediately achieve
7 compliance with the requirements contained in the tentative
8 WDRs/WRRs. Therefore, this tentative Cease and Desist
9 Order sets forth a time schedule to allow the Discharger
10 time to complete the actions to be in compliance with the
11 WDRs/WRRs.

12 The Discharger shall immediately comply with
13 interim limitations prescribed separately for Mobile Home
14 Park and Beach Café onsite wastewater treatment systems.
15 The interim limitations are calculated based on the
16 existing effluent data and the applicable regulations
17 including the California Ocean Plan. These interim
18 limitations are calculated based on the 99th and 95th
19 percentile of the monitoring data submitted by the
20 Discharger.

21 The Discharger shall complete these major tasks
22 in the tentative Cease and Desist Order. By January 30,
23 2017, the Dischargers shall submit a work plan to
24 investigate possible sources of total dissolved solids,
25 sulfate, and chloride in the effluent. By November 1,

1 2017, the Dischargers shall begin construction,
2 installation, and upgrades to combine the Mobile Park and
3 Beach Café's onsite wastewater treatment systems. By June
4 1st, 2018 the Dischargers shall complete all constructions
5 and upgrades needed for the Paradise Cove Wastewater
6 Treatment Plant. And as soon as possible, but no later
7 than September 1, 2018, the Dischargers shall achieve full
8 compliance with all requirements in the new WDRs/WRRs.
9 The Discharger shall submit quarterly progress reports on
10 the progress of the construction and upgrades.

11 The tentative WDRs/WRRs and the Cease and Desist
12 Order were circulated for public comment. By the end of
13 the comment periods, the Dischargers' consultants, Advanced
14 Onsite Water, and Heal the Bay both submitted their
15 comments. On behalf of the Discharger the consultant,
16 Advanced Onsite Water, commented on the effluent and
17 groundwater limitations to be unreasonable and excessive.

18 All permits including this tentative WDRs/WRRs
19 shall be consistent with the Basin Plan, as well as the
20 state law, regulations and policies. Paradise Cove
21 overlies the groundwater basin designated with municipal
22 water supply beneficial uses. The Basin Plan prescribes
23 specific groundwater quality objectives for the groundwater
24 basin at the Point Dume. To protect public health, safety
25 and welfare, and the drinking water supply the recycled

1 water used for subsurface irrigation shall meet the
2 Drinking Water Maximum Contaminant Levels specified in the
3 Title 22 of California Water Code.

4 Discharger commented that the TDS, boron, sulfate
5 and chloride are naturally occurring at the site due to the
6 marine deposits. Therefore, the background concentrations
7 of these constituents exceeds the effluent limits. The
8 salt concentration in the effluent depends on the drinking
9 water supply and additions from households and the Beach
10 Café. The drinking water for Paradise Cove is supplied by
11 Los Angeles County Water Works District 29 and not by local
12 groundwater wells. Therefore, the natural occurring salt
13 content underlying the site will not result in the elevated
14 TDS, chloride, sulfate, or boron in the effluent.

15 Another comment was regarding the new effluent
16 limit of Enterococcus for Beach Café. Based on the
17 monitoring report received that summarizes data from the
18 second quarter of 2016, there were several effluent samples
19 with Enterococcus exceeding 104 MPN, most probable numbers,
20 which have caused impacts to groundwater. The chlorination
21 at Beach Café wastewater treatment system functioned
22 properly in the past.

23 The Discharger shall identify and fix the
24 problem, whether it is the process design or operation, or
25 both, as soon as possible and no later than three months

1 from the adoption of this tentative WDRs/WRRs. Therefore,
2 Table 5 of the revised tentative WDRs/WRRs, footnote number
3 4, in your Board package page 7-025, will be revised to
4 reflect the applicable time to be from December 8, 2016 to
5 August 31st, 2018. And we'll (indiscernible) later on.

6 Heal the Bay requested the Regional Board to
7 include the mandatory penalties in the CDO in the event
8 that the Discharger does not meet the stated obligation and
9 schedule.

10 Regional Board assumes that the commenter is
11 referring to the stipulated penalties pursuant to Water
12 Code Section 13308. Such penalties are not appropriate at
13 this time. In order to assess stipulated penalties in the
14 CDO, the Regional Board would need to determine that the
15 Discharger has threatened to violate or will continue to
16 violate the CDO. At this time, there is no evidence
17 indicating that the Discharger threatens or will continue
18 to violate the CDO willfully. As the CDO has not been
19 issued yet it is premature and inappropriate to incorporate
20 stipulated penalties into this CDO.

21 While the Discharger has had compliance issues in
22 the past, Regional Board staff is committed to closely
23 overseeing the construction and implementation of the
24 upgrades at the Mobile Home Park and Beach Cafe pursuant to
25 the schedule in the CDO. If there is any evidence that the

1 Discharger will not meet a deadline in the CDO, the
2 Regional Board could, if warranted, issue an order for
3 stipulated penalties or proceed with an enforcement action.

4 To be consistent with the staff's responses to
5 comments raised by Dischargers, and to correct typos, a
6 change sheet was prepared. The first two rows -- and this
7 was distributed to you earlier before at the beginning of
8 this item -- the first two rows and the bottom second and
9 third rows are clarification of site information. As
10 mentioned in the response to comment, effluent from Beach
11 Café treatment system shall meet Enterococcus limit of 104
12 MPN three months from the adoption date of this permit.
13 Therefore the footnote at Table 5, in your Board Package
14 page 7-025, will be revised. And that is documented at the
15 bottom of this change sheet.

16 Here are the options. The Board can proceed to
17 adopt items number 7.1 the revised tentative WDRs/WRRs, and
18 7.2 the tentative Cease and Desist Order with the Change
19 Sheet. Or the Board can direct staff to modify the revised
20 tentative WDRs/WRRs and CDO as a logical outgrowth, and
21 then The Board can adopt them with the change sheet, or
22 take no action. In this case, the old permits separately
23 for Paradise Cove Mobile Home Park and Beach Cafe will
24 remain in effect.

25 The staff recommends the Board to adopt item

1 numbers 7.1, the revised tentative WDRs/WRRs, and 7.2 the
2 tentative Cease and Desist Order as presented, and along
3 with the change sheet.

4 And this will conclude my presentation. Thank
5 you.

6 CHAIR MUNOZ: Are there any questions or comments
7 before we proceed?

8 BOARD MEMBER GLICKFELD: I have one question.

9 CHAIR MUNOZ: Ms. Madelyn?

10 BOARD MEMBER GLICKFELD: Dr. Wu, I want to make
11 sure I understand. You showed the map at the beginning of
12 your presentation. Is the proposal to simply take the
13 effluent from the Beach Café Unit as is right now? There
14 was a little larger map that showed all of the units --
15 keep going. That one.

16 DR. WU: Okay.

17 BOARD MEMBER GLICKFELD: So are we going to still
18 have two units operating and then they're going to be
19 released up at the top or are you going to actually
20 physically demolish the one that's existing right now for
21 the restaurant and expand the one at the top that's --

22 DR. WU: Thank you for the chance for
23 clarification. I think that the current proposal that's
24 for that Discharger is to keep both systems separately at
25 the Beach Café and Mobile Home Park.

1 So apparently the wastewater effluent from the
2 Mobile Home Park -- let me try to see whether I can point
3 this out to you on the map -- at the Beach Café primary
4 treatment will be at the parking lot for the secondary
5 treatment disinfection. All the systems over here for
6 Beach Café will be managed the same here, but the treated
7 effluent will be pumped over here to the Mobile Home Park
8 area. And then at the same type the Mobile Home Park
9 system will stay in place also with events in the system
10 that include equalization, denitrification, and
11 chlorination and then will be --

12 BOARD MEMBER GLICKFELD: So the water will get
13 additional treatment, is what I wanted to know.

14 DR. WU: Then the water by (indiscernible) will
15 be combined and then will go on additional (indiscernible)
16 after the systems are combined for the filtration and
17 disinfection over here in the area marked in red. And then
18 yes, then both systems will stay and will be optimized
19 first, combined, and it will go in through the filtration
20 system before they got used for the recycled water.

21 BOARD MEMBER GLICKFELD: So related to that
22 question is the beach itself, the number of people coming
23 to that beach itself far exceeds the parking capacity
24 within the area. The parking goes for a mile up and down
25 Pacific Coast Highway and people lining up trying to get in

1 there, people walking in. What kind of data did the
2 Applicant collect to estimate the size of the bathroom
3 facilities that are needed to accommodate just the
4 beachgoers that are not using the restaurant?

5 DR. WU: In the past years when we look at the
6 monitoring report the major compliance issue for Beach Café
7 is that the systems overflow. So in the year 2012 the
8 Beach Café also installed an equalization tank to address
9 this issue.

10 Because the Beach Café was previously or
11 currently is regulated under a general permit the flow then
12 is 20,000 gallons per day. But through the major weekends,
13 such as Labor Day weekend or the Fourth of July weekend
14 usually there are millions of people going through. And in
15 some instances there was definitely a lot of them are going
16 to the Beach Café. So the flow, at least on a major
17 weekend, it is in the range of 22,000 gallons per day in
18 those major weekends.

19 So that's where the violation came from and so
20 after they installed an equalization tank (indiscernible)
21 or increase the capacity to 25,000 gallons per day this
22 should be sufficient to address the additional water
23 discharge from the Beach Café.

24 BOARD MEMBER GLICKFELD: So you're saying that
25 there's no way of separating out the Beach Café from the

1 beachgoers themselves?

2 DR. WU: Currently I believe that the bathroom
3 fixtures for the Beach Café offer beachgoers -- I don't
4 know how many of the beachgoers actually use the bathrooms.
5 And we are --

6 BOARD MEMBER GLICKFELD: Well, there's separate
7 outside bathrooms.

8 DR. WU: Right, it's all (indiscernible) I think
9 that were all also going to the same system.

10 BOARD MEMBER GLICKFELD: Well perhaps I'll ask
11 the Applicant what he has. Okay, thank you.

12 BOARD MEMBER DIAMOND: I do have one question.

13 CHAIR MUNOZ: Okay Ms. Fran?

14 BOARD MEMBER DIAMOND: Just one quick question,
15 can you point to where the schedule of where things are
16 supposed to be done by in our binder? I thought I saw
17 something, what is the schedule that they have to comply
18 with? There must be something. I'm just not finding.

19 CHAIR MUNOZ: It's the Cease and Desist Schedule.

20 DR. WU: This will be the Cease and Desist Order
21 and let me point it out to you. If you will turn to page
22 7-070 --

23 BOARD MEMBER DIAMOND: 070, okay.

24 DR. WU: Right, that's it.

25 BOARD MEMBER DIAMOND: So that's 5a through e?

1 DR. WU: Yes. That is all the tasks the
2 Discharger is required to according to the Cease and Desist
3 Order.

4 BOARD MEMBER DIAMOND: Okay. All right.

5 DR. WU: And this is going to be done before the
6 -- this is (indiscernible) to combine the systems and also
7 maintain the operation of both systems currently onsite.

8 BOARD MEMBER DIAMOND: So those are the dates
9 that various items need to be completed?

10 DR. WU: Yes.

11 BOARD MEMBER DIAMOND: And it begins in January
12 2017?

13 DR. WU: Mm-hmm.

14 BOARD MEMBER DIAMOND: And concludes no later
15 than September 1st, 2018.

16 DR. WU: Yes.

17 BOARD MEMBER DIAMOND: Okay, thank you. That's
18 what I was looking for.

19 DR. WU: Any more questions?

20 CHAIR MUNOZ: I have a question once everybody
21 speaks.

22 DR. WU: Okay.

23 CHAIR MUNOZ: So thank you very much for your
24 presentation.

25 We now have Mr. Dahlberg from Paradise Cove with

1 ten minutes and then Barbara Bradley will be doing an
2 additional ten minutes as well, and then following you the
3 City of Malibu for ten minutes, and then speaker cards.

4 So Mr. Dahlberg, please approach.

5 MR. DAHLBERG: Good morning Chair Munoz, Members
6 of the Board. I don't need ten minutes. Can I give
7 Barbara Bradley some of my time?

8 CHAIR MUNOZ: Yes.

9 MR. DAHLBERG: She probably needs more than I do.

10 CHAIR MUNOZ: Yes.

11 MR. DAHLBERG: Only briefly, I just want to first
12 thank staff for the professionalism and candor and
13 communication in carrying out this process with us.
14 They've really gone above and beyond and it's been a very
15 positive experience getting to this point.

16 While the outcome has not always been as perfect
17 as we would have liked in the past, there's no real
18 shortage of effort that we failed to put forth to try and
19 have the best possible operational wastewater treatment
20 system in Paradise Cove. We've made great strides and
21 we're committed to meeting the effluent limits going
22 forward.

23 I know I understand there may be some concerns
24 about the Applicant given the history before the Board. I
25 could spend all of my time driving through a history of

1 bankruptcies and litigation and Chapter 11s and all that
2 good stuff. But I'm more focused on trying to solve the
3 problems we've got in going forward and complying with the
4 realized WDR.

5 I would also however like to address some of the
6 comments made by Heal the Bay. While we will not claim to
7 be anywhere close to perfect the claims alleged by Heal the
8 Bay are dishonest and misleading at best. The claims made
9 by Heal the -- that she refers to numerous spills of raw
10 sewage in the Ramirez Creek. And while only one spill is
11 too many, she's referring to an incident from 10 to 20
12 years ago.

13 Her reference to ocean water quality ignores the
14 fact that Ramirez Creek is lined in concrete on its path
15 across Paradise Cove. As well as the existence of numerous
16 horse properties and hundreds of birds that play on the
17 beach and the pier impacting water quality at the bottom of
18 Ramirez Creek. In that vein it was interesting sitting
19 here watching the previous hearing, because we partnered
20 with the City of Malibu to put a stormwater treatment plant
21 along Ramirez Creek.

22 While a truly special location, Heal the Bay has
23 not bothered to check with the owners of this special piece
24 property and understand the reality of rent control,
25 bankruptcy, litigation, and the time it took to recover

1 from all of this in the late 1990s and early 2000s. I
2 assure you now though we have ample resources and are
3 preparing to put our best foot forward and comply with the
4 current WDR.

5 I also find it interesting that they use the new
6 Civic Center treatment system as an example of how things
7 should be done. While I wholeheartedly support this
8 project, the reality is that were it not for the efforts of
9 groups like the Los Angeles Waterkeeper, which I sit on the
10 board, and this Board, the City would never have acquiesced
11 to this project. Construction is just now commencing on a
12 project that's several years behind the original schedule.

13 Further, the new system does in fact make use of
14 onsite disposal. In fact, Paradise Cove will be reusing a
15 significantly higher percentage of its treated wastewater
16 than the City.

17 I also think it's premature to refer to the use
18 of septic pits as archaic, as they are still required under
19 (indiscernible).

20 Again, thank you for your time and consideration
21 of this Revised Waste Discharge Requirement. I'd be happy
22 to answer any questions you have after we hear Ms. Bradley.
23 Thank you.

24 CHAIR MUNOZ: Ms. Bradley?

25 MS. BRADLEY: I'm Barbara Bradley of Advanced

1 Onsite Water and I've been a wastewater engineer for
2 Paradise Cove for the last 15 years. And I would like to
3 say also that the staff have been exemplary, and it has
4 created so much trust and cooperation that simply wasn't
5 there ten years ago. It was a very different environment.
6 So I just wanted to say that.

7 Okay. So what I'd like to go over very quickly
8 is again reiterating there is a commitment to meeting the
9 water quality. And there will absolutely be no contest or
10 even discussion on the Waste Discharge Requirements. We
11 agree with them.

12 And we'd like to move to at least also request
13 that you acknowledge the water quality achievements that
14 have been in place for some time. And we wish to share
15 with you all the operational challenges that we have been
16 facing.

17 First of all our biggest concern with the issues
18 is that the interim limits are in many cases simply not
19 achievable within the timeframe that has been given. It's
20 not that we don't want to achieve them. It's just that we
21 don't want to have violations for something we physically
22 can't get done that fast even if it's the design process or
23 the permitting process. We're very practical in
24 (indiscernible) contractor who can immediately get on board
25 as soon as those things will come through.

1 And there are also issues that have been there
2 about Chloride. And perhaps this one not so much for the
3 future, because we believe that it will be resolved once
4 the treated wastewaters are blended.

5 But the most important one we're really concerned
6 about is the Enterococcus, because that one has the biggest
7 challenge throughout all the periods to be in compliance
8 consistently. And it's going to take six months. It's not
9 three, we're asking for an additional three months, to go
10 from December 2016 to March of 2017.

11 We just ask for an additional three months,
12 because to get through the design, to it right and get the
13 permitting, we get through the permitting with the City,
14 and to get the contractor, and to get all the equipment
15 ordered on time, those things -- it takes time.

16 And we have financially things in the interim
17 that have nothing to do with the final treatment system,
18 just because we wanted to get this taken care of for Beach
19 Café. And with that if we sometimes know that if there's
20 an Enterococcus exceedance, I think there is also a call
21 for interim turbidity at the same time. So those are all
22 the things we're trying to work on and cover.

23 And at the Mobile Home Park, we're again quite
24 concerned about Sulfate, because there were not monitoring
25 requirements for it before. And as a result we only have a

1 few data points we've collected just in the last few
2 months. And the limit that is set is simply the highest
3 concentration that we've found, but there's definitely a
4 possibility it could be higher. So why not give us
5 something that will give us some time to work on and figure
6 out where is this whole thing coming from. What kinds of
7 treatment can we implement, which we have in addition to
8 what we have already proposed for the treatment system.

9 And lastly we're asking that there is an
10 investigation that is going to be starting immediately.
11 And it will have to do with the Sulfate and other
12 constituents. And we don't know, again, what it will take
13 to implement the treatment. We actually have no idea what
14 that treatment will be yet.

15 And we're quite concerned that because of that in
16 particular, if we go back in the investigation and say well
17 we have the results of that, but it's going to take more
18 time to get this under construction, is there's an
19 opportunity to come back and ask the staff to consider it?

20 Here is a photo, aerial of Beach Café, which is
21 over here. There's the Beach Café with the parking. Up
22 here is the treatment system. This is under construction.
23 There were new tanks under here and new control water tanks
24 over that area. But you probably can't see it, because
25 it's so small and this is new, but an adjusting tank for

1 the chlorination.

2 So this is actually -- I'd like also if you could
3 acknowledge these two systems within a historical context.
4 That with this tank (indiscernible) there was hardly
5 anything of this size, and then not just here, but
6 throughout California. These were new back in 2006 and
7 earlier and so we've been doing quite a lot of work since
8 then. We have upgrades everywhere around, but one of the
9 problems that's been chronic since 2014, we've had a lot of
10 trouble with our pre-aeration system.

11 Without going into all of the things that
12 happened there we're simply seeing that none of it has been
13 satisfactory. We thought we had a good one and we had to
14 replace it. We replaced it in time. It had a
15 (indiscernible) electrical problem. We had a new aerator
16 in place, but with the summer load it hasn't been large
17 enough and we need to improve it again. So that's one of
18 the reasons why we're asking for this additional time is to
19 get this fixed.

20 And very sadly, this year has really brought home
21 that the operator who has been there a long time has simply
22 had too many health effects that have been affecting his
23 brain. And it has become very, very evident in the lack of
24 response to the high levels -- of repeatedly high levels of
25 Enterococcus and (indiscernible) inform either the owner or

1 the SE engineer. And so we're kind of trying now to catch
2 up on this, while recognizing that it's simply not possible
3 for him to continue.

4 So the process is in place. We've located good
5 candidates, state certified operators, and it's a matter of
6 selecting the right one and bringing them into a contract.
7 And we just didn't dare do this in the middle of the
8 summer, to have an operator switch over, but now is a good
9 time to get that going. So that's probably one of the
10 biggest issues that we have.

11 But the bottom line is we're really asking for
12 six months instead of three for this -- to get
13 (indiscernible) with this. And it's not that we don't want
14 to do it, we just don't realistically know what it takes to
15 get the right systems in place.

16 Very quickly, the Mobile Home Park was the
17 biggest treatment system of its kind at the time and it has
18 been pretty good for just about everything. In fact, both
19 of them have in terms of pollutants, but there have been
20 issues. There were some in the beginning, but really we've
21 been seeing a steady improvement all along.

22 And so we're very, very excited about the water
23 recycling. And we believe this to be a win-win all the way
24 around for the waters in California, for the property
25 owner, and for water quality. So this really, I think, is

1 probably the only concern there is we don't know enough
2 about the sulfate, and so we're just asking for an interim
3 limit of 300 instead of 264 -- 274, because we don't know
4 what the high levels will be. But we'll start monitoring
5 and find out where we want to be in exceedance until we can
6 figure out how to treat it.

7 And then if again we find out that there are
8 issues that come up with this investigative report, which
9 isn't due until the next year in the summer, then we may be
10 coming back. And we would like to have the opportunity to
11 have come back to staff to consider it, but we will be
12 keeping staff up to date on our schedule and how things are
13 developing throughout this period. It doesn't say that's
14 required, but I think that's a very good idea.

15 And finally, I just wanted to say this has not
16 been without a great deal of expense on the part of the
17 owner with \$5 million for the original treatment systems
18 and \$1 million in the infrastructure repairs at the Mobile
19 Home Park, so in repairing the sewer lines and getting them
20 up to snuff. That would move along with this. The Beach
21 Café upgrades were another \$3.5 million.

22 So you can see these amounts have not been small
23 over this period of time. And we're looking at an even
24 higher outlier for this recycled water, so this is a big
25 commitment. It's not just fix what's there, but make it

1 much better.

2 And with that I'd just like to thank you for your
3 consideration of these requests.

4 CHAIR MUNOZ: Thank you.

5 BOARD MEMBER YEE: Can we ask questions now or
6 no?

7 CHAIR MUNOZ: Wait.

8 Is there a representative here from the City of
9 Malibu?

10 BOARD MEMBER DIAMOND: I don't think so.

11 CHAIR MUNOZ: I don't see anyone.

12 Okay. We do have a speaker card from Mr. Johnson
13 from Heal the Bay. Please come forward and then we'll open
14 it up to questions and comments.

15 MR. JOHNSON: Good afternoon, Chairman Munoz and
16 Board Members. My name is Steven Johnson and I am the
17 Water Resources Policy Analyst for Heal the Bay. I think
18 about (indiscernible)

19 First of all we appreciate the time the Water
20 Board staff has spent on this issue as well as your
21 willingness to speak with us.

22 As was stated in our comment we are supportive of
23 the Kissel Company and their (indiscernible) Beach Café and
24 onsite treatment to allow for water recycling in Paradise
25 Cove's through their current treatment plant.

1 However given this year at the site, we are at
2 best cautiously optimistic about this project occurring
3 according to schedule. Yes, this history (indiscernible)
4 as previously was stated, however we also today there
5 continues to be exceedances on this site. That said as we
6 move forward we are supportive of those projects. We just
7 want to ensure that it happens on that schedule.

8 In consideration of Paradise Cove's chronic
9 violations over the past decade we believe it would be in
10 the best interests of the homeowners and the beach goers of
11 Paradise Cove to have a more cautionary Cease and Desist
12 Order.

13 We recommend mandatory civil penalties be
14 including in this if the Discharger does not meet the
15 Order's stated objections, obligations, and schedule.

16 We appreciated the opportunity to comment on this
17 in our written comments on the Cease and Desist Order. And
18 we apologize for not using more professional language in
19 our written comments, using the responses, as staff said
20 previously. They assumed incorrectly that we were
21 referring to stipulated penalties pursuant to Water Code
22 13308. Based on our research we see no language in the
23 Water Code 13308 preventing the Board from creating
24 mandatory civil penalties as part of the Cease and Desist
25 Order.

1 This would better ensure that the schedule is
2 followed and this ongoing issue is finally addressed.
3 Further, this would be prudent and cautionary due to the
4 popularity of the site given that it is (indiscernible)
5 Regional Board staff are committed to closely overseeing
6 the construction and implementation of the upgraded water
7 treatment. And we assure the Board that Heal the Bay will
8 also make similar efforts to keep a close eye on the
9 project in the months to come.

10 Thank you very much for the opportunity to speak.

11 CHAIR MUNOZ: Thank you.

12 Board Members, questions or comments?

13 BOARD MEMBER DIAMOND: I think Larry still has a
14 question over there.

15 CHAIR MUNOZ: Okay. Mr. Larry?

16 BOARD MEMBER YEE: So this is a question for the
17 Paradise Cove folks. You're essentially asking for an
18 additional three months to the deadlines that are listed in
19 the CDO; is that correct?

20 MS. BRADLEY: Yes. The staff in the change sheet
21 have suggested three months and we're asking for six,
22 simply because I have been working with Paradise and with
23 the City of Malibu Permitting for many, many years. And I
24 can tell you that three months is extremely difficult.

25 BOARD MEMBER YEE: So staff has suggested three,

1 you're asking for six, so what you're really asking for is
2 an additional three months on top of what staff are
3 suggesting?

4 MS. BRADLEY: That's correct.

5 BOARD MEMBER YEE: Okay. And staff's response to
6 that?

7 DR. WU: This is Eric and while reviewing the
8 comment letter provided by the Discharger, I don't think
9 the Discharger actually have a very clear picture about how
10 to resolve this issue again. So at this point there's no
11 actual construction or any actual action that they've
12 planned or proposed that would require the permitting to be
13 done. The issue can be resolved.

14 So and also a factor is the time that -- the
15 beginning of the violation was in March of this year. And
16 that the Discharger actually had time since then to come
17 and to resolve this issue. So my staff recommendation is
18 that if the Discharger will be acting to resolve this issue
19 then it should have been done. And the three months is
20 just to accommodate the need for them to further identify
21 any possible means to resolve this.

22 And again based on information that we have and
23 also the information by the Discharger we don't see there's
24 any construction yet at this point. It was not proposed in
25 the details at this time.

1 BOARD MEMBER YEE: So as Heal the Bay has pointed
2 out would there be any financial penalties in case the
3 deadlines are not met?

4 BOARD MEMBER GLICKFELD: Here comes the lawyer.

5 MS. FORDYCE: I'm Jennifer Fordyce. I'm a little
6 nonplussed by (indiscernible) I assume they were talking
7 about the civil litigation penalties for the Water Code
8 Section 13308 (indiscernible).

9 But I'm not quite seeing where they say mandatory
10 civil penalties. I am (indiscernible) mandatory minimum
11 penalties in the MPS. Those apply to MPS permits only.
12 There is no method in the Water Code to insert what they
13 call mandatory civil penalties in water, so I'm not really
14 understanding the thinking about that.

15 There is Water Code Section 13308 penalties, but
16 that's not a (indiscernible).

17 CHAIR MUNOZ: Maybe we can ask Heal the Bay if
18 they have a reference?

19 BOARD MEMBER DIAMOND: Well, why don't you have
20 her consult with them?

21 CHAIR MUNOZ: Maybe do you guys want to consult
22 with one another while we continue our deliberations?

23 Ms. Fran, did you have any -- or Larry?

24 BOARD MEMBER YEE: No, it's good.

25 CHAIR MUNOZ: Oh, okay.

1 MS. SMITH: Chairman Munoz, I just wanted to add
2 a little bit to Eric's response and the (indiscernible).

3 I do agree that when we first put out this
4 permit, if you look back to last June when they were in
5 full compliance with (indiscernible). And then just
6 recently we have (indiscernible). So that's why we put in
7 the new limit, because we feel that's the best way to
8 ensure it gets fixed and doesn't go on for two years while
9 they putting in the new system. So we put that in and we
10 put in the three months.

11 Eric is correct that we still quite don't know
12 what their plan is. And they said in their letter that
13 they're going to put in an aerator (indiscernible) they
14 have.

15 But what we did hear that was new today is their
16 dilemma to find a new operator, which we feel is the key
17 part of the problem here. It's not the system itself
18 although it seems to be a part of it keeps having some
19 issues. But they were in full compliance through last
20 summer peak time at Beach Café into the spring. And then
21 all of the sudden there was a problem. Maybe it was that
22 new part, but their commitment to find a qualified
23 certified operator (indiscernible) the six months.

24 But I just wanted to put that out, so the
25 schedule I guess is (indiscernible) operator. I think

1 that's a big part of the solution.

2 CHAIR MUNOZ: Ms. Fran?

3 BOARD MEMBER DIAMOND: Well, Mr. Dahlberg, I --
4 you don't need to come up. I just wanted to say in my
5 remarks to the Board and staff and you, I have seen you
6 come before us for many, many years. I'm sure seeing me
7 here today wasn't the thing that you were most looking
8 forward to, because we go back a long time. There's been a
9 long, long history of contamination at this beach where
10 hundreds of thousands if not millions of people have been
11 going to enjoy the swimming and the surfing. It is one of
12 the most beautiful places in our region, one of the most
13 beautiful beaches.

14 There has been a long history, and I know you
15 tried to give a little bit of a revisionist history of
16 what's taken place. But there has -- and including blaming
17 the birds. I mean, there is really a tremendous amount of
18 contamination that's gone on there and many Time Schedule
19 Orders that were given to you. I think this Board over the
20 years, has been more than generous.

21 And, you know, I really don't feel that we can do
22 much more than applaud the recycling water, which I
23 understand is a great benefit to you. But I still am very
24 concerned about the past history and not having it repeat
25 itself. So I'm very sympathetic to Heal the Bay and their

1 concerns. I'm sympathetic to the thousands of beachgoers
2 that go to your beach.

3 And the fact that it does cost a lot of money I
4 understand, but this is a very successful business that's
5 been run there over the years: everything from parking,
6 restaurants, movies being made there. And so I really
7 think the fastest that we can finally get this into a
8 healthy beach where people can enjoy going there and know
9 that they're not going to get sick is the most important
10 thing that we can do as a Board.

11 So what I would like to say that is that this
12 time, this order that has been given to you with the -- and
13 the dates on page 7-75 a through e, is a very good
14 schedule. I have no problems with that schedule at all,
15 but I would like to ask that we either have a change sheet
16 or direct the staff, whatever makes most sense, that every
17 time one of these dates a through e comes up that we have a
18 report the following month from Mr. Dahlberg and from our
19 staff about whether they're in compliance. And if they're
20 not in compliance that we take appropriate action, because
21 it's just it's finally at long last we have to deal with
22 this. And it's gone on far too long.

23 And I am really sorry to see it -- to see that we
24 still have to deal with it. I'm glad they're going to be
25 recycling water, but I think this is a time that we finally

1 have to do something. So that's what my request would be,
2 is that we move forward with these dates. And that we have
3 a report about a month after, whatever makes sense to
4 staff, that is close as possible to those deadlines. And
5 that we make sure that they are in compliance with these
6 deadlines. So that's where I am.

7 CHAIR MUNOZ: Well, I agree with you Board Member
8 Fran. We sit up here and we see people who come before us
9 over and over again. And since 2002 you have been out of
10 compliance three times. And I think that's a lot when
11 you're dealing with members of the public and your
12 community health and water quality. You have the beach,
13 you have a café.

14 And I don't think that I would support the three
15 month extension. But I do agree that we need to monitor
16 this very closely, and not overlook it, so two years from
17 now we hear you're out of compliance again. I think our
18 responsibility is to the members of the public to really
19 monitor, because I think it's been operating for quite some
20 time. It's a well-known place and I think that you also
21 too have a responsibility as business owners to your
22 clientele.

23 So I'm concerned is that your actions have proven
24 in the past that compliance has not been something that has
25 been a priority. And it bothers me, because you're

1 operating a restaurant and you're operating other things
2 that are right on the beach. And you know it's a high
3 season for you. I'm not sure whether it can be closed, so
4 that you can take care of all of these things and that you
5 can do the work while you still have the members of the
6 public.

7 So when if I first read all of this, I don't -- I
8 usually give business owners the benefit of a doubt. In
9 this case I feel that we have to monitor you very closely
10 to make sure it happens. And I know that there's a lot of
11 money that's invested, but that's what business is and if
12 you weren't making money you would've gotten out of the
13 business. But my biggest concern in the health of the
14 beachgoers, you know, and the exceedances that you've had
15 in the past. And I've heard your statements of good will,
16 but at this point I'm focusing on past behavior.

17 Any other comments?

18 BOARD MEMBER STRINGER: I don't really have much
19 to add, I guess, accept that I'm in agreement with my
20 colleagues. I guess I have one question, is there a way --
21 I'm very happy to hear that there's a commitment to get a
22 new operator out there, because I know it's been a problem.
23 Is there a way to document that in some fashion? Can we --
24 do we have authority to write that in? Or is that
25 something that is just we're --

1 MS. FORDYCE: Well, what we could do is we could
2 add a provision to the tentative Cease and Desist Order
3 requiring the Discharger to write a (indiscernible) report
4 (indiscernible) their time. And we could add that into the
5 Cease and Desist Order (indiscernible) --

6 BOARD MEMBER STRINGER: Well, what about the
7 commitment to get a new operator?

8 MS. FORDYCE: What was that?

9 BOARD MEMBER STRINGER: What about the commitment
10 to get a new operator? I mean, is there some certification
11 requirement for operators?

12 MS. CHOU: Yes, the State Board --

13 BOARD MEMBER STRINGER: Is that something that's
14 already required before?

15 MS. CHOU: I think the state requires that a
16 public system and have their operator certification. And
17 we can certainly require for the project operator on the
18 premises and to have the operator certification, yes.

19 BOARD MEMBER STRINGER: We can do that? Okay.
20 Is that something that you would recommend?

21 MS. CHOU: Yes.

22 BOARD MEMBER STRINGER: Okay. I'd like to see
23 that.

24 BOARD MEMBER GLICKFELD: So, are you asking for
25 the permit to require that he --

1 MS. CHOU: And I believe they already have that
2 in the language in the permit.

3 BOARD MEMBER STRINGER: Oh, it's already in
4 there?

5 MS. CHOU: Yeah.

6 BOARD MEMBER STRINGER: Oh, okay great. I'm
7 sorry, I missed that.

8 EXECUTIVE OFFICER UNGER: Rebecca, can you point
9 them to the language?

10 BOARD MEMBER STRINGER: I missed that. I'm sorry
11 Rebecca. My understanding was one of the problems here was
12 with the operator and --

13 MS. SMITH: Yeah, I'm trying to find the language
14 and the requirement to have a certified operator is in
15 there, but we can't (indiscernible) --

16 CHAIR MUNOZ: Can't find it?

17 MS. SMITH: -- I'm deferring to legal counsel I
18 don't think we can say they need to find a new operator,
19 but certainly we can --

20 BOARD MEMBER STRINGER: We can't say we either
21 approve or disapprove of your operator. We can't do that?

22 CHAIR MUNOZ: No.

23 BOARD MEMBER STRINGER: We can't?

24 MS. FORDYCE: I don't think we can say that, I
25 mean I don't know for sure, but I think obviously the Board

1 can encourage

2 BOARD MEMBER GLICKFELD: The lawyers are
3 laughing, you do realize that?

4 BOARD MEMBER STRINGER: I know. I'm laughing at
5 myself, joke.

6 Well, you know, as long as there's a commitment
7 on your part to get a new operator in there, and I can see
8 your heads nodding yes on that, then I'm comfortable with
9 that. And in the context of staying in close contact in
10 terms of the progress I'm encouraged to hear that you've
11 turned things around up there. So that's very encouraging.

12 Hold on.

13 DR. WU: I found the language. So I found the
14 language, in there. In your Board package, page 7-031 --

15 BOARD MEMBER DIAMOND: 031?

16 DR. WU: Yes, in 031 and item number 6 the last
17 sentence is, "Anyone employed in the operation of the
18 wastewater treatment plant must be certified pursuant to
19 the Water Quality Code Section 13625 to 13633."

20 BOARD MEMBER STRINGER: Okay. Great.

21 BOARD MEMBER DIAMOND: Okay.

22 BOARD MEMBER STRINGER: Thanks.

23 CHAIR MUNOZ: And Ms. Madelyn, do you have any
24 remarks?

25 BOARD MEMBER GLICKFELD: Yeah, I -- Mr. Dahlberg,

1 could you come up for a minute?

2 I'm glad that you recognize you have an operator
3 problem and I'm very glad that you're combining these two
4 systems and getting rid of the seepage pits down below.
5 And I'm glad that you're going to be doing some recycling,
6 and we just need you right now to comply with the -- to
7 show us that you're doing everything possible to comply
8 with these deadlines. And if you work closely with our
9 staff and you demonstrate compliance and you come back to
10 the Board at these different points and explain what's
11 going on, I think we'll get a better relationship as we did
12 with the City of Malibu when they showed that they were
13 moving forward.

14 And we know that things go wrong. We know that,
15 but we want you to move forward. The thing that worries me
16 the most is that you have these exceedances starting just
17 when the beach load goes up in the spring and through the
18 summer. And I asked the question of our staff before, what
19 do you do? You actually charge it by the person walking
20 in. You know how many cars come in. You know how many
21 people are going to the beach and who's going to the
22 restaurants, because they're asking for -- and do they get
23 different treatment inside?

24 How do you know when too many people are there,
25 that your system can't handle it?

1 MR. DAHLBERG: Well, let me just clarify.
2 Unfortunately, as of about two years ago we don't know how
3 many people are going in there. And I don't have any
4 control over how many people go in there. The State Lands
5 Commission and the Coastal Commission basically forced open
6 the gates of Paradise Cove they --

7 BOARD MEMBER GLICKFELD: I think what they forced
8 you to do is allow people to walk in with surfboards.
9 You're not charging anybody anymore?

10 MR. DAHLBERG: It's the general public. I do --

11 BOARD MEMBER GLICKFELD: You don't charge people
12 walking in anymore, because I see pedestrian fees on the
13 side of your gates.

14 MR. DAHLBERG: No, you don't. Not right now. On
15 two -- let me clarify -- on two occasions we did try to re-
16 implement a fee for what is called walk-ins. We started
17 calling it a daily beach club membership, because we do
18 have the right to charge for the use of our facilities.

19 The problem is implementation of that, because of
20 what's been reported in the -- and because of Coastal
21 Commission sensitivity to anything that may in any way
22 deter that right for the public. I haven't been able to
23 come up with a way short of having the police state there
24 to actually control and charge for those uses, so the place
25 is just basically been wide open.

1 If you come in and you park then you pay to park,
2 but as far as coming up with a plan to try to charge, so we
3 have a limit to the number of people that can come in is
4 just beyond our ability to do that.

5 BOARD MEMBER GLICKFELD: Then what are you doing
6 to expand your -- are you sufficiently expanding your
7 lavatory facilities and reflecting in that the size of the
8 new systems that you're building, so that you don't have a
9 problem?

10 MR. DAHLBERG: We are. We've essentially been
11 dealing with this for almost two years now, so we feel like
12 we have a pretty good handle on what the flows are right
13 now. And I will continue to try to come up with a plan
14 that will charge people for the use of our facilities and
15 limit that.

16 BOARD MEMBER GLICKFELD: I would be more
17 interested in you expanding the facilities, to make sure
18 that there is no overflows during the time -- and this is
19 something I would like to have the staff also answer --
20 during the time before you go into construction to combine
21 this system. And at the point that they're combined the
22 bacteria's going to be treated up at the top with the
23 tertiary treatment; is that right?

24 MR. DAHLBERG: Correct, the additional --

25 BOARD MEMBER GLICKFELD: So what we're concerned

1 about now -- what I'm most concerned about now is bacteria
2 that's coming out of the systems and is exposing people to
3 danger in the water itself. And at public beaches we have
4 a posting requirement. Do you have a posting requirement?

5 MR. DAHLBERG: Well, L.A. County does have a
6 posting requirement and they worked with Heal the Bay on
7 that right there at the bottom of the creek. And at the
8 risk of being argumentative I kind of resent the
9 implication that we're endangering the public at the beach
10 right there. I swim in that water. My family swims in
11 that water.

12 Several years ago, with the help of the Los
13 Angeles Waterkeeper, because of a concern for these tests
14 that are at the bottom of the creek we started doing
15 independent sampling in front of our lifeguard tower where
16 most of the public swims. And there wasn't a single
17 exceedance. And that includes on days we're taking a
18 sample right at the surf's level, at the bottom of the
19 creek where -- you can tell me I'm making --

20 BOARD MEMBER GLICKFELD: Well, we're not talking
21 about creek now. We're talking about your septic systems
22 and your sewer systems, so let's not get argumentative. I
23 don't mean to get argumentative. But I want to make sure
24 that the does the staff know that the right procedures are
25 in place? So that when these exceedances happen people at

1 least know that there's been an exceedance and that they
2 can make their best decisions about whether to go into the
3 water or not.

4 We have that at public beaches. He says that the
5 county is doing that here. Can the staff answer that
6 question, please?

7 DR. WU: I'm sorry I missed the question?

8 BOARD MEMBER GLICKFELD: The question was given
9 the fact that Mr. Dahlberg said that there is the county --
10 the county does do water quality testing at the beach. And
11 we have the water quality testing for the system, if we
12 know that there's a danger of people being exposed to
13 bacteria in the water is there a closure policy or is there
14 a signage policy? We have signage policies at other
15 beaches.

16 This is a beach that's sort of like Mother's
17 Beach to the north. It's very low surf. There's not a lot
18 of circulation in there. People love to bring their little
19 children there. There's hundreds of little kids and I
20 don't mean to denigrate, this is a fabulous place to bring
21 your kids. But I think that people ought to know if
22 there's exceedances and I think that we're experiencing a
23 problem, that's going to -- as soon as they do the
24 transition to the new system it's going to go away, because
25 you'll have a better disinfection system further away from

1 the beach.

2 But until then what are we going to do to make
3 sure people are notified?

4 EXECUTIVE OFFICER UNGER: I think the short
5 answer is -- the short answer is I think we're going to
6 have to report back to you. I mean, we just do not have
7 the resources and the ability to (indiscernible) --

8 BOARD MEMBER GLICKFELD: Oh no, I'm not
9 suggesting that we do that. I just wondered -- I was not
10 suggesting that we go down there and post the beach. I was
11 suggesting how we can be sure that there are the same
12 mechanisms in place as there are at public beaches. So
13 that when there are exceedances just notifying somebody at
14 the county beaches and harbors that they could go post it.

15 EXECUTIVE OFFICER UNGER: Yeah. We will initiate
16 (indiscernible) Department of Health to inquire what the
17 current notification procedures are at this beach. And we
18 will report back to you.

19 BOARD MEMBER GLICKFELD: Okay. I don't think we
20 need to make that part of this permit, but I would really
21 appreciate that happening.

22 And with that I also would like to make a motion.
23 Per the staff, and the staff, do you have any changes to
24 offer at this point?

25 MS. CHOU: Yeah, we made the language for the

1 local (indiscernible) --

2 BOARD MEMBER GLICKFELD: Are you ready for that
3 yet?

4 MS. FORDYCE: I'm trying to find the page hold
5 on. So regards the pending is 7-070 there will be a new
6 5f. Let me go and (indiscernible) --

7 BOARD MEMBER GLICKFELD: 7-07?

8 MS. FORDYCE: 7-070 is the page number.

9 BOARD MEMBER GLICKFELD: Okay.

10 MS. CHOU: The page number.

11 EXECUTIVE OFFICER UNGER: That is the Bates
12 number.

13 BOARD MEMBER GLICKFELD: That's the mandatory --
14 right.

15 MS. FORDYCE: And what we say, "Is after each
16 date listed in subsections a through e above the Discharger
17 shall provide a verbal report at the next regularly
18 scheduled Board meeting pertaining to the compliance or
19 lack of with the requirement."

20 So I didn't recommend putting in (indiscernible)
21 instead.

22 BOARD MEMBER GLICKFELD: So this is the new item
23 is 5f?

24 MS. FORDYCE: 5f.

25 BOARD MEMBER GLICKFELD: Okay. And are there any

1 other changes that we've made? I don't think so.

2 (Off mic colloquy.)

3 BOARD MEMBER YEE: Jennifer, I thought you were
4 huddling up with Heal the Bay to discuss --

5 MS. FORDYCE: Oh, I'm sorry. Yes, I did huddle
6 up with them. I did explain that the difference with Water
7 Code Section 13308 and the mandatory (indiscernible)
8 comments. I think they understand more about what we can
9 do. If there are any excessive (indiscernible) schedule
10 and hopefully there's no issues. But if there are there is
11 a way that the Board can reopen the Cease and Desist Order
12 and put in those types of penalties. Also there's always
13 that the Board can take an enforcement action and there is
14 a re-order provision. We always put those in, but it's
15 number 12 on 17-072. (phonetic)

16 BOARD MEMBER YEE: Good. Thank you.

17 MS. FORDYCE: It's a standard provision, so we
18 can revise these.

19 BOARD MEMBER GLICKFELD: So with that I don't
20 think -- are there any other changes that any of the Board
21 Members what to put in? Okay. Well, I would like to make
22 that move on a motion per staff, including the new item 5f
23 on page 7-070.

24 MS. FORDYCE: And the change sheet?

25 BOARD MEMBER GLICKFELD: And the change sheet, of

1 course and the change sheet.

2 BOARD MEMBER DIAMOND: Second.

3 CHAIR MUNOZ: Roll call vote, Miss Ronji?

4 MS. MOFFETT: Ms. Diamond?

5 BOARD MEMBER DIAMOND: Yes.

6 MS. MOFFETT: Ms. Glickfeld?

7 BOARD MEMBER GLICKFELD: Yes.

8 MS. MOFFETT: Ms. Munoz?

9 CHAIR MUNOZ: Yes.

10 MS. MOFFETT: Mr. Stringer?

11 BOARD MEMBER STRINGER: Yes.

12 MS. MOFFETT: And Mr. Yee?

13 BOARD MEMBER YEE: Yes.

14 CHAIR MUNOZ: And the motion carries. We are now
15 going to adjourn Day 1 of our current meeting. Day 2 will
16 be held tomorrow at the City of Santa Clarita Council
17 Chambers. And the meeting will begin at 9:00 a.m.

18 Can we have a motion to adjourn?

19 BOARD MEMBER GLICKFELD: Move adjourned.

20 CHAIR MUNOZ: Thank you.

21 (Whereupon, the Los Angeles Regional Water Quality Control
22 Board meeting adjourned at 4:35 p.m.)

23 --oOo--

24

25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of November, 2016.



Mason Booker

CER**00866

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of November, 2016.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852

Audio File of September 7, 2016
Regional Board Meeting for Petition



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

Draft (Two-Day)
Los Angeles Water Board Meeting Minutes
September 7, 2016 and September 8, 2016

Day One
September 7, 2016, 12:30 p.m.
Meeting location:

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301

The meeting was called to Order by Chair Irma Muñoz at 12:36 p.m.

1. Roll Call.

Board Members Present: Fran Diamond, Madelyn Glickfeld, Irma Muñoz, Charles Stringer and Lawrence Yee.

Board Members Absent: Maria Camacho

Staff Present: Samuel Unger, Deborah Smith, Paula Rasmussen, Jennifer Fordyce, David Coupe, Frances McChesney, Ronji Moffett, Gerardo Rabelo, Renee Purdy, David Hung, Deborah Brandes, Beth Payne (on loan from State Board), Dr. Celine Gallon, Dr. Rebecca Chou, Dr. Eric Wu, Ivar Ridgeway, Cassandra Owens, Theresa Rodgers, Anna Townsend

Individuals whose Names Appear on the Sign-In Sheet and/or Speaker Cards

Mr. Bruce Hamamoto, Los Angeles County Department of Public Works	Ms. Angela George, Los Angeles County Department of Public Works
Ms. Tracy Egoscue, Egoscue Law Group	Mr. Arthur Pugsley, L.A. Waterkeeper
Mr. Amir Mari, Larry Walker Associates	Mr. Chris Wessel, Geosyntec Consultants
Mr. Dan Jablonski, CH2m Hill	Mr. Craig George, City of Malibu
Mr. Steven Johnson, Heal the Bay	Ms. Rita Kampalath, Heal the Bay
Ms. Lauren Langer, Jenkins & Hogin	Mr. Geremew Amenu, L.A. County Public Works
Ms. Renee Nuggard, Torrance Logistics	Ms. Melissa Snyder, Torrance Logistics
Ms. Barbara Bradley, Advanced Onsite Water	Ms. Christine Rowe, Representing self
Ms. Becky Hayat, Natural Resources Defense Council	Ms. Jennifer Voccola Brown, City of Malibu Dr. Andrew Sheldon, City of Malibu
Mr. Paul Alva, L.A. County Department of Public Works	Mr. Armando D'Angelo, L.A. County Department of Public Works
Mr. Steven Dahlberg, Paradise Cove Land Co.	

IRMA MUÑOZ, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

2. Order of Agenda.

Executive Officer (EO) asked that the Board allow one public commenter, Ms. Christine Rowe, to speak today after the Uncontested Items Calendar since she cannot attend the meeting tomorrow.

3. Board Member Communications.

Board member Larry Yee had no ex parte communications to report, but mentioned his independent work with an ad hoc group of citizens in the Ojai Valley to raise awareness among citizens for greater water conservation and efficiency.

Board member Fran Diamond had no ex parte communications to report, but noted that while there is improved water quality in Catalina, there are tremendous water supply issues there.

Chair Irma Muñoz reported that she participated in two meetings with LA County to discuss collaboration and partnership over the next couple of years. She also met with cities in the San Gabriel Valley to hear concerns about the LA County MS4 Permit. Chair Muñoz invited other cities to sit down with her and other Board members so she can listen to what the concerns are regarding the permit.

Uncontested Items Calendar.

EO stated the Uncontested Items Calendar as: Items 4 and 5.

MOTION: Board member Charles Stringer moved to approve the Uncontested Items Calendar.

Seconded by: Board members Larry Yee and Fran Diamond
Motion carried: Approved unanimously by roll call vote.

Maria Camacho - Absent
Francine Diamond - Yea
Madelyn Glickfeld - Yea
Irma Muñoz - Yea
Charles Stringer - Yea
Lawrence Yee - Yea

There was no scheduled Public Forum for Day One of this meeting; however, the Board allowed brief public comments from Ms. Christine Rowe, representing herself, concerning the UTC Rocketdyne site. Ms. Frances McChesney responded to Board member questions.

6. Consideration of Petition for Review of the Executive Officer's Action to Approve the Enhanced Watershed Management Program for the North Santa Monica Bay (NSMB) Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175.

Ms. Jennifer Fordyce, Board attorney, introduced the item to provide the Board with background and context of the item, summarize the contentions that were raised in the

petition, and explain what the Board's options are in its consideration of the petition. Ms. Fordyce and Ms. McChesney responded to questions from Board members regarding the review standard for reconsidering an EO's actions.

Ms. Renee Purdy, Chief of the Regional Programs section, provided background information on the relationship of the NSMB EWMP to the Laguna Point to Latigo Point Area of Special Biological Significance (ASBS), as well as the Ocean Plan and the ASBS special protections and discharge requirements it contains, including preparation of ASBS Compliance Plans.

The Petitioners made a joint presentation summarizing the contentions in their petition and requesting that the Board review the merits of the petition. Before getting into the substance of their petition, Petitioners renewed their objections regarding their request for the Board to appoint separate counsel for the Board and for staff. Ms. McChesney pointed the Board to the ruling by Chair Muñoz denying the Petitioners' request. Speakers included:

- Mr. Arthur Pugsley, L.A. Waterkeeper
- Ms. Becky Hayat, Natural Resources Defense Council (NRDC)

Ms. Renee Purdy provided an overview of the NSMB EWMP development, review, and approval process and provided Board staff's responses to the contentions raised in the petition. EO Samuel Unger concluded staff's responses explaining why he approved the NSMB EWMP.

Los Angeles County MS4 Permittees in the NSMB EWMP group responded to the petition. Speakers included:

- Ms. Angela George, L.A. County Flood Control District and County of Los Angeles
- Mr. Craig George, City of Malibu
- Dr. Andrew Sheldon, City of Malibu

The Board members asked questions of the Petitioners and Board staff and generally made comments in favor of not reviewing the Petition.

MOTION: Board member Charles Stringer made a motion to decline review of the petition.

Seconded by: Board member Lawrence Yee
Motion carried unanimously by roll call vote.

Maria Camacho - Absent
Francine Diamond - Yea
Madelyn Glickfeld - Yea
Irma Muñoz - Yea
Charles Stringer - Yea
Lawrence Yee - Yea

7. Consideration of tentative Waste Discharge Requirements (WDRs) and Water Reclamation Requirements (WRRs), and a tentative Cease and Desist Order (CDO) for The Kissell Company, Inc. and the Paradise Cove Land Company LLC – Paradise Cove Wastewater Treatment Plant, including systems at Paradise Cove Mobile Home Park and the Paradise Cove Beach Café, City of Malibu.

Staff report was presented by Dr. Eric Wu, Unit Chief Groundwater Permitting.

Speaker cards:

- Mr. Steven Dahlberg, Paradise Cove Land Company
- Ms. Barbara Bradley, Advanced Onsite Water (on behalf of Paradise Cove Land Co.)
- Mr. Steven Johnson, Heal the Bay

MOTION: Board member Madelyn Glickfeld made a motion to adopt Items 7.1 and 7.2, with the change sheet and changes read into the record.

Seconded by: Board member Fran Diamond
Motion carried unanimously by roll call vote.

Maria Camacho - Absent
Francine Diamond - Yea
Madelyn Glickfeld - Yea
Irma Muñoz - Yea
Charles Stringer - Yea
Lawrence Yee - Yea

Adjournment of Day One of the meeting was at 4:35 p.m.

Day Two
September 8, 2016, 9:00 a.m.
Meeting Location:

City of Santa Clarita
(Council Chambers)
23920 Valencia Blvd.
Santa Clarita, CA 91355

The meeting was called to order by Acting Chair Fran Diamond at 9:11 a.m.

9. Roll Call.

Board Members Present: Fran Diamond, Madelyn Glickfeld (arrived at 9:16 a.m.), Charles Stringer, and Lawrence Yee (arrived at 9:41 a.m.)

Board Members Absent: Maria Camacho and Irma Muñoz

Staff Present: Samuel Unger, Deborah Smith, Paula Rasmussen, Jennifer Fordyce, David Coupe, Frances McChesney, Ronji Moffett, Gerardo Rabelo, Renee Purdy, David Hung, Deborah Brandes, Dr. Celine Gallon, Dr. Rebecca Chou, Dr. Eric Wu, Ivar Ridgeway, Cassandra Owens, Theresa Rodgers, Erum Razzak, Chris Lopez, Beth Payne (on loan from State Board), Shana Rapoport, Celine Gallon, Cris Morris, Raul Medina, Veronica Alpuche, Ching To, Steven Webb, Susana Lagudis, Jessica Pearson

Individuals whose Names Appear on the Sign-In Sheet and/or Speaker Cards

Mr. Paul Alva, L.A. County Department of Public Works	Ms. Angela George, Los Angeles County Department of Public Works
Ms. Cassidy Skelton, Lake Hughes	Ms. Alesia Robertson, Resident Green Valley
Ms. Joanne Melfi, Resident Lake Hughes	Mr. Dan Medina, City of Gardena
Mr. Phil Canon, Resident Lake Hughes	Ms. Diana Mahmud, Mayor City of So. Pasadena
Mr. Ed Suher, CASC Engineering	Ms. MaryAnne Pierson, Resident Lake Elizabeth
Mr. Steven Johnson, Heal the Bay	Mr. Robin Kennard, Resident
Mr. Charles Lupida, Resident Lake Hughes	Ms. Bonnie Robinson, Resident Lake Hughes
Ms. Teri Gordon, Resident Lake Hughes	Ms. Pat Green, Resident Lake Hughes
Ms. Debbie Gottas, Resident Lake Hughes	Ms. Louisa Stephen, Resident Lake Hughes
Ms. Linda Love, Resident Lake Hughes	Ms. Alicia Shacklem, Resident Lake Hughes
Mr. Kevin Braucksreker, Lake Hughes	Ms. Sharon Lehner, Lake Hughes
Mr. Charles Lehner, Lake Hughes	Ms. Betty Thompson, Lake Hughes
Ms. Jacqueline McMiller, Atta Environmental	Mr. Timothy Elersich, Lake Elizabeth
Ms. Donna Siano, Lake Elizabeth	Mr. Geremew Amenu, L.A. County Public Works
Mr. William Woodling, Lake Hughes	Mr. Gerardo Perez, Lake Hughes
Ms. Michelle Tsiebos, L.A. County Public Health	Mr. John Hunter, John Hunter and Associates Ms. Jennifer Horn, Lake Elizabeth
Mr. Dennis Horn II, Lake Elizabeth	Ms. Vivian Marquez, City of Los Angeles
Mr. Scott Thompson, Lake Hughes	Mr. Steve Erleri, Lake Hughes
Mr. Scott Abbott, L.A. County Public Health	Mr. Peter Pulido, Lake Elizabeth
Ms. Judy Nelson, City of Glendora	

10. Order of Agenda.

The Executive Officer stated that the order of agenda will be in the following order – items 13, 17, 11, 12, 14, 15, 16, 18, and 19.

13. Executive Officer's Report. *(Presented by Executive Officer, Samuel Unger)*

Report and Addendum Report was given to the Board. The Report was posted on the Board's website:

<http://www.waterboards.ca.gov/losangeles>

17. Informational update on the progress of residential accommodation and temporary relocation for the implementation of cleanup in the Carousel community.

Assistant Executive Officer Paula Rasmussen gave the presentation for this matter.

11. Approval of draft meeting Minutes for the July 14, 2016 Board meeting.

MOTION: Board member Madelyn Glickfeld to approve the July 14, 2016 draft Board meeting minutes.

Seconded by: Board member Lawrence Yee
Motion Carried: Approved by roll call vote.

Maria Camacho - Absent
Francine Diamond – Yea
Madelyn Glickfeld – Yea
Irma Muñoz – Absent
Charles Stringer – Abstained
Lawrence Yee – Yea

12. Board Member Communications.

None

14. Update from State Board by Ms. Fran Spivy-Weber. *(There was no report from State Board during this meeting.)*

Presentation of Sustained Superior Accomplishment Awards to Ms. Cris Morris, Mr. Chris Lopez, and Ms. Erum Razzak

15. Public Forum.

Speakers:

- Council member Margaret Clark, City of Rosemead
- Mr. Dan Medina, City Council member City of Gardena
- Ms. Diana Mahmud, City of South Pasadena
- Ms. Judy Nelson, City of Glendora

16. Consideration of tentative Basin Plan Amendment to Incorporate a Total Maximum Daily Load (TMDL) for Nutrients in Elizabeth Lake, Munz Lake, and Lake Hughes.

Staff report was given by Ms. Jenny Newman.

Speaker cards:

- Mr. Paula Alva, L.A. County Department of Public Works
- Mr. Scott Abbott, L.A. County Department of Public Works
- Mr. Bill Winter, L.A. County Department of Public Works
- Ms. Louisa Stephen, Lakes Town Council
- Ms. Susan Zahnter, Association of Rural Town Councils
- Mr. Robin Kennard, Representing self
- Mr. Kevin Braucksreker, Representing Elizabeth Lake
- Ms. Mary Anne Pierson, Resident Elizabeth Lake
- Mr. Frank Toothaker, Representing self
- Ms. Linda Love, Resident Elizabeth Lake
- Mr. Jeff Rheaume, Representing self
- Ms. Michelley Benitez, Representing self
- Mr. Scott Thompson, Representing self

MOTION: Board member Charles Stringer to adopt the tentative Basin Plan Amendment Amendment, with the change sheet.

Seconded by: Board member Lawrence Yee
Vote: Approved unanimously by Roll Call vote

Maria Camacho – Absent
Fran Diamond – Yea
Madelyn Glickfeld – Yea
Irma Muñoz – Absent
Charles Stringer – Yea
Lawrence Yee – Yea

The Board adjourned to Closed Session at 12:57 p.m. Counsel announced that the Board would discuss items 20.3, 20.4, 20.5, and 20.12. The Board reconvened at 1:51 p.m.)

(Items 18 and 19 were heard as a joint presentation, but voted on separately)

18. Consideration of tentative amended Waste Discharge Requirements for MS4 Discharges within the coastal watersheds of Los Angeles County, except those discharges originating from the City of Long Beach MS4; Order No. R4-2012-0175, NPDES No. CAS004001 (LA County MS4 Permit), to incorporate changes from the revised Ballona Creek and Los Angeles River Watershed Trash TMDLs.
19. Consideration of tentative amended Waste Discharge Requirements for MS4 Discharges from the City of Long Beach; Order No. R4-2014-0024, NPDES No. CAS004003 (City of Long Beach MS4 Permit), to incorporate changes from the revised Los Angeles River Watershed Trash TMDL.

There was a joint presentation made on items 18 and 19 by Mr. Chris Lopez, Stormwater Permitting (MS4) unit. There were no speaker cards or opposition for item 19, the Long Beach MS4 Permit amendment. Acting Chair Fran Diamond asked the Board members if they would be willing to adopt item 19 on consent and vote on that item before going into questions on item 18.

MOTION: Board member Madelyn Glickfeld moved to adopt item 19.

Seconded by: Board member Lawrence Yee
Vote: Approved unanimously by Roll Call vote

Maria Camacho – Absent
Fran Diamond – Yea
Madelyn Glickfeld – Yea
Irma Muñoz – Absent
Charles Stringer – Yea
Lawrence Yee – Yea

Speakers for item 18:

- Ms. Vivian Marquez, City of Los Angeles
- Mr. Paul Alva, County of Los Angeles Department of Public Works
- Mr. John Hunter, Lower Los Angeles River and other cities
- Mr. Ray Tahir, TECS Environmental, representing South El Monte, Compton, and San Fernando

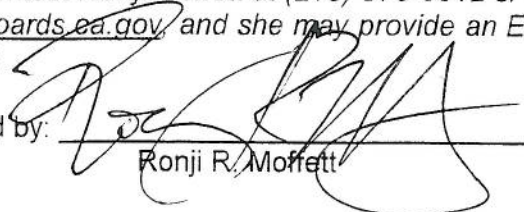
MOTION: Board member Madelyn Glickfeld moved to adopt item 18.

Seconded by: Board member Lawrence Yee
Vote: Approved unanimously by Roll Call vote

Maria Camacho – Absent
Fran Diamond – Yea
Madelyn Glickfeld – Yea
Irma Muñoz – Absent
Charles Stringer – Yea
Lawrence Yee – Yea

The meeting adjourned at 2:36 p.m. (For more detailed information on any matter at our meetings, you may contact Ronji Moffett at (213) 576-6612 or email at: ronji.moffett@waterboards.ca.gov, and she may provide an Electronic copy of the transcript or audio, if available.)

Written and submitted by:



Ronji R. Moffett

then finalized on

12/8/16