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August 15, 2013

Emel G. Wadhwani
Senior Staff Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: SWRCB/OCC File A-2236(a) Through (kk)

Dear Ms. Wadhwani:

The City of Avalon (“Avalon”) is pleased to submit these comments on the State Board’s current receiving water limitations (“RWL”) language and the two questions posed by the State Board regarding how the Los Angeles County MS4 Permit (“LA Permit”) addresses the issue. These issues are vitally important to Avalon, for the reasons explained below. Revisions to the current RWL language are particularly important in light of the 9th Circuit Court of Appeals’ decision issued August 8, 2013¹, which is more fully discussed below.

I. Why the Issues are Important to Avalon

Avalon is located on Santa Catalina Island, in the County of Los Angeles, approximately 22 miles southwest of the Los Angeles Harbor breakwater. Avalon has only 3,500 year-round residents, and its primary source of revenue is tourism. Although it welcomes many visitors each day during the summer, the City has limited year-round resources to provide essential governmental services to its residents, include water quality programs. Avalon’s City Council must, therefore, carefully balance its limited resources to achieve the most efficient results for its citizens.

Avalon is oriented around Avalon Bay and its harbor. While the City is making substantial strides to improve the water quality in Avalon Bay, the Bay has historically faced bacteria water quality challenges. In April of 2012, Avalon cooperated with the Los Angeles Regional Water Quality Control Board on the development of a Cease and Desist Order and Total Maximum Daily Load (the “TMDL”) for Avalon Bay. The TMDL is based on the bacteria water quality objectives of the Basin Plan for the Los Angeles Region. The TMDL

¹ *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. August 8, 2013) ___ F.3d ___ [Dock. No. 10-56017].
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recognizes that it will take Avalon time to achieve these bacteria objectives, and thus anticipates summer dry weather compliance by April of 2016 and wet-weather compliance by November of 2017.

Avalon is diligently implementing the TMDL and has already invested over \$6 Million on programs and improvements associated with the TMDL. Avalon's efforts appear to be paying off, with the Bay experiencing the best water quality this summer it has seen for many years.

The State Board recently designated Avalon for coverage under the revised Phase II MS4 Permit issued earlier this year, and Avalon has enrolled under the Permit. The City is therefore currently subject to the RWL language in Part D of the Permit, which provides that the City's discharges "shall not cause or contribute to an exceedance of water quality standards contained . . . in the applicable Regional Water Board Basin Plan." As interpreted by the 9th Circuit Court of Appeals,² this language is believed to require strict and immediate compliance with water quality standards, including the bacteria water quality objectives of the Basin Plan for the Los Angeles Region. Thus, even though the TMDL recognizes that it will take Avalon some time to achieve the bacteria objectives, the current RWL language has been interpreted by the 9th Circuit to require immediate compliance.³

Avalon believes that the 9th Circuit's interpretation of the RWL language conflicts with prior State Board interpretations of the RWL language and is bad policy. Avalon is working diligently to implement the TMDL and investing significant public funds to do so. Avalon should have the certainty that implementing the TMDL as anticipated will be compliance, and should not be faced with potential immediate non-compliance when the Regional Board has acknowledged that time is needed to comply. To provide such certainty, the State Board should revise the RWL language.

II. Responses to Two Questions

With the above in mind, the City has the following responses to the two questions posed by the State Board. In the City's view, the RWL language must be amended to include a compliance program option that contains the following key elements: it must be voluntary; it

² *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, *rev'd on other grounds* by 133 S.Ct. 710 (2013).

³ This problem has been made worse by the 9th Circuit's August 8, 2013 decision. That decision appears to suggest that dischargers may be held jointly liable for receiving water exceedances, even without specific evidence that the individual discharger actually discharged the pollutants causing or contributing to the exceedance. To avoid such liability without evidence, dischargers will be compelled to turn inward and focus only on their discharges.



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must allow for either a watershed or jurisdictional approach; it must be based on a best management practices approach; it must allow for prioritization of pollutant-water body combinations; it must permit adaptive management; and it must provide that good faith compliance with the program constitutes compliance with the RWL and discharge prohibitions. The City's answers below are based on these key elements.

A. General Support for Compliance Approach in the LA Permit

The City generally supports the LA Permit's compliance approach as a good first step toward revising the RWL language. The approach is properly an optional one that allows permittees to decide whether the current language or a different approach works best for the City. It also contains sufficient rigor to provide measurable and enforceable requirements that permittees must meet. Most importantly, it provides for two different watershed or jurisdictional compliance paths that all permittees may implement. Although somewhat cumbersome, the City views the LA approach as a good first step and commends the Regional Board for its attempt to address the RWL issue. To fully address the issue, however, additional language rooted in the iterative process is required.

B. Support for CASQA's Improvements to the LA Permit's Approach

Although the City views the LA Permit's approach as a good first step, the City believes that the language requires further refinement. The City supports the RWL language put forward by CASQA in its response to the State Board's two questions as an additional step toward true RWL reform. CASQA's refinements to the LA approach makes the compliance program process more usable and comprehensive.

The City notes that, for Phase II programs, the CASQA approach will require further modification to fit it within the Phase II permit. Moreover, the State Board should additionally consider including in the revised RWL language a mechanism to address those situations where, despite good faith efforts, achievement of water quality standards, including interim and final wasteload allocations/effluent limitations, proves to be currently infeasible. Building such a mechanism into the RWL compliance process now will avoid future disputes and will establish a comprehensive structure through which the State and Regional Boards can work collaboratively with MS4s to achieve water quality standards.



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III. Conclusion

Avalon appreciates the opportunity to provide these comments to the State Board and looks forward to the State Board workshop on the topic. It urges the State Board to use this opportunity to make meaningful revisions to the RWL language.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. G. Andre Monette', written over the typed name.

J. G. Andre Monette
for BEST BEST & KRIEGER LLP

JGM:am

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<p>[via U.S. Mail and email] City of Covina c/o City Manager 125 East College Street Covina, CA 91273 vcastro@covinaca.gov</p>	<p>Additional Interested Party By Request:</p> <p>[via U.S. Mail only] Andrew R. Henderson, Esq. General Counsel Building Industry Legal Defense Foundation 17744 Sky Park Circle, Suite 170 Irvine, CA 92614 ahenderson@blasc.org</p>
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