



CITY OF WEST HOLLYWOOD

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DEPARTMENT OF PUBLIC WORKS

August 15, 2013

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Via email: ewadhvani@waterboards.ca.gov

Subject: SWRCB/OCC FILE A-2236(A) THOROUGH (KK) COMMENTS IN RESPONSE TO QUESTIONS POSED BY THE STATE WATER RESOURCES CONTROL BOARD CONCERNING RECEIVING WATER LIMITATIONS AS ADDRESSED IN ORDER NO. R4-2012-0175 – WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4) DISCHARGES WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE DISCHARGES ORIGINATING FROM THE CITY OF LONG BEACH MS4

The City of West Hollywood (City) appreciates the opportunity to provide comments on the request by the State Water Resources Control Board (State Water Board) in its July 8, 2013 announcement with respect to the petitions received on Order No. R4-2012-0175 (LA MS4 Permit) which was further clarified in the subsequent announcement issued on July 29, 2013. Specifically, the State Water Board in its July 8, 2013 announcement requested comment as follows:

The Los Angeles MS4 Permit appears to provide a compliance alternative to the State Water Board's precedential receiving water limitations for MS4s. Under the Los Angeles MS4 Permit, dischargers that are in compliance with the requirements and milestones of an approved watershed management program/enhanced watershed management program are also generally deemed to be in compliance with the Permit's receiving water limitations. All interested persons are invited to submit comments within 30 days of the date of this letter, addressing the following questions:

1. *Is the watershed management program/enhanced watershed management program alternative contained in the Los Angeles*



MS4 Permit an appropriate approach to revising the receiving water limitations in MS4 permits?

2. *If not, what revisions to the watershed management program/enhanced watershed management program alternative of the Los Angeles MS4 Permit would make the approach a viable alternative for receiving water limitations in MS4 permits?*

In its July 29, 2013 announcement, the State Water Board further clarified that in addition to the questions above, it is *generally seeking all information that would assist it in determining whether these approaches constitute appropriate revisions or additions to the existing receiving water limitations language in MS4 Permits.*

The City of West Hollywood is a small city, home to 35,000 residents and a tourism destination with many visitors who enjoy the nearby Santa Monica Bay beaches. The City's residents are strongly supportive of proactive environmental measures and actions to protect water quality and the environment. City staff is innovative, progressive, and committed to protecting water quality. The City's La Brea Streetscape Project currently is under construction is a METRO grant funded Transportation Enhancement Project which includes Green Street amenities including installation of infiltration beds under the parkway areas to accommodate percolation of storm water runoff. In 2004, the City constructed the Spaulding Avenue Parking Lot, the first municipal parking lot in the western United States to be paved with porous asphalt. The West Hollywood General Plan 2035 and Climate Action Plan, both adopted in 2011, provide a roadmap for the City to continue implementing long term strategies towards improving the environment.

Nevertheless, the City has been concerned and continues to be concerned with the Receiving Water Limitations language in municipal stormwater permits. This language is of great importance to municipalities because the U.S. Ninth Circuit Court found in NRDC v. County of Los Angeles that municipal Permittees will be deemed in violation of the stormwater permit due to exceedances of water quality standards even if they are acting in good faith to correct those exceedances. The receiving water limitations language requires municipalities to follow an iterative process to implement additional measures based on the results of water

quality monitoring to increase as necessary the effectiveness of the stormwater quality program, however the court found that a municipality will still be found in violation of the permit notwithstanding the measures being taken to meet those water quality standards. This places municipalities in an untenable and vulnerable position.

The LA MS4 Permit E/WMP provisions do not weaken the existing RWL language. The RWL language is still intact in the 2012 LA MS4 Permit, but the E/WMP approach provides a means to better define what is expected of the iterative process (e.g., through the “reasonable assurance analysis”). Additionally, it provides a means to resolve the problem created by the 9th Circuit decision for Permittees who are acting in good faith and diligently implementing the provisions of the 2012 LA MS4 Permit. This approach is also consistent with, and serves as an example of, the Strategic Compliance Program approach recommended by the California Stormwater Quality Association. The City supports the CASQA comment letter and proposed RWL language.

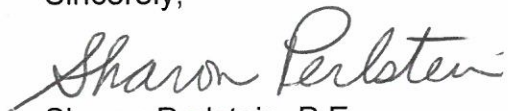
The 2012 LA MS4 Permit EWMP approach, which incorporates design storms (e.g., the 85th percentile 24-hour event and the 1-year/1-hour storm for trash control) and allows for a compliance schedule, provides certainty and a clear objective for municipalities seeking to define the scope of their technical and fiscal responsibilities under the MS4 Permit. Municipalities must utilize scarce fiscal resources wisely and would much prefer to deploy those resources to address water quality objectives and other essential public services rather than in the defense of third party actions under the federal Clean Water Act’s citizen suit provision. Compliance with water quality standards will require significant investment in public programs and infrastructure which must be established, supported, maintained, and funded over time.

We believe that the E/WMP approach contained in the Los Angeles MS4 Permit is an appropriate means for Permittees to comply with receiving water limitations for MS4 discharges. There remains much work to be done to flesh out this approach and come to an understanding of how to implement such an approach in practice. We want to continue to work with Regional Board staff to protect and restore the quality of our valuable water resources in a manner that is most effective and allows us to prioritize water quality objectives for deployment of our limited municipal

resources in a way that addresses the most pressing water quality priorities for the benefit of the public taxpayer.

The City of West Hollywood thanks the State Water Board for consideration of these comments. If you have any questions, please contact me at (323) 848-6383.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Perlstein". The signature is written in black ink and is positioned above the typed name and title.

Sharon Perlstein, P.E.
City Engineer