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10 STATE OF CALIFORNIA
11 REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION
12 AND
13 STATE WATER RESOURCES CONTROL BOARD

14
15 Petition of NRDC, Los Angeles Waterkeeper, and)
16 Heal the Bay, for Review by the California)
17 Regional Water Quality Control Board, Los)
18 Angeles Region, of the Regional Board Executive)
19 Officer's Action to Conditionally Approve Nine)
20 Watershed Management Programs Pursuant to the)
21 Los Angeles County Municipal Separate)
22 Stormwater National Pollutant Discharge)
23 Elimination System (NPDES) Permit, Order No.)
24 R4-2012-0175, NPDES Permit No. CAS004001;)

25 Petition of NRDC, Los Angeles Waterkeeper, and)
26 Heal the Bay, for Review by the State Water)
27 Resources Control Board of the Regional Board)
28 Executive Officer's Action to Conditionally)
Approve Nine Watershed Management Programs)
Pursuant to the Los Angeles County Municipal)
Separate Stormwater National Pollutant)
Discharge Elimination System (NPDES) Permit,)
Order No. R4-2012-0175, NPDES Permit No.)
CAS004001)

ADDENDUM FOR PETITION FOR
REVIEW OF LOS ANGELES
REGIONAL WATER QUALITY
CONTROL BOARD EXECUTIVE
OFFICER'S ACTION TO
CONDITIONALLY APPROVE NINE
WMPs PURSUANT TO THE L.A.
COUNTY MS4 PERMIT

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1 **I. INTRODUCTION**

2 This petition addendum seeks review of the Los Angeles Regional Water Quality Control
3 Board’s (“Regional Board”) action on September 10, 2015 to ratify the Regional Board Executive
4 Officer’s final approvals of three specific Watershed Management Programs (“WMPs”) prepared
5 by dischargers (collectively “Permittees”) regulated by the 2012 Los Angeles County Municipal
6 Separate Storm Sewer System (“MS4”) Permit (Order No. R4-2012-0175) (“Permit”). The 2012
7 Permit gives Permittees “safe harbors,” which under certain circumstances excuse their violations
8 of water quality standards so long as they are developing and implementing voluntary WMPs.
9 However, the approved, final WMPs for the Los Angeles River Upper Reach 2, Lower San Gabriel
10 River, and Lower Los Angeles River contain significant deficiencies and fail to meet the explicit
11 requirements of the 2012 Permit.

12 Adequate WMPs are critical to protect water quality in the Los Angeles area, and are also
13 the means by which the Regional Board, U.S. Environmental Protection Agency (“EPA”), and the
14 public will determine compliance with the Permit and the federal Clean Water Act.¹ As the State
15 Water Resources Control Board (“State Board”) stated in its precedential Order on the 2012 Permit
16 (“State Board Order”),

17 ...we are keenly aware that the success of the Los Angeles MS4 Order in addressing
18 water quality issues depends primarily on the careful and effective development and
19 implementation of programs consistent with the requirements of the Order...²
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22 ¹ The Regional Board Executive Officer conditionally approved all nine WMPs on April 28, 2015,
23 despite the failure of the WMPs to meet Permit requirements, to address inadequacies identified by
24 the Regional Board staff itself, and to protect water quality in area rivers and beaches. Moreover,
25 the Executive Officer’s action on April 28, 2015 was illegal because by “conditionally” approving
26 the nine WMPs – a step nowhere allowed by the 2012 Permit – he acted outside the scope of his
27 delegated authority and he improperly modified the terms of the Permit. This addendum focuses
28 on the substantive failures of the WMPs, and their water quality impacts, rather than the flawed
process, however, as that issue was fully addressed in our original petition.

² State Water Resources Control Board, *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No CAS004001*, June 16, 2015, at p. 7 (“State Board Order”).

1 Yet, on September 10, 2015, the Regional Board ignored facial deficiencies and ratified
2 the Executive Officer's approvals of the Los Angeles River Upper Reach 2, Lower San Gabriel
3 River, and Lower Los Angeles River final WMPs. The Regional Board's decision ensures that
4 Permittees in those watershed groups, and therefore the Los Angeles and San Gabriel Rivers, will
5 *not* achieve water quality standards – a core requirement of the 2012 Permit, the State Board
6 Order, and the Clean Water Act. For these reasons and those explained in detail below, the
7 Regional Board's action on September 10, 2015 was inappropriate, improper, and an abuse of
8 discretion.

9 **II. PROCEDURAL HISTORY**

10 Draft WMPs for the Los Angeles River Upper Reach 2, Lower San Gabriel River, and
11 Lower Los Angeles River were first submitted in June 2014. On August 18, 2014, Petitioners
12 submitted comments on these three specific draft WMPs, which, among other things, addressed the
13 many deficiencies in the draft plans. Regional Board staff also reviewed the draft WMPs and in
14 October 2014, sent a letter to all three WMP groups identifying significant deficiencies to be
15 corrected as a prerequisite to the Board's approval of the WMPs.³ The Permittees were directed to
16 submit revised WMPs addressing the Board's concerns. Shortly thereafter, Los Angeles River
17 Upper Reach 2, Lower San Gabriel River, and Lower Los Angeles River watershed groups
18 submitted revised plans in January 2015 for Regional Board review and approval.⁴

19 In all three revised WMPs, Permittees failed to correct many, if not most, of the
20 deficiencies previously identified by Regional Board staff. Nonetheless, on April 28, 2015, the
21 Executive Officer issued conditional approvals for all nine revised WMPs,⁵ wherein Permittees
22 were directed to submit final WMPs to the Regional Board that satisfy all of the conditions
23 imposed by the Executive Officer. According to the conditional approvals, failure to satisfy all of
24 the conditions would result in a rescission of the conditional approvals.

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27 ³ See Exhibit A to original Petition: Regional Board Staff Review of Draft WMPs.

28 ⁴ See Exhibit C to original Petition: Links to Revised WMPs.

⁵ See Exhibit B to original Petition: Letters of Conditional Approvals from the Executive Officer.

1 The final WMPs for the Los Angeles River Upper Reach 2, Lower San Gabriel River, and
2 Lower Los Angeles River, unfortunately, did *not* satisfy all of the Executive Officer’s conditions.
3 Even if they had, however, the final plans still should have been denied because the conditions did
4 not address all of the WMP inadequacies that remained – inadequacies that are in violation of
5 explicit Permit requirements. Rather than rescinding the conditional approvals, the Executive
6 Officer issued “final” approval letters for all nine WMPs asserting that the final plans satisfied all
7 the conditions that were identified in the Executive Officer’s conditional approval letters.⁶

8 On May 28, 2015, the Natural Resources Defense Council (“NRDC”), Los Angeles
9 Waterkeeper, and Heal the Bay (collectively “Petitioners”) petitioned the Regional Board to
10 review the Executive Officer’s illegal conditional approvals, and pursuant to Section 13320 of the
11 California Water Code and Section 2050 of Title 23 of the California Code of Regulations, also
12 sought review by the State Board.

13 At the June 16, 2015 State Board meeting, the Chair of the State Board indicated that the
14 board was unlikely to act on the petition until the Regional Board first had the opportunity to
15 review the petition, and on July 1, 2015, the Regional Board gave notice that it would consider
16 Petitioners’ petition for review at its September 10, 2015 public meeting. On August 24, 2015,
17 Petitioners placed their petition for review with the State Board in abeyance until November 9,
18 2015, to allow the Regional Board review to proceed.

19 On September 10, 2015, the Regional Board considered Petitioners’ petition for review.
20 Notwithstanding Petitioners’ concerns, the Regional Board ratified the Executive Officer’s final
21 approvals for all nine WMPs. Petitioners now submit this addendum to challenge the Regional
22 Board’s September 10, 2015 decision and approval of the Los Angeles River Upper Reach 2,
23 Lower San Gabriel River, and Lower Los Angeles River final WMPs.

24 **III. STANDARD OF REVIEW**

25 Petitioners’ authority to seek State Board review of the Regional Board’s action on
26 September 10, 2015 is provided under Water Code § 13320, which states, “Upon finding that the
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28 ⁶ See Exhibit A to this Petition Addendum: Final Approval Letters from the Executive Officer.

1 action of the regional board, or the failure of the regional board to act, was inappropriate or
2 improper, the state board may direct that the appropriate action be taken by the regional board,
3 refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or
4 take any combination of those actions.” Moreover, in reviewing the Executive Officer’s action
5 pursuant to Water Code § 13320, the State Board must exercise its independent judgment as to
6 whether the action was reasonable and in order to uphold a Regional Board action, the State Board
7 must find that the action was based on substantial evidence.⁷

8 **IV. ARGUMENT**

9 The final WMPs for the Los Angeles River Upper Reach 2, Lower San Gabriel River, and
10 Lower Los Angeles River do not comply with the express requirements of the Permit. As a result,
11 these WMPs, which are intended to provide Permittees a finite, rigorous and enforceable pathway
12 toward achievement of water quality standards, instead provide a mechanism for further delay,
13 waste of resources, and continued degradation in receiving waterways in three of the most
14 urbanized sub-watersheds in the Los Angeles region. Specific deficiencies identified in each of the
15 three final WMPs are discussed in further detail below.

16 **A. The Los Angeles River Upper Reach 2 WMP Does Not Comply with the 2012 Permit** 17 **or the State Board Order, and Does Not Ensure Compliance With Water Quality** 18 **Standards**

19 Covering one of the most industrialized watersheds in Los Angeles County, and addressing
20 a reach of the Los Angeles River impaired for ammonia, coliform bacteria, copper, lead, nutrients,
21 oil, and trash, the Los Angeles River Upper Reach 2 WMP is a linchpin of the Permit’s scheme to
22 address impairment in the Los Angeles River.

23 Yet the Los Angeles River Upper Reach 2 WMP suffers from a litany of deficiencies, that
24 go to the heart of the function of a WMP and the Permit’s requirements, including: 1) inadequate
25 Reasonable Assurance Analysis, receiving water quality data, model calibration and verification,
26 2) no strategy to comply with interim water quality based effluent limitations (“WQBELs”), 3) an

27 ⁷ See State Water Resources Control Board, *In the Matter of the Petition of Stinnes-Western*
28 *Chemical Corporation*, September 18, 1986, at 11.

1 inadequate and undefined adaptive management process, and 4) no enforceable commitment to
2 meeting interim milestones and final deadlines.

3 **1. Inadequate Reasonable Assurance Analysis, Receiving Water Quality Data,
4 Model Calibration, and Verification**

5 The 2012 Permit requires Permittees to conduct a Reasonable Assurance Analysis for each
6 water body-pollutant combination addressed by a WMP, with the objective of demonstrating the
7 ability of the proposed control measure to ensure that MS4 discharges “do not cause or contribute
8 to exceedances of receiving water limitations.” (2012 Permit, at Part VI.C.5.b.iv.(5).) The
9 Reasonable Assurance Analysis, therefore, forms the bedrock for WMP development as it is
10 necessary to ensure that in the long-term, the WMPs will achieve the necessary water quality
11 goals.⁸ As the State Board confirmed:

12 ... the requirement for a reasonable assurance analysis in particular is designed to ensure
13 that Permittees are choosing appropriate controls and milestones for the WMP/EWMP.
14 Competent use of the reasonable assurance analysis should facilitate achievement of final
15 compliance within the specified deadlines.⁹

16 The Reasonable Assurance Analysis is a modeling exercise, and modeling requires
17 adequate data both to populate the model, and to calibrate and verify that model by comparing the
18 modeling results to real world conditions. Thus, the confidence in any model – or the assurance it
19 provides – is dependent on the volume and quality of available data. Unfortunately, the Los
20 Angeles River Upper Reach 2 WMP does not contain sufficient receiving water data to provide the
21 required reasonable assurance that the control measures proposed in the WMP will lead to the
22 achievement of water quality standards.

23 On October 27, 2014, the staff provided written comments on the Los Angeles River
24 Upper Reach 2 group’s draft WMP, which, among other things, identified and provided extensive
25 commentary on the poor model calibration. Specifically, the staff commented that the plan did not

26 ⁸ See California Regional Water Quality Control Board, Los Angeles Region, *2012 MS4 Permit*
27 *Adoption Hearing Transcript*, November 8, 2012, at p. 67 (“2012 Permit Adoption Hearing
28 Transcript”).

⁹ State Board Order, at p. 37.

1 describe how the model was calibrated in accordance with the calibration criteria set forth Table
2 3.0 of the Reasonable Assurance Analysis Guidelines.¹⁰ Moreover, no historical hydrology and
3 water quality monitoring data were used for comparison with the model results for the baseline
4 prediction. On January 27, 2015, the Los Angeles River Upper Reach 2 group submitted a revised
5 WMP, represented to have addressed all of staff's concerns from their October 27, 2014 letter.
6 Specifically, in response to staff's comments about the inadequate Reasonable Assurance Analysis
7 modeling, a new section (Section 4.5) was added to the revised WMP. However, all references to
8 model calibration and verification were in the future tense - confirming that it has not been done
9 for the WMP:

10 For the RAA hydrologic series of 1986 to 2011, daily baseline concentrations and loads
11 will be determined from the 90th percentile. The runoff values from the storm events will
12 first be found, then any loads less than a tenth of an inch will be removed. From there, the
13 load days from the 90th percentile will be retrieved. Once these values are found, the 90th
14 percentile daily load reduction values can be identified for each pollutant. Also, once the
15 loads for the pollutants are identified, a comparison of SBPAT and LSPC runoff volumes
can be completed to show the difference between simulated and observed values to ensure
the model can properly assess conditions and variables, as required from RAA guidelines.¹¹

16 This inadequate model calibration was noted again in the Executive Officer's April 28,
17 2015 conditional approval.¹² Yet the final Los Angeles River Upper Reach 2 WMP makes clear

18 ¹⁰ Los Angeles Regional Water Quality Control Board, *Guidelines for Conducting Reasonable*
19 *Assurance Analysis in a Watershed Management Program, Including an Enhanced Watershed*
20 *Management Program* (March 25, 2014), available at
http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/watershed_management/docs/RevisedRAAModelingCriteriaFinal-withAtts.pdf.

21 ¹¹ Los Angeles River Upper Reach 2 Watershed Management Area, Revised Watershed
22 Management Program (WMP) Plan, January 27, 2015, at p. 103 ("Los Angeles River Upper Reach
2 Revised WMP").

23 ¹² See Los Angeles Regional Water Quality Control Board, Approval, With Conditions, of the Los
24 Angeles River Upper Reach 2 Watershed Management Group's Watershed Management Program
25 (WMP), Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4)
26 Permit, April 28, 2015, at p. 4 ("Section 4.5, Modeling Calibration, of the revised draft WMP
27 discusses a comparison of SBPAT and LSPC runoff volumes "to show the difference between
28 simulated and observed values to ensure the model properly assess conditions and variables."
Provide this comparison of SBPA T and LSPC runoff volumes as an appendix or subsection to the
model calibration section.") ("Conditional Approval Letter for Los Angeles River Upper Reach 2
WMP").

1 that no calibration of the current model has been conducted in the Los Angeles River Upper Reach
2 watershed using data from current conditions. The calibration information presented in the final
3 WMP only address "...some of the broader hydrology and pollutant modeling and calibration
4 efforts, to which LSPC and SBPAT were subjected and evaluated."¹³ In other words, only limited
5 calibration is presented, which, to make matters worse, was all conducted by others and over the
6 span of a decade, outside the river reach at issue. Given the irrelevance and inapplicability of these
7 results to the Los Angeles River Upper Reach 2 watershed, the WMP's Reasonable Assurance
8 Analysis cannot provide "reasonable assurance" of any outcome, and thus cannot serve as the basis
9 for providing Permittees "safe harbor" benefits and excusing their violations of water quality
10 standards.

11 **2. No Strategy to Comply with Interim QBELs**

12 The 2012 Permit requires Permittees to incorporate the compliance schedules found in
13 Attachments L through R of the Permit, consistent with implementation schedules for water body-
14 pollutant combinations addressed by TMDLs, and to develop interim milestones and dates for their
15 achievement. (2012 Permit, at Part VI.C.5.c.) Yet the Los Angeles River Upper Reach 2 WMP
16 lacks any plan to comply with interim QBELs. In the Regional Board staff's comments from
17 October 27, 2014, staff noted:

18 The draft WMP does not clearly specify a strategy to comply with the interim QBELs for
19 the LA River metals TMDL (January 11, 2012; January 11, 2020 and January 11, 2024
20 deadlines). Table 3-1 presents a phased implementation plan, which suggests that Phase 2
21 activities will be conducted to meet the 2020 deadline and Phase 3 activities, to meet the
22 2024 deadline; however, the draft WMP needs to be revised to include documentation that
the 2012 past deadlines have been achieved or specify an appropriate strategy for achieving
compliance with the past due interim QBELs.¹⁴

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24 ¹³ Los Angeles River Upper Reach 2 Watershed Management Area, Watershed Management
Program (WMP) Plan, June 12, 2015, at p. 75, available at
25 [http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed
26 management/los_angeles/upper_reach2/Upper_LA_River_R2_FinalWMP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_angeles/upper_reach2/Upper_LA_River_R2_FinalWMP.pdf) ("Los Angeles
River Upper Reach 2 Final WMP").

27 ¹⁴ Los Angeles Regional Water Quality Control Board, Review of the Los Angeles River Upper
28 Reach 2 Watershed Management Group's Draft Watershed Management Program, Pursuant to Part
VI.C of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, October

1 In response to this staff concern, a single line was added to Section 5.1 of the Los Angeles
2 River Upper Reach 2 group’s revised WMP: “The Los Angeles River Trash TMDL will be
3 implemented by October 1, 2015, in order to meet the annual compliance assessment date on
4 September 30, 2016.”¹⁵ Furthermore, the revised WMP maintains from the draft WMP the
5 following caveat, “The WMP, including the schedule aspect, will be updated through the adaptive
6 management process, therefore the schedule identified is always tentative.”¹⁶ While there is now
7 acknowledgment that requirements existed prior to 2020 in the Los Angeles River Upper Reach 2
8 group’s final WMP, there is still no provision of an actual strategy for future compliance or a
9 documentation of past compliance. Rather, the final plan states:

10 Interim and final compliance dates in the LAR Metals and Bacteria TMDLs are the primary
11 drivers for the LAR UR2 WMA RAA and WMP Plan implementation schedule. The dates
12 identified in this WMP Plan are subject to the procurement of grants or other financing
13 support commensurate with the existing and future fiduciary responsibilities of the
14 Permittees. They may furthermore be adjusted based on evolving information developed
15 through the iterative adaptive management process identified in the 2012 MS4 Permit or
16 similar Parts within future MS4 Permits.¹⁷

17 The final WMP for the Los Angeles River Upper Reach 2 provides neither a
18 documentation of past compliance nor any future commitment to meet interim WQBELs. As such,
19 implementation of the Los Angeles River Upper Reach 2 WMP cannot ensure the achievement of
20 interim milestones or final compliance deadlines for water body-pollutant combinations addressed
21 by TMDLs – an outcome in violation of Permit requirements.

22 **3. Inadequate Adaptive Management Process**

23 The 2012 Permit requires Permittees that participate in a WMP to implement an adaptive
24 management process – evaluating sampling data and adjusting program elements to ensure that
25 receiving water limitations and TMDL compliance can be achieved. (2012 Permit, at Part VI.C.8.)

26 27, 2014, at p. 2 (“Regional Board Staff Comments on Los Angeles River Upper Reach 2 Draft
27 WMP”).

28 ¹⁵ Los Angeles River Upper Reach 2 Revised WMP, at p. 104.

¹⁶ *Id.*

¹⁷ Los Angeles River Upper Reach 2 Final WMP, at p. 116.

1 The Los Angeles River Upper Reach 2 WMP, however, fails to describe how adaptive
2 management will be carried out, or to commit to any real program change as part of adaptive
3 management. Regional Board staff identified this shortcoming in October of 2014:

4 While the draft WMP notes revisions will occur as part of the “Adaptive Management
5 Process” in referral to multiple proposed actions it does not include a comprehensive
6 strategy for the Adaptive Management process. The draft WMP should provide more detail
7 on how the “Adaptive Management Process” will be implemented.¹⁸

8 Despite staff’s explicit instruction to the Los Angeles River Upper Reach 2 Permittees to provide
9 more detail on the adaptive management process, the adaptive management process section was
10 resubmitted unchanged in the revised WMP. Nonetheless, the Executive Officer’s April 28, 2015
11 conditional approval letter required no adaptive management process improvements, and the final
12 WMP as “officially” approved included no new language to address this problem.

13 The 2012 Permit relies on the adaptive management process as a backstop to correct other
14 program inadequacies and to ensure the “reasonable assurance” of ultimate receiving water
15 limitations and TMDL compliance that underpins the “alternative compliance approach” scheme.
16 In its final Order approving the 2012 Permit, the State Board cites to adaptive management as a
17 means to ensure the appropriate rigor and accountability in the WMP approach,¹⁹ and to ensure
18 that the 85th percentile, 24-hour storm event retention approach will actually achieve compliance
19 with receiving water limitations and TMDL-based limitations, despite a lack of current data or
20 analysis to demonstrate that it will.²⁰ Because the adaptive management process in the Los
21 Angeles River Upper Reach 2 WMP fails to meet the requirements of the Permit, it cannot serve as
22 an adequate backstop for the WMP’s modeling shortcomings.

23 Acknowledging the lack of data for model calibration and verification described above,
24 Regional Board staff at the September 10, 2015 public meeting argued that any existing WMP
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27 ¹⁸ Regional Board Staff Comments on Los Angeles River Upper Reach 2 Draft WMP, at p. 2.

28 ¹⁹ State Board Order, at p. 38.

²⁰ *Id.* at p. 43.

1 deficiencies will be corrected in the future via the adaptive management process.²¹ Yet the Los
2 Angeles River Upper Reach WMP relies on a vague and circular adaptive management process to
3 fix, in the future, a currently inadequate program. Like the previous permit's failed "iterative
4 process" condemned by the State Board,²² the Los Angeles River Upper Reach 2 WMP's adaptive
5 management process will be nothing more than a paper process, leading to an endless loop of
6 WMP implementation without producing real progress towards permit compliance.

7 **4. No Commitment to Meeting Interim Milestones and Final Deadlines**

8 The initial draft WMP submitted by the Los Angeles River Upper Reach 2 watershed group
9 on June 26, 2014 failed to commit to any schedule for achieving interim milestones and final
10 deadlines as required by the Permit (2012 Permit, at Part VI.C.5.c.), yet the Regional Board staff
11 did not raise the issue in their October 27, 2014 comments. When the Regional Board Executive
12 Officer conditionally approved the Los Angeles River Upper Reach 2 group's revised WMP, he
13 did note the plan's lack of commitment to meeting milestones and final compliance schedules.
14 Specifically, he stated:

15 In Table 5-1 of the revised draft WMP, "Tentative Control Measure Implementation
16 Schedule," delete all instances of the word "tentative." If you prefer, you can replace the
17 word "tentative" with "approved" or "current." In the last sentence of the second paragraph
18 of Section 5.1, change the sentence "The WMP, including the schedule aspect, will be
19 updated through the adaptive management process, therefore the schedule identified is
20 always tentative." to "The WMP, including the schedule aspect, will be updated through
the adaptive management process; to that extent, the schedule identified is tentative unless
the schedule is associated with TMDL provisions..."²³

21 In the final WMP submitted on June 12, 2015, the word "Current" has been substituted, along with
22 the insertion of "Final" (in quotes) to read "Current Control Measure 'Final' Implementation
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25 ²¹ The final transcript for the September 10, 2015 Regional Board meeting was not made publicly
26 available until the afternoon of October 30, 2015 – the date of this filing. Petitioners will provide
27 citations to the transcript, and reserve the right to address additional arguments raised by Regional
Board staff, as appropriate.

28 ²² State Board Order, at p. 14.

²³ Conditional Approval Letter for Los Angeles River Upper Reach 2 WMP, at p. 4.

1 Dates.”²⁴ However, the requested sentence change was only slightly modified and now reads,
2 “...the implementation schedules identified are tentative unless determined as a date certain
3 associated with specific TMDL provisions”²⁵ (as opposed to the requested “...unless the schedule
4 is associated with TMDL provisions”). The final WMP also states:

5 The dates identified in this WMP Plan are subject to the procurement of grants or other
6 financing support commensurate with the existing and future fiduciary responsibilities of
7 the Permittees. They may furthermore be adjusted based on evolving information
8 developed through the iterative adaptive management process identified in the 2012 MS4
9 Permit or similar Parts within future MS4 Permits.²⁶

10 In addition, most of the implementation actions in Table 5-1 will not occur or be complete
11 until 2028 or later (and none prior to 2016). Thus, there remains no commitment to meeting these
12 final deadlines, and no identification whatsoever of actions to meet interim milestones in the final
13 WMP that was ultimately approved by the Executive Officer. Without such a commitment to
14 achieving interim milestones and final compliance deadlines for TMDL-specific limitations, the
15 Los Angeles River Upper Reach 2 WMP cannot ensure a rigorous and transparent process toward
16 the achievement of receiving water limitations, as required by the Permit and the State Board
17 Order.

18 Furthermore, the implementation of proposed control measures and meeting of compliance
19 deadlines are conditioned on the procurement of funding.²⁷ In other words, where Permittees of the
20 Los Angeles River Upper Reach 2 group demonstrate a failure to secure funding for WMP
21 implementation, for whatever reason, the enforceable requirements of the Permit’s WMP
22 provisions (e.g. the interim milestones and final compliance deadlines) are effectively rendered
23 unenforceable. Given the financial constraints and conflicting priorities municipalities consistently
24 complain of, a claim of failure to secure funding for WMP implementation is a virtual certainty.

26 ²⁴ Los Angeles River Upper Reach 2 Final WMP, Table 5-1, at p. 117.

27 ²⁵ *Id.* at 116.

28 ²⁶ *Id.*

²⁷ Los Angeles River Upper Reach 2 Final WMP, at p. 116.

1 In reviewing the 2012 Permit, the State Board concluded that the Permit’s WMP approach
2 ensures “the appropriate rigor, transparency, and accountability... to lead to achievement of
3 receiving water limitations.”²⁸ Yet the Los Angeles River Upper Reach 2 WMP fails to commit the
4 dischargers to anything, and instead conditions every element of the program on unidentified
5 funding, permitting, government approvals, and other contingencies.²⁹ As such, it violates explicit
6 requirements of the 2012 Permit, and the Regional Board’s action on September 10, 2015 to ratify
7 the Los Angeles River Upper Reach 2 final WMP was inappropriate, improper, and an abuse of
8 discretion.

9 **B. The Lower San Gabriel River WMP Does Not Comply with the 2012 Permit or the**
10 **State Board Order, and Does Not Ensure Compliance With Water Quality Standards**

11 The Regional Board, on September 10, 2015, also ratified the Executive Officer’s final
12 approval for the Lower San Gabriel River WMP, despite Petitioners’ presentation, which revealed
13 significant inadequacies that continue to remain in the final WMP. As with the Los Angeles River
14 Upper Reach 2 WMP, the Lower San Gabriel River WMP fails to comply with Permit
15 requirements in numerous aspects, six of which pertain to core WMP requirements: 1) no clear
16 schedule to demonstrate that compliance will be achieved “as soon as possible,” 2) no commitment
17 or demonstration that receiving water limitations for pollutants not addressed by TMDLs will be
18 achieved, 3) insufficient specificity with regard to structure and non-structural BMPs, 4)
19 insufficient specificity with regard to the achievement of interim milestones, 5) lack of measurable
20 milestones to evaluate compliance, and 6) unenforceable and contingent volumetric reduction
21 targets. As a result of these deficiencies, Permittees of the Lower San Gabriel River watershed
22 group will engage in an endless loop of WMP implementation without ever achieving compliance
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26 ²⁸ State Board Order, at p. 33.

27 ²⁹ For a complete list of all the deficiencies that continue to exist in the Los Angeles River Upper
28 Reach 2 final WMP, please see Exhibit B attached to this petition addendum.

1 with receiving water limitations – an outcome that the State Board has repeatedly stated it cannot
2 accept.³⁰

3 **1. No Clear Schedule to Demonstrate that Compliance will be Achieved “as**
4 **Soon as Possible”**

5 The Lower San Gabriel River WMP fails to provide a compliance schedule to demonstrate
6 that receiving water limitations will be achieved “as soon as possible.” The 2012 Permit requires
7 that for exceedances of receiving water limitations, the WMP must provide a schedule that ensures
8 compliance “as soon as possible.” (2012 Permit, at Part VI.C.5.a.iv.) Parts VI.C.2.a.ii.(4) and
9 VI.C.2.a.iii.(2)(c) of the Permit provide further clarification on the meaning of “as soon as
10 possible.” In their review of the Lower San Gabriel River group’s draft WMP, the Regional Board
11 staff commented:

12 Where data indicate impairment or exceedances of RWLs and the findings from the source
13 assessment implicate discharges from the MS4, the Permit requires a strategy for
14 controlling pollutants that is sufficient to achieve compliance as soon as possible. Although
15 Section 3 includes a compliance strategy, the program needs to more clearly demonstrate
16 that the compliance schedule (Section 5) ensures compliance is “as soon as possible.
17 The WMP needs to provide a clear schedule that demonstrates implementation of the
18 BMPs will achieve the required interim metal reductions by the compliance deadlines. The
19 WMP schedule should at the least provide specificity on actions within the current and next
20 permit terms.

21 ...it would be reasonable to update the WMP to contain project milestones and
22 implementation timeframes for projects that will be implemented under this grant.³¹

23 In response to staff’s concern about the inadequate compliance schedule, text was added to
24 p. 5-1 of the Lower San Gabriel River group’s revised WMP:

25 Meeting the load reductions determined by the RAA results in an aggressive compliance
26 schedule in terms of the technological, operational, and economic factors that affect the
27 design, development, and implementation of the necessary control measures. Notably, as

28 ³⁰ State Board Order, at p. 33.

³¹ Los Angeles Regional Water Quality Control Board, Review of the Lower San Gabriel River
Watershed Management Area Draft Watershed Management Program, Pursuant to Part VI.C of the
Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, October 30, 2014, at
p. 2 (“Regional Board Staff Comments on Lower San Gabriel River Draft WMP”).

1 described in Chapter 6, there is currently no funding source to pay for these controls... As
2 such the Group considers the compliance schedule to be as short as possible... the
3 aggressive schedule in place to target zinc provides an equally aggressive schedule to target
4 the remaining WQPs, and as such it is considered to be as short as possible for all WQPs.³²
5 However, this passage interpreted staff's requirement for "as soon as possible" compliance in
6 strictly financial terms, with additional indeterminate delays added for acquisition and
7 "conversion." Thus, there is no effort to show that compliance will occur "as soon as possible" –
8 only an assertion that it is considered to be so.

9 The Regional Board Executive Officer flagged this issue in his April 28, 2015 letter
10 conditionally approving the Lower San Gabriel River group's revised WMP. Specifically, he
11 wrote:

- 12 1. Revise Table 5-1 of the revised draft WMP to state that for control measures listed as
13 being a "jurisdictional effort," the Permittees that are responsible for completion of
14 each milestone are identified in Table 3-11.
- 15 2. Revise Table 5-1 of the revised draft WMP to include the milestones and milestone
16 completion dates for the following targeted control measures (TCMs) as follows:
 - 17 a. TCM-PLD-2 (LID Ordinance): Remove the phrase "when practicable" and set a
18 milestone date for ordinance adoption to 12/28/17 (i.e., end of permit term).
 - 19 b. TCM-TSS-1 (Exposed Soil Ordinance): Remove the phrase "if practicable" from the
20 milestone description.
 - 21 c. TCM-TSS-3 (Private Lot Sweeping Ordinance): Remove the phrase "when
22 practicable" from the milestone description.
 - 23 d. TCM-RET-1 (Encourage downspout disconnects): Identify interim milestone(s) and
24 date(s) for milestone achievement and include in table.³³

25 While the requested wording changes were made for the Lower San Gabriel River group's
26 final WMP that was submitted on June 12, 2015, none of the substantive comments (e.g.
27 Permittees should propose an implementation schedule that will ensure compliance "as soon as
28 possible") from the Regional Board staff's October 30, 2014 letter has been addressed. Without a

32 Lower San Gabriel River Watershed Management Program, January 30, 2015, at 5-1 ("Lower San Gabriel River Revised WMP").

33 Los Angeles Regional Water Quality Control Board, Approval, With Conditions, of the Lower San Gabriel River Watershed Management Group's Watershed Management Program (WMP), Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, April 28, 2015, at p. 3 ("Conditional Approval Letter for Lower San Gabriel River WMP").

1 clear commitment and demonstration to achieve compliance as soon as possible, the Lower San
2 Gabriel River final WMP is inconsistent with explicit Permit terms, and as importantly, the WMP
3 cannot provide Permittees the ambitious, well-defined, and implementable alternative path to
4 permit compliance that the Regional Board envisioned for the WMP approach – *and* that served as
5 the basis for the State Board’s ultimate approval of the Permit’s WMP provisions.³⁴

6 **2. No Commitment or Demonstration that Compliance with Receiving Water**
7 **Limitations for Pollutants Not Addressed by TMDLs will be Achieved As**
8 **Soon as Possible**

9 For waterbody-pollutant combinations not addressed by TMDLs, the Lower San Gabriel
10 River WMP does not commit to any schedule or strategy to achieve compliance as soon as
11 possible. The 2012 Permit requires that for exceedances of receiving water limitations not
12 addressed by TMDLs, Permittees must demonstrate that the proposed control measures will
13 achieve compliance in the shortest timeframe possible. (2012 Permit, at Part VI.C.5.b.iv.(5)(c);
14 VI.C.5.c.iii.(3)(c).) Regional Board staff reviewed the draft WMP in October of 2014 and
15 commented:

16 For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires
17 that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities
18 and control measures to be implemented will achieve applicable receiving water limitations
19 as soon as possible. The RAA demonstrates the control measures would be adequate to
20 comply with the limitations/deadlines for the “limiting pollutants” for TMDLs and
21 concludes that this will ensure compliance for all other pollutants of concern. However, it
22 does not address the question of whether compliance with limitations for pollutants not
23 addressed by TMDLs could be achieved in a shorter time frame.³⁵

24 In response to staff’s concerns, changes were made to the Executive Summary of the
25 Reasonable Assurance Analysis section (Section 4.1) in the revised WMP, stating that the
26 Reasonable Assurance Analysis “determined that the metal zinc will be the primary or ‘limiting’
27 pollutant and that by implementing the structural and non-structural measures... to reduce zinc, the
28 remaining pollutant goals will be achieved... The rationale for this modeling approach is included

³⁴ State Board Order, at 76.

³⁵ Regional Board Staff Comments on Lower San Gabriel River Draft WMP, at p. 3.

1 Section 5.3.1 of the RAA (Appendix 4-1).” However, the staff request was for the Lower San
2 Gabriel River Permittees to determine if “compliance with limitations for pollutants not addressed
3 by TMDLs could be achieved in a *shorter time frame* (emphasis added)” – this comment was not
4 addressed in the revised WMP.

5 No additional requirement was requested to address this issue in the Executive Officer’s
6 April 28, 2015 conditional approval letter, and consequently, no further changes were made to the
7 final WMP to rectify this deficiency. The Lower San Gabriel River final WMP, therefore, will not
8 ensure that compliance with receiving water limitations for pollutants not addressed by TMDLs
9 will be achieved as soon as possible, and as a result, water quality improvement will continue to be
10 delayed for the Lower San Gabriel River watershed.

11 **3. Insufficient Specificity with Regard to Structural and Non-Structural** 12 **BMPs**

13 The Lower San Gabriel River WMP lacks the required specificity regarding the proposed
14 structural and non-structural control measures to meet compliance deadlines. The 2012 Permit
15 requires a WMP to identify specific structural and non-structural control measures and BMPs,
16 including the number, type, and location(s), as well as the nature, scope, timing, and frequency of
17 implementation. (2012 Permit, at Parts VI.C.5.iv.(4)(b)-(c).) Regional Board staff identified this
18 as a deficiency in the Lower San Gabriel River group’s draft WMP in their October 30, 2014
19 written comments:

20 The RAA identifies potential areas for green street conversion and assumes a 30%
21 conversion of the road length in the suitable areas; however, the specific locations and
22 projects are not identified. Although it may not be possible to provide detailed information
23 on specific projects at this time, the WMP should at least commit to the construction of the
24 necessary number of projects to ensure compliance with permit requirements per applicable
25 compliance schedules.³⁶

26 Despite staff’s explicit request for Permittees to provide more details, the revised WMP did
27 not include any changes to the section of the draft WMP that discusses green streets projects. Thus,
28 the paragraph continues to read:

³⁶ *Id.*

1 Specific green streets projects were not investigated during this initial analysis for potential
2 BMPs, therefore, the City-specific summary lists potential regional LID BMPs that *could*
3 (emphasis added) be used to achieve the required interim milestones and targets. Since this
4 WMP is a planning-level document, over time the Watershed Group will report and
demonstrate that the summative effect of projects implemented add up to the required
reductions for interim milestones and final targets.”³⁷

5 Permittees’ failure to revise this section demonstrates disregard for staff’s concern and explicit
6 instructions for revision. Section 5.1.3, however, was revised and now states:

7
8 Uncertainties associated with the targeted nonstructural controls complicate establishment
9 of specific implementation dates. Despite this uncertainty, the Group has made a diligent
10 effort to provide a clear schedule of specific actions within the current and next permit
11 terms in order to achieve target load reductions. In addition, the status of these controls will
be included in the annual watershed reports as well as through the adaptive management
process in order to assess their progress in attaining targeted load reductions.”³⁸

12 Even though Section 5.1.3 was slightly revised, there is still no commitment made beyond
13 self-proclaimed good-faith intentions and an asserted willingness to track progress (or its lack
14 thereof) through the permit cycle. No additional changes were made to address the deficiency in
15 the Executive Officer’s April 28, 2015 conditional approval letter, and no further changes were
16 made to the final WMP that was submitted on June 12, 2015, which was ultimately approved by
17 the Executive Officer and ratified by the Regional Board on September 10, 2015. Lacking
18 specificity on proposed control measures and BMPs, the Lower San Gabriel River group’s
19 Permittees cannot provide the required assurance that the implementation of their final WMP will
20 put them on a well-defined, transparent, and finite path toward the achievement of receiving water
21 limitations.

22 **4. Insufficient Specificity with Regard to the Achievement of Interim Milestones for TMDLs**

23 The Lower San Gabriel River WMP fails to provide any specificity on actions to ensure the
24 achievement of interim milestones for receiving water limitations addressed by TMDLs. For each
25 proposed structural and non-structural BMP geared toward the achievement of TMDL compliance,
26

27 ³⁷ Lower San Gabriel River Revised WMP, at 5-5.

28 ³⁸ *Id.* at 5-2.

1 the WMP must provide interim milestones and dates, and sufficient detail to ensure adequate
2 progress toward the achievement of interim milestones, and ultimately final compliance deadlines.
3 (2012 Permit, at Part VI.C.5.b.iv(4)(d).) Regional Board staff, in their October 30, 2014
4 comments, stated:

5 In a number of cases, additional specificity on the number, type and general location(s) of
6 watershed control measures well *as the timing of implementation for each* (emphasis
7 added) is needed... there should at least be more specificity on actions within the current
8 and next permit terms to ensure that the following interim requirements are met (1) a 10%
9 reduction in metals loads during wet weather and a 30% reduction in dry weather by 2017
and (2) a 35% reduction in metals loads during wet weather and a 70% reduction during
dry weather by 2020.³⁹

10 There are no changes between the draft and revised WMP that directly address this comment.
11 Given the vague nature of nearly all of the nonstructural “milestones” and provisional nature of
12 virtually all of the BMPs, it is not surprising that there is no direct linkage between committed
13 actions and achieving interim requirements by specified dates.

14 In conditionally approving the Lower San Gabriel River group’s revised WMP, the
15 Regional Board Executive Officer did not identify this issue as one of the remaining deficiencies,
16 thus no further changes were made to the final WMP to rectify this shortcoming. Consequently,
17 the deficiency remains uncured in the officially approved Lower San Gabriel River WMP. As
18 such, implementation of the final WMP will not provide Permittees a clearly defined,
19 implementable, and enforceable alternative to TMDL compliance, as required by the WMP
20 provisions of the 2012 Permit and mandated by the State Board in its final Order approving the
21 Permit’s WMP approach.

22 **5. Lack of Measurable Milestones to Evaluate Compliance**

23 The compliance schedules proposed in the Lower San Gabriel River WMP fails to include
24 milestones based on measurable criteria or indicators. To ensure that a WMP provides “the
25 appropriate rigor, transparency, and accountability”⁴⁰ to lead to the achievement of receiving water

27 ³⁹ Regional Board Staff Comments on Lower San Gabriel River Draft WMP, at p. 4.

28 ⁴⁰ State Board Order, at p. 33.

1 limitations, the 2012 Permit requires measureable milestones and dates for their achievement
2 within the permit term. (2012 Permit, at Part VI.C.5.c.iii.) Yet the initial draft WMP for the Lower
3 San Gabriel River watershed group only provided an implementation schedule for non-structural
4 BMPs up to 2017. In response, in their October 30, 2014 written comments, staff requested: “The
5 LSGR Watershed Management Group must provide measureable milestones for implementing
6 each one of the proposed control measures that will allow an assessment of progress toward the
7 interim and final WQBELs and receiving water limitations every two years.”⁴¹

8 The revised WMP included only minor additional “milestones”:

- 9 • For Right-of-Way BMP’s: “Every two years the adaptive management process will
10 include an assessment of the effectiveness of both 1) right-of-way BMPs incorporated
11 into CIP projects and 2) the STP in contributing toward targeted load reductions.”
- 12 • For Regional BMP’s: “The preliminary site assessments and feasibility study will be
13 completed by March 2016. Field analysis at selected sites will begin in December
14 2016.”
- 15 • Near the end of this section, the following sentence has been added: “Even though not
16 all projects can be specified and scheduled at this time, the Participating Agencies are
17 committed to constructing the necessary regional and right-of-way BMPs to meet the
18 determined load reductions per applicable compliance schedules.”⁴²

19 However, these vague additions do not represent meaningful, let alone measureable,
20 milestones for assessment of progress towards receiving water limitations compliance. There was
21 no additional requirement to fix this deficiency in the Executive Officer’s April 28, 2015
22 conditional approval letter, and no further revisions were made with regard to this issue in the final
23 WMP. Without clear and concrete milestones, the Lower San Gabriel River WMP cannot
24 demonstrate – let alone ensure – the achievement of final compliance deadlines.

25 **6. Unenforceable and Contingent Volumetric Reduction Targets**

26 Confronted by Petitioners with the Lower San Gabriel River WMP’s lack of commitment
27 to meeting interim milestones and final compliance deadlines at the September 10, 2015 Regional
28 Board public meeting, the Board staff responded that they interpreted the volumetric reductions set

29 ⁴¹ Regional Board Staff comments on Lower San Gabriel River Draft WMP, at Reasonable
30 Assurance Analysis Memorandum.

31 ⁴² Lower San Gabriel River Revised WMP, at 5-6.

1 forth in the WMPs as enforceable requirements.⁴³ The staff went on to assert that failure to meet
2 these volumetric reductions on time would be a Permit violation, subject to enforcement by the
3 Regional Board, U.S. EPA, and the affected public. The volumetric reductions in the Lower San
4 Gabriel River WMP, however, are conditioned on obtaining funding; and, for pollutants not
5 addressed by a TMDL, any deadlines are tentative at best.⁴⁴ As soon as Permittees of the Lower
6 San Gabriel River group demonstrate a failure to obtain funding for WMP implementation, the
7 volumetric reduction requirements will be effectively rendered unenforceable. Given the financial
8 constraints and conflicting priorities municipalities consistently complain of, a claim of failure to
9 secure funding for WMP implementation is a virtual certainty. Permittees of the Lower San
10 Gabriel River watershed group should not be allowed to evade enforceable requirements of the
11 Permit; therefore, a final WMP containing such wavering and uncertain commitment should have
12 been denied.

13 The final WMP for the Lower San Gabriel River fails to comply with explicit Permit
14 requirements for what ought to be included in a WMP for Regional Board approval.⁴⁵ The WMP,
15 therefore, should have been denied as required by the Permit. As such, the Regional Board's action
16 on September 10, 2015 to ratify the Lower San Gabriel River final WMP was inappropriate,
17 improper, and an abuse of discretion.

18 **C. The Lower Los Angeles River WMP Does Not Comply with the 2012 Permit or the**
19 **State Board Order, and Does Not Ensure Compliance With Water Quality Standards**

20 The final WMP for the Lower Los Angeles River watershed group does not comply with
21 the Permit's explicit program development requirements, and therefore, should have been denied

22 ⁴³ The final transcript for the September 10, 2015 Regional Board meeting was not made publicly
23 available until the afternoon of October 30, 2015 – the date of this filing. Petitioners will provide
24 citations to the transcript, and reserve the right to address additional arguments raised by Regional
25 Board staff, as appropriate.

26 ⁴⁴ Lower San Gabriel River Watershed Management Program, June 12, 2015, at 5-1, 6-1, available
27 at http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/lower_sangabriel/LowerSGRiver_FinalWMP.pdf.

28 ⁴⁵ For a complete list of all the deficiencies that continue to exist in the Lower San Gabriel River
final WMP, please see Exhibit B attached to this petition addendum.

1 as required by the Permit. Yet, the Lower Los Angeles River WMP, in its deficient state, was
2 approved by the Executive Officer, and then ratified by the Regional Board. As with the Los
3 Angeles River Upper Reach 2 and Lower San Gabriel River final WMPs, the Lower Los Angeles
4 River group's WMP suffers from a whole host of shortcomings, but four go to the heart of WMP
5 requirements: 1) no clear schedule to demonstrate that compliance will be achieved "as soon as
6 possible," 2) no commitment or demonstration that receiving water limitations for pollutants not
7 addressed by TMDLs will be achieved, 3) insufficient specificity with regard to structure and non-
8 structural BMPs, 4) unenforceable and contingent volumetric reduction targets.

9 **1. No Clear Schedule to Demonstrate that Compliance will be Achieved "as**
10 **Soon as Possible"**

11 The Lower Los Angeles River WMP does not provide compliance schedule to demonstrate
12 that receiving water limitations will be achieved "as soon as possible." The 2012 Permit requires
13 that for exceedances of receiving water limitations, the WMP must provide a schedule that ensures
14 compliance "as soon as possible." (2012 Permit, at Part VI.C.5.a.iv.) Parts VI.C.2.a.ii.(4) and
15 VI.C.2.a.iii.(2)(c) of the Permit provide further clarification on the meaning of "as soon as
16 possible." In their review of the Lower Los Angeles River group's draft WMP, the Regional Board
17 staff commented:

18 Where data indicate impairment or exceedances of RWLs and the findings from the source
19 assessment implicate discharges from the MS4, the Permit requires a strategy for
20 controlling pollutants that is sufficient to achieve compliance as soon as possible. Although
21 Section 3 includes a compliance strategy, the program needs to more clearly demonstrate
22 that the compliance schedule (Section 5) ensures compliance is "as soon as possible."⁴⁶

23 In response to staff's concern about the inadequate compliance schedule, text was added to
24 p. 5-1 of the Lower Los Angeles River revised WMP:

25 Meeting the load reductions determined by the RAA results in an aggressive compliance
26 schedule in terms of the technological, operational, and economic factors that affect the

26 ⁴⁶ Los Angeles Regional Water Quality Control Board, Review of the Lower Los Angeles River
27 Watershed Management Group's Draft Watershed Management Program, Pursuant to Part VI.C of
28 the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, October 28,
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1 design, development, and implementation of the necessary control measures. Notably, as
2 described in Chapter 6, there is currently no funding source to pay for these controls... As
3 such the Group considers the compliance schedule to be as short as possible... the
4 aggressive schedule in place to target zinc provides an equally aggressive schedule to target
5 the remaining WQPs, and as such it is considered to be as short as possible for all WQPs.⁴⁷
6 However, this passage seems to have interpreted staff's requirement for "as soon as possible"
7 compliance in strictly financial terms, with additional indeterminate delays added for acquisition
8 and "conversion." Thus, there is no effort to show that compliance will occur "as soon as possible"
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10 The Regional Board Executive Officer flagged this issue in his letter conditionally
11 approving the Lower Los Angeles River group's revised WMP on April 28, 2015. Specifically, he
12 wrote:

- 13 6. Revise Table 5-1 of the revised draft WMP to state that for control measures listed as
14 being a "jurisdictional effort," the Permittees that are responsible for completion of
15 each milestone are identified in Table 3-11.
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23 practicable" from the milestone description.
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25 date(s) for milestone achievement and include in table.⁴⁸

26 While the requested wording changes were made for the Lower Los Angeles River final
27 WMP that was submitted on June 12, 2015, none of the substantive comments (e.g. Permittees
28 should propose an implementation schedule that will ensure compliance "as soon as possible")
from the Regional Board staff's October 28, 2014 letter have been addressed. Without a clear

29 ⁴⁷ Lower Los Angeles River Watershed Management Program, January 28, 2015, at 5-1 ("Lower
30 Los Angeles River Revised WMP").

31 ⁴⁸ Los Angeles Regional Water Quality Control Board, Approval, With Conditions, of the Lower
32 Los Angeles River Watershed Management Group's Watershed Management Program (WMP),
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3 provide Permittees the ambitious, well-defined, and implementable alternative path to permit
4 compliance that the Regional Board envisioned for the WMP approach – *and* that served as the
5 basis for the State Board’s ultimate approval of the Permit’s WMP provisions.⁴⁹

6 **2. No Commitment or Demonstration that Compliance with Receiving Water**
7 **Limitations for Pollutants Not Addressed by TMDLs will be Achieved As**
8 **Soon as Possible**

9 For waterbody-pollutant combinations not addressed by TMDLs, the Lower Los Angeles
10 River WMP does not commit to any schedule or strategy to achieve compliance as soon as
11 possible. The 2012 Permit requires that for exceedances of receiving water limitations not
12 addressed by TMDLs, Permittees must demonstrate that the proposed control measures will
13 achieve compliance in the shortest timeframe possible. (2012 Permit, at Part VI.C.5.b.iv.(5)(c);
14 VI.C.5.c.iii.(3)(c).) Regional Board staff reviewed the draft WMP in October of 2014 and
15 commented:

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17 that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities
18 and control measures to be implemented will achieve applicable receiving water limitations
19 as soon as possible. The RAA demonstrates the control measures would be adequate to
20 comply with the limitations/deadlines for the “limiting pollutants” for TMDLs and
21 concludes that this will ensure compliance for all other pollutants of concern. However, it
22 does not address the question of whether compliance with limitations for pollutants not
23 addressed by TMDLs could be achieved in a shorter time frame.⁵⁰

24 In response to staff’s concerns, changes were made to the Executive Summary of the
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27 pollutant and that by implementing the structural and non-structural measures... to reduce zinc, the
28 remaining pollutant goals will be achieved... The rationale for this modeling approach is included

⁴⁹ See State Board Order, at 76.

⁵⁰ Regional Board Staff Comments on Lower Los Angeles River Draft WMP, at p. 3.

1 Section 5.3.1 of the RAA (Appendix 4-1).” However, the staff request was for the Lower Los
2 Angeles River Permittees to determine if “compliance with limitations for pollutants not addressed
3 by TMDLs could be achieved in a *shorter time frame* (emphasis added)” – this comment was not
4 addressed in the revised WMP.

5 No additional requirement was requested to address this issue in the Executive Officer’s
6 April 28, 2015 conditional approval letter, and consequently, no further changes were made to the
7 final WMP to rectify this deficiency. The Lower Los Angeles River final WMP, therefore, will not
8 ensure that compliance with receiving water limitations for pollutants not addressed by TMDLs
9 will be achieved as soon as possible, and as a result, water quality improvement will continue to be
10 delayed for the Lower Los Angeles River watershed.

11 **3. Insufficient Specificity with Regard to Structural and Non-Structural** 12 **BMPs**

13 The Lower Los Angeles River WMP lacks the required specificity regarding the proposed
14 structural and non-structural control measures to meet compliance deadlines. The 2012 Permit
15 requires a WMP to identify specific structural and non-structural control measures and BMPs,
16 including the number, type, and location(s), as well as the nature, scope, timing, and frequency of
17 implementation. (2012 Permit, at Parts VI.C.5.iv.(4)(b)-(c).) Regional Board staff identified this
18 as a deficiency in the Lower Los Angeles River group’s draft WMP in their October 28, 2014
19 written comments:

20 The RAA identifies potential areas for green street conversion and assumes a 30%
21 conversion of the road length in the suitable areas; however, the specific locations and
22 projects are not identified. Although it may not be possible to provide detailed information
23 on specific projects at this time, the WMP should at least commit to the construction of the
24 necessary number of projects to ensure compliance with permit requirements per applicable
25 compliance schedules.⁵¹

26 Despite staff’s explicit request for Permittees to provide more details, the revised WMP did
27 not include any changes to the section of the draft WMP that discusses green streets projects. Thus,
28 the paragraph continues to read:

⁵¹ *Id.* at p. 4.

1 Specific green streets projects were not investigated during this initial analysis for potential
2 BMPs, therefore, the City-specific summary lists potential regional LID BMPs that *could*
3 (emphasis added) be used to achieve the required interim milestones and targets. Since this
4 WMP is a planning-level document, over time the Watershed Group will report and
demonstrate that the summative effect of projects implemented add up to the required
reductions for interim milestones and final targets.”⁵²

5 Since this wording elicited the initial staff comment on the draft WMP, Permittees’ failure to
6 revise this section demonstrates their disregard for staff’s concern and explicit instructions for
7 revision. Section 5.1.3, however, was revised and now states:

8 Uncertainties associated with the targeted nonstructural controls complicate establishment
9 of specific implementation dates. Despite this uncertainty, the Group has made a diligent
10 effort to provide a clear schedule of specific actions within the current and next permit
11 terms in order to achieve target load reductions. In addition, the status of these controls will
12 be included in the annual watershed reports as well as through the adaptive management
process in order to assess their progress in attaining targeted load reductions.”⁵³

13 Even though Section 5.1.3 was slightly revised, there is still no commitment made beyond
14 self-proclaimed good-faith intentions and an asserted willingness to track progress (or its lack
15 thereof) through the permit cycle. No additional requirements were made to address this deficiency
16 in the Executive Officer’s April 28, 2015 conditional approval letter, and no further changes were
17 made to the final WMP that was submitted on June 12, 2015, which was ultimately approved by
18 the Executive Officer and ratified by the Regional Board on September 10, 2015. Lacking
19 specificity on proposed control measures and BMPs, the Lower Los Angeles River group’s
20 Permittees cannot provide the required assurance that the implementation of their final WMP will
21 put them on a well-defined, transparent, and finite path toward the achievement of receiving water
22 limitations.

23 **1. Unenforceable and Contingent Volumetric Reduction Targets**

24 In responding to Petitioners’ argument on September 10, 2015 about the Lower Los
25 Angeles River WMP’s lack of commitment to meeting interim milestones and final compliance
26 deadlines, Regional Board staff stated that the volumetric reductions set out in the final WMP

27 ⁵² Lower Los Angeles River Revised WMP, at 5-5.

28 ⁵³ *Id.* at 5-2.

1 represent an enforceable commitment from the Permittees.⁵⁴ In other words, failure to meet these
2 volumetric reductions in accordance with the provided schedule would be non-compliance, at
3 which point Permittees could be subject to enforcement by the Regional Board, U.S. EPA, and the
4 affected public. However, like the Lower San Gabriel River WMP, the volumetric reductions in
5 the Lower Los Angeles River WMP are also expressly conditioned on obtaining funding; and, for
6 pollutants not addressed by a TMDL, any deadlines are tentative at best.⁵⁵ If Permittees of the
7 Lower Los Angeles River group demonstrate a failure to obtain funding for WMP implementation,
8 the volumetric reduction requirements will be effectively rendered unenforceable. Given the
9 financial constraints and conflicting priorities municipalities consistently complain of, a claim of
10 failure to secure funding for WMP implementation is a virtual certainty. Permittees of the Lower
11 Los Angeles River watershed group should not be allowed to evade enforceable requirements of
12 the Permit, thus their final WMP, by having such uncertain language, should have been denied

13 The Lower Los Angeles River WMP fails to comply with core program development
14 requirements pursuant to the 2012 Permit.⁵⁶ As a result, the WMP cannot ensure the appropriate
15 rigor, accountability, and transparency to put Permittees on an alternative path toward the
16 achievement of water quality goals. The Lower Los Angeles River WMP should have been denied,
17 as required by the Permit, and therefore Permittees would have had to immediately demonstrate
18 compliance with receiving water limitations. Instead, however, Permittees of the Lower Los
19 Angeles River watershed group are given “safe harbor” benefits as a result of their WMP approval,
20 thereby allowing them to continue discharging highly polluted stormwater for years to come.

22 ⁵⁴ The final transcript for the September 10, 2015 Regional Board meeting was not made publicly
23 available until the afternoon of October 30, 2015 – the date of this filing. Petitioners will provide
24 citations to the transcript, and reserve the right to address additional arguments raised by Regional
25 Board staff, as appropriate.

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27 available at
28 http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/los_angeles/lower_losangeles/LowerLARiver_FinalWMP.pdf.

⁵⁶ For a complete list of all the deficiencies that continue to exist in the Lower Los Angeles River final WMP, please see Exhibit B attached to this petition addendum.

1
2 **V. REVISED REQUEST FOR RELIEF**

3 Petitioners seek an order by the State Board to invalidate the Regional Board's action on
4 September 10, 2015 to ratify the Executive Officer's final approvals of the Los Angeles River
5 Upper Reach 2, Lower San Gabriel River, and Lower Los Angeles River WMPs. In addition,
6 Petitioners request an order remanding the matter to the Regional Board with instructions for staff
7 to require WMP compliance with Permit requirements and the State Board Order.

8 **VI. CONCLUSION**

9 For all the foregoing reasons, the pending Petition for Review and Petition Addendum,
10 should be GRANTED, and the Regional Board's ratification of the Executive Officer's final
11 approvals for the Los Angeles River Upper Reach 2, Lower San Gabriel River, and Lower Los
12 Angeles River WMPs should be OVERTURNED.

13
14 Respectfully submitted,

15 Dated: October 30, 2015

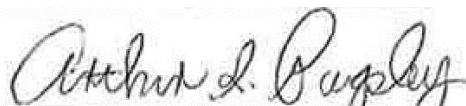
NATURAL RESOURCES DEFENSE COUNCIL, INC.

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20 _____
21 Becky Hayat
22 Attorneys for NATURAL RESOURCES
DEFENSE COUNCIL, INC. & HEAL THE BAY

23 Dated: October 30, 2015

LOS ANGELES WATERKEEPER

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27 Arthur S. Pugsley
28 Attorneys for LOS ANGELES WATERKEEPER
& HEAL THE BAY

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