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## Los Angeles Regional Water Quality Control Board

June 10, 2019

Corinne Bell  
Water Policy Analyst  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401

### **Re: Response to NRDC Report**

Dear Ms. Bell:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) has reviewed the April 2019 NRDC report entitled, "Omission Accomplished II: The Lack of Municipal Stormwater Enforcement in the Los Angeles Region." The purpose of this letter is to respond to some of the conclusions of the report, explain how the Los Angeles Water Board is addressing exceedances of bacteria standards, describe the Board's stormwater compliance and enforcement approach and activities, and reiterate our commitment to full and effective implementation of our MS4 program. While we were disappointed in the report, we welcome NRDC's focus on improving water quality, protecting public health, and safeguarding the environment, which are goals we share. With that in mind, the following comments are intended to facilitate a cooperative path forward.

### **Background on the 2012 Los Angeles County MS4 Permit**

The 2012 Los Angeles County MS4 Permit is a strong and innovative permit. It is the first permit of its kind to contain numeric water quality-based effluent limits to implement a large number of watershed-based Total Maximum Daily Loads (TMDLs). It provides a robust and clear framework to foster collaboration among stakeholders and treat stormwater as a resource by encouraging multi-benefit solutions to improve water quality, protect public health, and help ensure the human right to safe, clean, affordable, and accessible water. The Permit was the impetus for the State Water Resources Control Board's (State Water Board) Strategy to Optimize Resource Management of Stormwater (STORMS), Los Angeles County's Safe, Clean Water Program adopted by Measure W, and Culver City's Clean Water Clean Beach Parcel Tax adopted by Measure CW. Many elements of the Permit, including the watershed management/enhanced watershed management program approach, were identified as guiding principles for all MS4 permits across the state by the

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State Water Board in its order resolving the administrative petitions on the Permit (Order WQ 2015-0075).

### **Correction of the Characterization of Water Quality and Public Health Impacts**

The report's characterization of water quality and public health impacts contained many incorrect or misleading conclusions. For example, the report neglects to include important context for the number of exceedances of bacteria standards at Santa Monica Bay beaches. Monitoring for bacteria at Santa Monica Bay beaches occurs weekly -- and as often as daily at a number of sites -- resulting in over 22,000 samples collected over the period analyzed in the report. While the Los Angeles Water Board takes seriously any exceedance of a bacteria standard, when compared to 22,000 samples, the 1,256 exceedances reported by NRDC at Santa Monica Bay beaches represent a 5% exceedance rate. The report further neglects to acknowledge the significant improvement in water quality at Santa Monica Bay beaches since the Santa Monica Bay Beaches Bacteria TMDL became effective in 2003 and the Permit was adopted in 2012.

The report also provides a misleading characterization of the public health impacts of this 5% exceedance rate of bacteria standards. The report uses a study published 13 years ago, based on water quality data from 19 years ago, before the adoption of the Bacteria TMDL and the subsequent significant water quality improvement noted above. Compounding this, the report selects the upper end of the range of 427,800 to 993,000 illnesses from this outdated study. Finally, the report applies an estimate of cost per illness unrelated to recreational water quality to infer the public health costs associated with the 5% exceedance rate of bacteria standards at Santa Monica Bay beaches, which is 8 to 19 times higher than the estimate provided in the 2006 study.

### **Los Angeles Water Board Approaches to Addressing Exceedances of Bacteria Standards**

The Los Angeles Water Board addresses exceedances of water quality standards (often caused by more than one source) in multiple ways. For example, to address the exceedances of bacteria standards identified in your report, the Los Angeles Water Board has taken the following actions to date:

(1) for the exceedances in Ballona Creek, the Board issued a time schedule order, which is a formal enforcement action under the Water Boards' Water Quality Enforcement Policy, requiring five cities, Los Angeles County, and the Los Angeles County Flood Control District to implement three regional projects at a capital cost of \$32.6 million within four and a half years while maintaining existing water quality;

(2) for the exceedances at Malibu Beach, the Board focused its efforts on regulating discharges of bacteria from septic systems by imposing a discharge prohibition on these discharges and a strict schedule to eliminate existing discharges, resulting in the City of Malibu investing approximately \$100 million in a centralized wastewater treatment facility; and

(3) for the exceedances at Santa Monica Bay beaches, the Board has worked with MS4 permittees through the TMDL implementation and watershed management program process, resulting in the installation of 34 low flow diversions and treatment systems to eliminate or treat discharges of urban runoff during dry weather conditions. At Santa Monica Pier, identified in your report as the worst location in terms of bacteria exceedances, the City of Santa Monica just completed (in fall 2018) a \$15 million project

required by the Los Angeles County MS4 Permit through the City's enhanced watershed management program.

### **The Los Angeles Water Board's Stormwater Compliance and Enforcement Program**

The goal of the Los Angeles Water Board's Compliance and Enforcement Program is to ensure compliance or a return to compliance as expeditiously as possible to protect water quality and remediate pollution. The Board follows the process set forth in the Water Quality Enforcement Policy. Generally, the Water Boards use a progressive enforcement process consisting of an escalating series of actions characterized as "informal" and "formal" in the policy, commencing with compliance assistance, which may include notices of violations, followed by increasingly severe and punitive actions such as formal enforcement orders requiring compliance actions with deadlines, civil liability complaints and/or other formal enforcement. This process reflects the Los Angeles Water Board's desire for local governments to spend their limited resources on actual compliance. And, in most cases, compliance is achieved without the need to assess penalties.

Over the last four years, the Los Angeles Water Board has deliberately focused its stormwater enforcement activities on the Statewide General NPDES Permit for Discharges Associated with Industrial Activities (Industrial Stormwater Permit). Stormwater discharges from industrial facilities can be a significant source of pollutants to the MS4; therefore, effective implementation of the Industrial Stormwater Permit is important to the success of the MS4 program, particularly in the Los Angeles Region which has over 3,600 industrial facilities enrolled in the Industrial Stormwater Permit. Accordingly, the focus on enforcement of the Industrial Stormwater Permit includes initiatives that will reduce pollutants discharged from industrial facilities to the MS4 and our region's water bodies by increasing industrial facilities' compliance with the Industrial Stormwater Permit. These include:

(1) an initiative led by the Industrial Task Force, convened by the Los Angeles Water Board's Chair, Irma Muñoz, and which NRDC is a part of, to locate and enroll industrial facilities that are required to comply with the Industrial Stormwater Permit but have not enrolled (i.e., "non-filers");

(2) an initiative to ensure industrial facilities that fail to meet their numeric action levels implement the appropriate best management practices to come into compliance;

(3) an initiative to ensure that industrial facilities that claim no exposure to stormwater meet the permit requirements to do so; and

(4) an initiative to ensure that industrial facilities' Stormwater Pollution Prevention Plans (SWPPPs) meet the requirements of the Industrial Stormwater Permit.

Furthermore, since 2015, the Los Angeles Water Board has participated in multi-agency efforts that are reducing stormwater pollution and its impact on Environmental Justice communities within the cities of Boyle Heights, Pacoima, Paramount and Pomona through public outreach and engagement with the community, compliance inspections and follow-up enforcement as needed.

Additionally, since 2012, considerable MS4 program resources have been devoted to supporting the paradigm shift embodied in the 2012 Los Angeles County MS4 Permit, including review of watershed management programs/enhanced watershed management programs and engineering designs for regional stormwater capture projects to improve water quality and achieve other community benefits, including increased local water

resiliency. During this same timeframe, the Los Angeles Water Board has also devoted significant resources to addressing administrative and judicial challenges to the 2012 Los Angeles County MS4 Permit. This includes: defending against 37 administrative petitions challenging the Permit, two administrative petitions challenging watershed management programs to implement the Permit's requirements, two test claims filed with the Commission on State Mandates on the Permit, a State Audit of the MS4 program, and litigation by NRDC, Los Angeles Waterkeeper and several permittees on the Permit.

The Los Angeles Water Board takes abatement of stormwater pollution, including compliance with the Region's MS4 permits seriously. In 2018, the Board launched an MS4 enforcement initiative in partnership with the Water Boards' Office of Enforcement. Since then, the Board has issued two Investigative Orders to the cities of Compton and Gardena, a Notice of Violation to the City of Compton alleging failure to comply with the Investigative Order, and two Administrative Civil Liability Complaints in the amounts of \$128,843 to the City of Compton and \$714,985 to the City of Gardena for alleged violations of monitoring requirements of the Los Angeles County MS4 Permit. The Board also issued 13 Notices of Violation to the cities of San Marino, Sierra Madre, Rosemead, Carson, La Cañada Flintridge, San Fernando, Commerce, Hidden Hills, Huntington Park, Bell Gardens, Monrovia, Montebello and Maywood for alleged failure to meet the Los Angeles County MS4 Permit's monitoring requirements and numeric water quality-based effluent limitations for trash. The report is silent about this enforcement initiative.

In addition, the Los Angeles Water Board implements numerous compliance assurance activities. Since 2012, MS4 program staff have conducted regular audits of cities' commercial/industrial pollutant control programs and illicit connections/illicit discharge elimination programs; reviewed annual reports from the 86 permittees under the Los Angeles County MS4 Permit, the 12 permittees under the Ventura County MS4 Permit and the City of Long Beach for its MS4 permit; issued investigative orders related to MS4 permittees' trash controls among others; reviewed adaptive management of watershed management programs to implement the Los Angeles County MS4 Permit; and aggressively supported incorporation of numeric water quality-based effluent limits to implement TMDLs in the Industrial Stormwater Permit.

In order to evaluate the impact of our stormwater compliance and enforcement actions, the Los Angeles Water Board is implementing a three-year pilot project in the San Jose Creek subwatershed to assess water quality improvements resulting from a geographically focused effort to enroll all non-filers in the Industrial Stormwater Permit, ensure that industrial facility enrollees comply with the Industrial Stormwater Permit, and ensure that each city within the subwatershed complies with the Los Angeles County MS4 Permit.

These are just some examples of the Los Angeles Water Board's commitment to a robust stormwater compliance and enforcement program. As with all nine regional water boards, the Los Angeles Water Board's performance is tracked and reported annually in the California Water Boards' Annual Performance Report. This performance report shows that the Los Angeles Water Board is consistently among the top performing regional water boards both in stormwater enforcement and the monetary penalties assessed for non-compliance across all programs annually.

In conclusion, we hope we can move forward to cooperatively implement our shared mission to restore and protect our region's waters and provide for a safe and healthy

environment. Our Chair and Vice Chair, along with myself and our Assistant Executive Officer, would like to meet with you and the leadership at NRDC to further discuss your concerns and our shared goals. Please contact me if you would be interested in us arranging such a meeting.

Sincerely,



Renee Purdy  
Executive Officer

cc: Jared Blumenfeld, Secretary for Environmental Protection, CalEPA  
Kristin Peer, Assistant General Counsel, CalEPA  
Christine Hironaka, Deputy Cabinet Secretary, Office of the Governor  
E. Joaquin Esquivel, Chair, State Water Board  
Eileen Sobeck, Executive Director, State Water Board  
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Lawrence Yee, Vice Chair, Los Angeles Water Board