RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

December 10, 2012

VIA ELECTRONIC MAIL

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, California 95812-0100
Facsimile: (916) 341-5199
jbashaw@waterboards.ca.gov

Re: City of Downey Petition for Review Re: LARWQCB Order No. R4-2012-0175

Dear Ms. Bashaw:

The City of Downey ("City" or "Petitioner") hereby submits this Petition for Review ("Petition") to the California State Water Resources Control Board ("State Board") pursuant to section 13320(a) of the California Water Code ("Water Code"), requesting that the State Board review an action by the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"). Specifically, Petitioner seeks review of the Regional Board's November 8, 2012 Municipal Separate Stormwater Sewer System ("MS4") Permit, Order No. R4-2012-0175, reissuing NPDES Permit No. CAS004001 ("Permit").

Petitioner requests that this Petition be held in abeyance at this time pursuant to 23 C.C.R. § 2050.5(d). As an initial matter, Petitioner has every intention in abiding by the Permit in good faith and is genuinely optimistic about working with the Regional Board to assess and implement the strategies and requirements necessary for compliance. Nevertheless, the Permit contains significant issues that concern Petitioner, and other aspects that the Petitioner believes are flawed. Thus, while Petitioner has every hope that it will not need to request that the State Board act on any of the issues raised herein, as a matter of prudence and protection against the uncertainty of such a momentous and unprecedented Permit and other potential legal challenges that may ultimately alter the Permit, the Petitioner wishes to file this Petition and have it held in abeyance until such time as Petitioner requests the State Board to act on the Petition, if ever.

1. **Names, Addresses, Telephone Numbers and E-mail Addresses of Petitioner**

City of Downey
c/o City Manager
11111 Brookshire Avenue
Downey, CA 90241
Phone: (562) 904-7284
Fax: (562) 923-6388
CityManager@downeyca.org

With copies to Petitioner's Counsel to:

Lisa Bond
Candice K. Lee
Andrew J. Brady
Richards, Watson & Gershon
355 South Grand Ave., 40th Floor
Los Angeles, CA 90071
Phone: (213) 626-8484
Fax: (213) 626-0078
lbond@rwglaw.com
clee@rwglaw.com
abrady@rwglaw.com

2. **The Specified Action of the Regional Board Upon Which Review is Sought**

By this Petition, the City is challenging the Regional Board's November 8, 2012 adoption of the "Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4," Order No. R4-2012-0175, reissuing NPDES Permit No. CAS004001 ("Permit").

3. **The Date of the Regional Board's Action**

The Regional Board approved the challenged Permit on November 8, 2012.

4. Statement of Reasons the Action of the Regional Board was Inappropriate and Improper

Petitioner believes the Permit generally embodies a workable approach to improving water quality in the County, while reflecting the work the permittees have initiated during the prior permit terms and the work they have committed to perform in the future. However, several provisions of the Permit – including the imposition of numeric standards in the Receiving Water Limitations provisions, the manner of the incorporation of various Total Maximum Daily Loads ("TMDL") and numeric Water Quality Based Effluent Limitations ("WQBEL") provisions, the Permit's monitoring requirements, the Permit's economic considerations, provisions on joint liability, and certain minimum control measures – are inappropriate or improper in that, among other things, they impose obligations on Petitioner that are not mandated or supported by the Clean Water Act ("CWA"), the Porter-Cologne Water Quality Control Act ("Porter-Cologne"), or other applicable law. A more detailed discussion of these issues is provided in the Statement of Points and Authorities below.

5. The Manner in Which the Petitioner Has Been Aggrieved

Petitioner is a permittee under the Permit. It, along with the other permittees, is responsible for compliance with the Permit. Failure to comply with the Permit exposes Petitioner to administrative liability under the CWA and Porter-Cologne and potential lawsuits by the Regional Board and/or third parties under the CWA's citizen suit provision. To the extent that certain provisions in the Permit are improper or inappropriate, Petitioner should not be subject to such actions.[1]

6. The Specific Action Requested of the State Board With This Petition

The issues raised in this Petition may be resolved or rendered moot by actions to be taken by the permittees, Regional Board staff actions, amendment of the Permit, and/or developments in other jurisdictions. Accordingly, Petitioner requests the State Board hold this Petition in abeyance at this time pursuant to 23 C.C.R. § 2050.5(d). Depending on the outcome of these actions, Petitioner will, if necessary, request the

[1] Petitioner may provide the State Board with additional information concerning the manner in which it has been aggrieved by the Regional Board's action in adopting the Permit. Any such additional information will be submitted to the State Board as an amendment to this Petition.

State Board to act on all or some of the issues raised in the Petition and schedule a hearing. Petitioner will provide a complete list of specific actions requested if and when the Petitioner requests the State Board to act on this Petition.

7. Statement of Points and Authorities in Support of Legal Issues Raised in the Petition

The following is a brief discussion of the issues Petitioner raises in this Petition. In addition to the issues discussed below, to the extent not addressed or inadequately addressed by the Regional Board in its responses to comments, Petitioner also seeks review of the Permit on the grounds raised in Petitioner's previous written comments, copies of which are attached hereto as Exhibits "A" and "B." Petitioner will submit to the State Board a complete statement of points and authorities in support of this Petition, as necessary, if and when Petitioner requests the State Board to take the Petition out of abeyance and act upon it.

a. The Permit Should Be Revised To Be Consistent with the Maximum Extent Practicable Standard and State Policy by Allowing Compliance Through an Iterative Management Process and Not Require Strict Adherence to Numeric Standards in Receiving Waters and for WQBELs

Consistent with both State and Federal standards, and in particular the Federal Maximum Extent Practicable ("MEP") standard applicable to municipal storm water permits, permittees should be able to achieve compliance with the entire Permit through good faith adherence to a best management practice ("BMP")-based iterative approach. The Permit, on the other hand, and contrary to controlling policy, appears to require adherence to strict numeric standards in receiving water bodies and for WQBELs.

The Federal MEP standard for MS4 Permits is a BMP-based, iterative process that does not require adherence to strict numeric standards. *See* Permit, Attachment A, p. A-11; 2003 EPA Memo, "Guidance on Definition of Maximum Extent Practicable"; *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999); *Divers Environmental Conservation Organization v. State Water Resources Control Board*, 145 Cal.App.4th 246, 256 (2006); *BIA v. State Water Quality Resources Control Board*, 124 Cal.App.4th 866, 889-90 (2004); 1993 State Board

Memorandum, "Definition of Maximum Extent Practicable." Accordingly, the Permit's imposition of numeric standards exceeds the Federal MEP, which has numerous legal ramifications discussed further below.

Under a regime of enforceable numeric standards, even if the permittees are doing all they can by implementing required BMPs in good faith, they can still be held in violation of the Permit, for reasons that are entirely beyond their control. Such an outcome is unfair, and contrary to law. *BIA*, *supra*, 124 Cal.App.4th at 889 (MEP standard requires showing of technical and economic feasibility); *Hugley v. JMS Dev. Corp.*, 78 F.3d 1523, 1529-30 (11th Cir. 1996) (The CWA does not require permitees to achieve the impossible). The MS4 is too large, too complicated, and there is no model to assess and track the movement of pollutants into, through, and out of it. Accordingly, numeric standards are simply inappropriate at this time.

i. The Receiving Water Limitations Language's Numeric Standards

The Receiving Water Limitation ("RWL") provisions of the Permit indicate that strict adherence to the numeric water quality standards is required in receiving waters for permittees, regardless of whether a permittee adheres to a BMP-based iterative approach in good faith or not. *See, e.g.*, Permit, part V.A.1; Fact Sheet pp. F-36-37.

In prior permits, the RWL standard, despite having similar (but not identical) language, was understood to be an iterative process where compliance would not be measured according to numeric water quality exceedances, but through a BMP-based iterative process. *See* State Board Order No. 99-05; State Board Order No. 2001-15.

The RWL language in the Permit is inconsistent with State Board Water Quality Order No. 99-05 and other prior precedents and Orders. State Board Water Quality Order No. 99-05 unequivocally requires compliance with storm water management plans as a means of complying with receiving water limitations and, therewith, water quality standards. In State Water Quality Order No. 2001-15, the State Board affirmed the iterative approach in stating that "we will generally not require 'strict adherence' with water quality standards through numeric effluent limitations and we continue to follow an iterative approach." State Board Order No. 2001-15, p. 8. Finally, most recently, the State Board, on September 7, 2012, found that "[i]t is not feasible at this time to set enforceable numeric effluent criteria for

municipal BMPs and in particular urban discharges." *See* Fact Sheet for NPDES Permit and Waste Discharges Requirements for State of California Department of Transportation, NPDES Permit No. CAS000003, Order No. 2012-XX-DWG.

Although these latter items regard numeric effluent limitations, the same logic is even more applicable to receiving water limitations, over which individual permittees maintain even less control. Imposing numeric standards for the receiving water body is infeasible, unachievable, and will require the development of BMPs that violate and exceed the requirements of law. *See* Permit, Attachment A, p. A-11 (the Permit's own definition of MEP states that BMP's must be effective, have public support, exhibit reasonable relationship between cost and benefit achieved, and be technically feasible).

ii. The Provisions in the Permit Requiring Adherence to Numeric WQBELs Exceed Federal Requirements and Violate State and Federal Law and Policy

1. The Permit's WQBELs Were Improperly Formulated

The Regional Board failed to provide adequate justification for incorporating numeric water quality based effluent limitations ("WQBELs") in the Permit for each of the 33 incorporated Total Maximum Daily Loads ("TMDL") to which they apply. A WQBEL is an enforceable translation in an MS4 permit for attaining compliance with a TMDL Waste Load Allocation ("WLA"), which serves to protect beneficial uses of a receiving water. 40 C.F.R. § 130.2. The Permit fails to establish that an adequate requisite Reasonable Potential Analysis ("RPA") has been conducted.

The Permit fails to establish if discharges from any individual permittee's MS4 have the reasonable potential to cause or contribute to an excursion above any "State water quality standard including State narrative criteria for water quality." *See* EPA's November 12, 2010 Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs" ("EPA Memorandum"), which states:

> Where the NPDES authority determines that MS4 discharges *have the reasonable potential to cause or contribute to a water quality excursion*, EPA

> recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards.

EPA Memorandum, p. 2 (emphasis added).

There are two generally accepted approaches to conducting an RPA. According to USEPA guidance, "A permit writer can conduct a reasonable potential analysis using effluent and receiving water data and modeling techniques, as described above, or using a non-quantitative approach." NPDES Permit Writers' Manual, September 2010, page 6-23.

Neither the administrative record nor the Permit's Fact Sheet contains any evidence of the Regional Board having performed an RPA in accordance with the two foregoing approaches. Regarding the first approach, such an analysis would in any case have been impossible to perform given that no outfall ("effluent") monitoring has been required for any Los Angeles County MS4 permit since the MS4 program began in 1990. No modeling appears to have been conducted either. Furthermore, the absence of any reference to WQBELs or RPA in any of the Regional Board's TMDL documents counters its assertion that the TMDL development process satisfied the RPA requirement for establishing a numeric WQBEL in this instance.

Beyond this, federal regulations not only require that an RPA be performed to determine an excursion above a water quality standard, but also that the storm water discharge must be measured against an "allowable" ambient concentration. 40 C.F.R. §122.44(d)(iii).

While wet and dry weather monitoring data have been generated relative to some TMDLs, such data cannot singularly serve to determine an excursion above a TMDL, even where such data does exist, which is not in every case. Outfall monitoring data would have to have been evaluated against in-stream generated ambient (dry weather) data to make such a determination. As for the second, non-quantitative approach, the Regional Board also failed to provide information in the Permit, its accompanying documents, or the administrative record indicating that it had performed a non-quantitative analysis based on recommended criteria described in USEPA guidance.

In lieu of conducting either a quantitative or non-quantitative RPA, the Regional Board concluded that reasonable potential can be demonstrated in several ways, one of which is through the TMDL development process. Fact Sheet, p. F-34. No citation to any authority was provided for this proposition. In essence, the Regional Board appears to claim that the same analysis it used to establish a TMDL constitutes a type of RPA. The logic it used to arrive at this conclusion is, however, faulty. A WQBEL is a means of attaining a TMDL WLA, a translation of a WLA into prescribed actions or limits which has in the past been typically expressed as a BMP. Before a WQBEL can be developed, however, a need for it must be established. As the Writers' Manual points out:

> The permit writer should always provide justification for the decision to require WQBELs in the permit fact sheet or statement of basis and must do so where required by federal and state regulations. *A thorough rationale is particularly important when the decision to include WQBELs is not based on an analysis of effluent data for the pollutant of concern.*

NPDES Permit Writers' Manual, September 2010, page 6-23 (emphasis added).

No such rationale is provided in the Regional Board's Fact Sheet, which in the absence of effluent data derived from outfall monitoring, would have been absolutely necessary to justify the need for a numeric WQBEL. It is possible that outfall monitoring could demonstrate that existing BMPs implemented through a MS4 permittee's storm water management plan is already meeting a TMDL WLA, thereby obviating the need for any WQBELs. But that was not done, and simply translating a TMDL WLA directly into a numeric WQBEL without the requisite analysis is a clear violation of permit-writing standards, applicable law and good practice.

Furthermore, and finally, the EPA Memorandum is clear that reliance on numerics should be coupled with the "disaggregation" of different storm water sources within permits. *See* EPA Memorandum at pp. 3-4. The Permit fails to adequately disaggregate storm water sources within applicable TMDLs regarding numeric WQBELs and for receiving water limitations, further making the imposition of numeric standards inappropriate.

2. The Permit's Numeric WQBELs Violate the Requirements of Law Because They are Infeasible

The Regional Board's numeric WQBELs are not feasible. The 2010 EPA Memorandum recommends "*where feasible*, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards." EPA Memorandum, p. 2 (emphasis added). This position is based on 40 CFR §122.44(k), which authorizes the use of BMPs "when numeric limitations are infeasible." In 1991, the State Board concluded that "numeric effluent limitations are infeasible as a means of reducing pollutants in municipal storm water discharges, at least at this time." State Water Resources Control Board Water Quality Order 91-03, page 49.

Although this determination was made over twenty years ago, the State Board's position on this issue has not changed since then, as evidenced by its adoption of the Caltrans MS4 permit in September of 2012. Citing the fact sheet for the Caltrans MS4 permit, the State Board affirmed that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." Fact Sheet for NPDES Permit and Waste Discharges Requirements for State of California Department of Transportation, NPDES Permit No. CAS000003, Order No. 2012-XX-DWG, September 7, 2012, page 9.

The Caltrans MS4 permit's fact sheet also supports the use of BMP-based WQBELs as a means of meeting TMDLs and other quality standards. The Caltrans MS4 permit is also subject to TMDLs adopted by the Regional Board and USEPA. If this aspect of the Permit is not corrected, Los Angeles County MS4 permittees will be compelled to comply strictly with numeric WQBELs and receiving water limitations while Caltrans need only implement WQBEL BMPs to achieve compliance with the same TMDLs. This inconsistency lacks any justification.

In addition, when comparing the Permit to the General Industrial and General Construction Storm Water Permits that are within the Petitioner's MS4 (but are the primary enforcement responsibility of the Regional Board), the Permit clearly imposes excessive, unfair, and infeasible requirements onto the Petitioner. Imposing general BMP-based WQBEL compliance requirements onto a General Industrial and General Construction Storm Water permittee's discharge while imposing enforceable numeric WQBELs on to the Petitioner who is receiving the discharge is plainly unjustifiable. Here again, if this aspect of the Permit is not corrected, the Petitioner

will be compelled to comply strictly with numeric WQBELs and receiving water limitations while General Industrial and General Construction Storm Water permittees need only implement BMP based WQBELs to achieve compliance.

Moreover, the Permit allows the use of BMPs to meet federal TMDLs. Having two different compliance standards, one for State adopted TMDLs that require meeting numeric WQBELs and one for USEPA adopted TMDLs that require BMP-based WQBELs is improper and inappropriate. Furthermore, while the State may impose requirements more stringent than federal regulations, it must provide a justification and conduct required analysis that has not been done in the Permit, its accompanying documents, or elsewhere in the administrative record. Water Code § 13241; *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

b. Various TMDLs and TMDL Requirements Incorporated into the Permit Are Contrary to State and Federal Law and Policy

Various TMDLs incorporated into the Permit establish compliance with WLAs in the receiving water contrary to Federal storm water regulations and State Law. In addition to complying with TMDL WLAs at the outfall, the Permit also improperly requires compliance with TMDL WLAs (dry and wet weather) in the receiving water as a "limitation."

Examples include, but are not limited to, the metals TMDLs for the Los Angeles River adopted by the State, the metals TMDL for the San Gabriel River adopted by USEPA, the Los Angeles River Bacteria TMDL and the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants. The affected TMDLs all require in-stream monitoring to determine compliance with waste load allocations.

As will be addressed further below, Federal regulations only require two types of monitoring – effluent and ambient – for compliance: "The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards." 40 C.F.R. §122.44(d)(viii)(B).

USEPA defines effluent as outfall discharges. Ambient monitoring is defined by USEPA to mean the "natural concentration of water quality constituents prior to

mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impacts to human health." *See* EPA Glossary of Terms (http://water.epa.gov/scitech/datait/tools/warsss/glossary.cfm).

All TMDLs and other water quality standards are supposed to be ambient standards, as the noted in a USEPA commissioned report: "EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution."[2]

Although some of the TMDLs specify ambient monitoring such as the Los Angeles River Metals and Bacteria TMDLs, the Regional Board has misunderstood ambient monitoring to be a form of in-stream compliance monitoring, along with TMDL effectiveness monitoring. For example, the Los Angeles River Metals TMDL requires Los Angeles County MS4 permittees and Caltrans to submit a Coordinated Monitoring Plan ("CMP"), which includes both "TMDL effectiveness monitoring and ambient monitoring."[3]

The CMP that was submitted to and approved by the Regional Board proposed a monitoring plan that essentially treats TMDL effectiveness monitoring and ambient monitoring as being one of the same, and which collectively serve the purpose of determining compliance with dry and wet weather WLAs based on in-stream monitoring.

It is unclear why the Regional Board established two compliance standards, one of which (*viz.*, wet weather WLAs) is clearly not authorized under federal law. One explanation is that it did so because previously adopted TMDLs, some of which date back a few years, assumed that compliance would be determined by in-stream monitoring. The Regional Board was either not aware or ignored, at the time of the TMDLs adoption, that attainment of waste load allocations should be determined by

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[2] National Research Council, Assessing the TMDL Approach to Water Quality Management Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science and Technology Board, page 12.
[3] Total Maximum Daily Loads for Metals and Los Angeles River and Tributaries, U.S. Environmental Protection Agency, Region 9, California Regional Water Quality Control Board, Los Angeles Region, May 27, 2005, page 79.

outfall monitoring. More recently-adopted TMDLs, such as the Machado Lake Nutrients TMDL, do not require compliance in the receiving water (the lake in this case), but instead compliance at the outfall. The Regional Board has not explained why certain TMDLs are required to comply at the outfall while others are required to comply in the receiving water.

The purpose of ambient monitoring is to evaluate the health of receiving waters determined during normal states – not when it rains. State-sponsored Surface Water Ambient Monitoring Programs (SWAMPs) recognize that ambient monitoring is only performed during dry weather. As mentioned above, ambient monitoring sets a reference point against which storm water discharges are measured to determine attainment of water quality standards. While the State and federal-adopted TMDLs call for both dry and wet weather WLAs, federal regulations do not recognize either. It is the ambient standard that is supposed to operate as a TMDL WLA.

c. The Regional Board Failed to Adequately Consider Economic Impacts Pursuant to Water Code Section 13241

The Regional Board's failure to adequately consider the economic impacts of the Permit, as required by Water Code Sections 13000 and 13241, render the Permit invalid. Water Code Section 13623 requires the Regional Board to include "[e]conomic considerations" under Water Code Section 13241 with its consideration of the Permit. The Regional Board incorrectly asserts that consideration of economics is not required in this Permit. *See* Permit, p. 26. Because, as demonstrated above and throughout, the Permit requirements exceed the Federal MEP standard for storm water permits in numerous key regards, consideration of economic factors is necessary. *City of Burbank v. State Water Resources Control Bd.*, 35 Cal. 4th 613, 618, 627 (2005).

The alleged facts in the economic consideration section of the Fact Sheet misrepresent the permittees' data and fail to consider the economic impact of new, costly aspects of the Permit. The Permit's economic analysis uses the 2001 permit as its basis. Accordingly, the Permit fails to take into account 33 new TMDLs, new Minimum Control Measures ("MCMs"), Watershed Management Programs, and the loss of the County of Los Angeles as principal permittee, among other factors.

It is also premature and improper to assume that permittees will obtain funding from proposed ballot measures and other sources of funding which have not

even been approved, much less voted on by the public. *See* Permit, Fact Sheet, p. F-153. If the Regional Board wants to rely on initiatives, such as the Los Angeles County Flood Control District's Water Quality Funding Initiative, as sources of funding to offset the costs of storm water management, it should have delayed its public hearing and approval of the Permit until after the voters have actually voted on such initiatives. Otherwise, if such initiatives fail to pass, the co-permittees will be left to implement the Permit's requirements without these much-needed funds. Even if the Water Quality Funding Initiative is approved by the voters, the funds generated by the Initiative would not even be available until 2014 – well after the deadline for certain compliance deadlines set forth in the Permit. Moreover, the Water Quality Initiative will not cover all the costs imposed on all permittees by the Permit.

d. The Permit's Monitoring Program Exceeds the Requirements of Law

The Permit's Receiving Water Monitoring Program is improper for exceeding the scope of monitoring requirements authorized under Water Code Sections 13267 and 13383. Water Code Section 13267 states:

> "(b) (1) In conducting an investigation . . . the regional board may require that . . . any . . . political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."

The Regional Board's failure to conduct and communicate the requisite cost-benefit analysis pursuant to the monitoring requirements in the Permit constitutes an abuse of discretion. Water Code §§ 13267 and 13225(c).

The relevant portions of Water Code Section 13383 state:

> "(a) The . . . regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements . . . for any person who discharges, or proposes to discharge, to navigable waters. . . .

> (b) The . . . or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required."

The Permit goes far beyond a requirement that a permittee "monitor" the effluent from its own storm drains. The Permit's Receiving Water Monitoring Program seems to require a complete hydrogeologic model found in the receiving water body, which will in many cases be miles away from many of the individual permittees' jurisdictions. To the extent the Permit requires individual permittees to compile information beyond their jurisdictional control, they are unauthorized. Although Water Code Section 13383(b) permits the Regional Board to request "other information", such requests can only be "reasonably" imposed. Cal. Water Code § 13383(b). The Permit requires co-permittees to analyze discharges and make assumptions regarding factors well beyond their individual boundaries. This is not reasonable, and is therefore not permitted under Water Code Sections 13225, 13267, and 13383. It is equally unreasonable to require the monitoring of authorized or unknown discharges. *See* Permit at p. 108. The monitoring program also exceeds federal requirements which, in line with state requirements, do not require monitoring beyond the MS4. *See* 40 C.F.R. §122.26.

e. Provisions in the Permit Imposing Joint or Joint and Several Liability for Violations are Contrary to Law

The Permit appears to improperly impose joint liability and joint and several liability for water quality based effluent limitations and receiving water exceedances. The Permit states that "Permittees with co-mingled MS4 discharges are jointly responsible for meeting the water quality-based effluent limitations and receiving water limitations assigned to MS4 discharges in this Order." Permit, p. 23. The Permit then states that permittees are responsible for implementing programs within their jurisdictions "to meet the water quality-based effluent limitations and/or receiving water limitations assigned to such commingled MS4 discharges." *Id.*

It is both unlawful and inequitable to make a permittee liable for the actions of other permittees over which it has no control. A party to an MS4 Permit is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1348 (N.D. Ga. 2004). Because

the City cannot prevent another permittee from failing to comply with the Permit, the Regional Board cannot, as a matter of law, hold the City jointly or jointly and severally liable with another permittee for violations of water quality standards in receiving water bodies or for TMDL violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Cal. Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement." Cal. Water Code § 13350(a). In similar fashion, the CWA directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. Thus, there is no provision for joint liability under either the California Water Code or the CWA.

Furthermore, joint liability is proper only where joint tortfeasors act *in concert* to accomplish some common purpose or plan in committing the act causing the injury, which will generally never be the case regarding prohibited discharges. *Kesmodel v. Rand*, 119 Cal. App. 4th 1128, 1144 (2004); *Key v. Caldwell*, 39 Cal. App. 2d 698, 701 (1940). For any such discharge, it would be unlawful to impose joint liability and especially joint and several liability. Furthermore, the issue of imposing liability for contributions to "commingled discharges" of certain constituents, such as bacteria, is especially problematic because there is no method of determining who has contributed what to an exceedance.

Permittees should not be required to prove they did not do something when the Regional Board has failed to raise even a rebuttable presumption that the contamination results from a particular permittee's actions. Yet, by stating that the Permit "allows a Permittee to clarify and distinguish their individual contributions and demonstrate that its MS4 discharge did not cause or contribute to exceedances of applicable water quality-based effluent limitations and/or receiving water limitations," that is precisely what the Permit does. Permit, p. 24. Such a reversed burden of proof is contrary to law, and illicitly creates a presumption of "guilty until proven innocent." *See* Cal. Evid. Code § 500; *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1667-1668 (2003).

The Regional Board has the burden of proof to establish a CWA violation, and requiring permittees to prove a negative in the case of a commingled discharge is unfair and unlawful. *Rapanos v. United States*, 547 U.S. 715, 745 (2006); *Sacket v. E.P.A.*, 622 F.3d 1139, 1145-47 (9th Cir. 2010) ("We further interpret the CWA to require that penalties for noncompliance with a compliance order be assessed only

after the EPA proves, in district court, and according to traditional rules of evidence and burdens of proof, that the defendants violated the CWA in the manner alleged in the compliance order.")

f. The Permit Improperly Intrudes on Permittees' Local Land Use Authority

To the extent that this Permit relies on federal authority under the CWA to impose land use regulations and dictate specific methods of compliance, it violates the Tenth Amendment of the U.S. Constitution. Furthermore, to the extent the Permit requires a municipal permittee to modify its city ordinances in a specific manner, it also violates the Tenth Amendment. According to the Tenth Amendment,"[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article XI, section 7 of the California Constitution also guarantees municipalities the right to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." *See also City of W. Hollywood v. Beverly Towers*, 52 Cal. 3d 1184, 1195 (1991). Furthermore, the United States Supreme Court has held that the ability to enact land use regulations is delegated to municipalities as part of their inherent police powers to protect the public health, safety, and welfare of its residents. *See Berman v. Parker,* 348 U.S. 26, 32-33 (1954). Because it is a constitutionally conferred power, land use powers cannot be overridden by State or federal statutes.

Even so, both the CWA and the Porter-Cologne Act provisions regarding NPDES permitting do not indicate that the Legislature intended to preempt local land use authority. *Sherwin Williams Co. v. City of Los Angeles,* 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1309 (1998) (Preemption of police power does not exist unless "Legislature has **removed** the constitutional police power of the City to regulate" in the area); *see* Water Code §§ 13374 and 13377 and 33 U.S.C. § 1342 (b)(1)(B).

The Permit essentially establishes the Regional Board as a "super municipality" responsible for setting zoning policy and requirements throughout Los Angeles County. In response to this objection, the Regional Board stated that "the permit does not impose land use regulations, nor does it restrict or control local land-use decision-making authority. Rather, the Permit requires the permittees to fulfill

CWA requirements and protect water quality in their land use decisions." Responses to Comments H-53. This is simply not the case, as the permit improperly imposes numerous mandatory land use requirements, including but not limited to the adoption of low impact development ("LID") ordinances. *See, e.g.,* Ex. A at pp. 96-115 (Planning and Land Development Program).

g. The Permit Exceeds the Regional Board's Authority by Requiring the City to Enter Into Contracts and Coordinate With Other Co-permittees

The Regional Board cannot require the City to enter into agreements or coordinate with other co-permittees. The requirements that permittees engage in interagency agreements (Permit at p. 39) and coordinate with other co-permittees as part of their storm water management program (Permit at p. 56-58) are unlawful and exceed the authority of the Regional Board. The Regional Board lacks the statutory authority to mandate the creation of interagency agreements and coordination between permittees in an NPDES Permit. *See* Water Code §§ 13374 and 13377. The Permit creates the potential for City liability in circumstances where the permittee cannot ensure compliance due to the actions of third party state and local government agencies over which the City has no control. Such requirements are not reasonable regulations, and thus violate state law. *Communities for a Better Environment v. State Water Resources Control Bd.*, 132 Cal. App. 4th 1313, 1330 (2005) (regulation pursuant to NPDES program must be reasonable.)

h. Various Aspects of the Permit's Non-Stormwater Discharge Provisions Are Inconsistent with Federal Law and Contrary to State Law

The Permit contains a significant revision to non-stormwater discharge prohibitions: "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges *through* the MS4 to receiving waters ..." Permit, p. 27. The previous 2001 permit, however, required MS4 permittees to "effectively prohibit non-storm water discharges *into* the MS4." The previous Permit also provided for several exceptions of non-stormwater discharges that could be legally discharged to the MS4. Non-stormwater discharges that were not exempted were deemed illicit discharges. The adopted Permit, on the other hand, revises the non-stormwater discharge prohibition by replacing "to" the MS4 with

"through" the MS4 and in the case of TMDL discharges "from the MS4" to a receiving water.

The Regional Board's revised non-stormwater provision is not authorized under Federal storm water regulations. Nevertheless, the Regional Board attempts to rely on 40 C.F.R. §122.26(a)(3)(iv) to assert that an MS4 permittee is only responsible for discharges of storm water and non-storm water from the MS4. The Regional Board's citation mentions nothing about permittees being responsible for storm water and non-stormwater from the MS4. Instead, it states that co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewer system. But the term "discharges" as used in the regulation refers to storm water discharges only.

To the contrary, Section 402(p)(B)(ii) of the CWA, clearly specifies that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." Nothing in this section or anywhere else in the CWA authorizes a prohibition of non-stormwater discharges "through" or "from" the MS4. In fact, the Regional Board cites no legal authority either in the Permit or the Fact Sheet to support changing the discharge prohibition from "to" or "into" the MS4 to "through" or "from" the MS4. By doing do, the Regional Board has illicitly expanded the non-stormwater discharge requirements beyond their permissible or reasonable scope, and beyond the MEP standard.

Additionally, the Permit improperly defines non-stormwater to expansively include all dry-weather runoff. This is contrary to State and Federal definitions of storm water, which include "surface runoff," "drainage," and "urban runoff." 40 C.F.R. § 122.26(b)(13); *see also* State Water Board Order No. 2001-15, pp. 7-8. This further expansion of the non-stormwater provisions exceeds the Federal requirements and places an additional, unfair burden on permittees forced to try to prohibit these discharges.

i. The Timing and Procedures of the Permit Adoption Were Contrary to Law and Deny the Permittees' Due Process Rights

The period provided to review and comment on the Permit was unreasonably short given the breadth of the Permit. Furthermore, the "dual" procedure the Regional Board adopted whereby part of the Permit could be discussed on October 4 and 5, 2012, without the benefit of seeing a revised draft tentative Permit or responses

to comments, and then only allowing comments on "changes" to the Permit at the November 8, 2012 hearing, unreasonably limited the ability of the permittees to comment on the Permit as a whole based on the changes to the permittees' original comments. *See* Regional Board 9/26/12 "Order on Proceedings." By denying the permittees a meaningful opportunity to review and comment on a Permit that so drastically affects the permittees' rights and finances, the Regional Board has denied the permittees due process rights under state and federal law. *See Spring Valley Water Works v. San Francisco*, 82 Cal. 286 (1890) (reasonable notice and opportunity to be heard are essential elements of "due process of law," whatever the nature of the power exercised.) Furthermore, under the CWA, a reasonable and meaningful opportunity for stakeholder participation is mandatory. *See, e.g., Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376, 381 (8th Cir. 1994) ("the overall regulatory scheme affords significant citizen participation, even if the state law does not contain precisely the same public notice and comment provisions as those found in the federal CWA.")

j. The Regional Board's Forced Recusal of Board Member Mary Ann Lutz was Improper and Prejudiced the Municipal Permittees

Ms. Lutz was, at the time of the hearings, the Board member appointed to reflect the perspective of municipal governments. She was improperly forced by the Regional Board to recuse herself from the proceedings. By improperly forcing her recusal, the Regional Board staff and counsel purposefully and unduly prejudiced the municipal permittees by denying the Board, the permittees, and the public Ms. Lutz' valuable perspective as a municipal representative, public servant and Mayor.

k. The Permit as a Whole Constitutes an Unfunded State Mandate, Which Is Not Permitted by the California Constitution Unless Funding is Provided by the State

The Permit contains mandates imposed at the Regional Board's discretion that are unfunded and go beyond the specific requirements of either the CWA or the USEPA's regulations implementing the CWA, and thus exceed the MEP standard. Accordingly, these aspects of the Permit constitute non-federal state mandates. *See City of Sacramento v. State of California*, 50 Cal. 3d 51, 75-76 (1990). Indeed, the Court of Appeal has previously held that NPDES permit requirements imposed by the Regional Board under the Clean Water and Porter-Cologne Acts can constitute state

mandates subject to claims for subvention. *County of Los Angeles v. Commission on State Mandates*, 150 Cal.App.4th 898, 914-16 (2007).

i. The Permit's Minimum Control Measure Program is an Unfunded State Mandate

The Permit's Minimum Control Measure program ("MCM Program") qualifies as a new program or a program requiring a higher level of service for which State funds must be provided. The particular elements of the MCM Program that constitute unfunded mandates are:

- The requirements to control, inspect, and regulate non-municipal permittees and potential permittees;
- The public information and participation program;
- The industrial/commercial facilities program;
- The public agency activities program; and
- The illicit connection and illicit discharge elimination program.

See Permit, p. 69-143.

The MCM Program requirement that the permittees inspect and regulate other, non-municipal NPDES permittees is especially problematic and clearly constitutes an unfunded mandate. *See, e.g.*, Permit at pp. 38-40. These are unfunded requirements which entail significant costs for staffing, training, attorney fees, and other resources. Notably, the requirement to perform inspections of sites already subject to the General Construction Permit is clearly excessive. Permittees would be required to perform pre-construction inspections, monthly inspections during active construction, and post-construction inspections. The Regional Board is requiring a higher level of service in this Permit than in prior permits.

Furthermore, there are no adequate alternative sources of funding for inspections. User fees will not fully fund the program required by the Permit. Cal. Gov't Code, § 17556(d). NPDES permittees already pay the Regional Water Quality Control Board fees that cover such inspections in part. It is inequitable to both cities and individual permittees for the Regional Board to charge these fees and then require cities to conduct and pay for inspections without providing funding.

ii. The Permit's Imposition of Numeric Standards Render it an Unfunded Mandate

If strict compliance with numeric state water quality standards is required in the form of WQBELs and Receiving Water Limitations, the entire Permit will constitute an unfunded mandate because such a requirement clearly exceeds both the Federal standard and the requirements of prior permits, despite the fact no funding will be provided to help meet targets. *See Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, 124 Cal. App. 4th 866, 873, 884-85 (2004) (though the State and Regional Boards may require compliance with California state water quality standards pursuant to the CWA and state law, these requirements exceed the Federal Maximum Extent Practicable standard.)

8. Statement that the Petition Has Been Sent to the Regional Board

A copy of this Petition is being served upon the Executive Officer of the Regional Board.

9. Statement that Issues/Objections Were Raised Before the Regional Board

The substantive issues raised in this Petition were all raised to the Regional Board before the Regional Board acted on November 8, 2012.

10. Service of Petition

This Petition is being served upon the following parties via electronic mail:

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, CA 95812-0100
Facsímile: (916) 341-5199
jbashaw@waterboards.ca.gov

California Regional Water Quality Control Board
Los Angeles Region
Samuel Unger, Executive Officer
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Facsimile: (213) 576-6640
sunger@waterboards.ca.gov

11. Conclusion

For the reasons stated herein, Petitioner has been aggrieved by the Regional Board's action in adopting the Permit. Issues raised in this Petition, however, may be resolved or rendered moot by Regional Board actions or developments in other jurisdictions. Accordingly, until such time as Petitioner requests the State Board to consider this Petition, Petitioner requests the State Board hold this Petition in abeyance.

Very truly yours,

Andrew J. Brady
City of Downey

Enclosure

cc: Samuel Unger
Yvette M. Abich Garcia
Jason Wen
Candice K. Lee

City of Downey

FUTURE UNLIMITED

July 23, 2012

Ivar Ridgeway
Los Angeles Regional Water Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Tentative NPDES Permit (Draft Order) for MS4 Dischargers within the Los Angeles County Flood Control District

The City of Downey (City) takes pride in itself as very proactive in reducing pollutants in storm water runoff. In a recent presentation to the Regional Board, it was mentioned that the city has over 1,000 Low Impact Development (LID) type systems located throughout the City. In fact, in an effort to distinguish itself, Downey was one of the few cities submitting a separate Report of Waste Discharge (ROWD) six months prior to the scheduled expiration of the current permit in 2006 with the purpose of obtaining coverage under a separate and individual MS4 permit. Downey has not requested this ROWD be withdrawn, but nonetheless recognizes the appropriateness of submitting comments at this time; in part as the Regional Board has listed the City as a permittee under the Tentative Permit.

Downey is not a member of the Los Angeles Permit Group (LAPG), but has been following the developments and vetting by some sixty (60) municipalities of that group's comments. Rather than submit many of the same comments, Downey hereby incorporates the comments being submitted to the Regional Board by the LAPG into this letter by reference. Downey would also like to incorporate by reference, the legal comments being submitted separately on behalf of the City of Signal Hill.

Downey further recognizes that the comments being submitted by the LAPG are extensive and that there will only be a very limited amount of time for the Regional Board to review and make the requested modifications to the tentative permit prior to the currently scheduled adoption date of September 7, 2012. The City would therefore like to bring to the attention of the Regional Board several items of importance.

1. The open section that lists the names of the contact person, thus incorporating the names into the MS4 permit is inappropriate as City personnel are very likely to change over the next 5 or more years. Only the City titles and addresses should be listed.
2. Section D.1.b.i (page 56) indicates that all the Minimum Control Measures (MCM) must be implemented within 30 days of the effective date of the permit. The is not realistic given that the permittees are being given six (6) months in which to decide whether to implement the MCMs or follow the Watershed Management Program (WMP) as described separately within the Tentative Permit.
3. During a presentation to the Regional Board earlier this year as part of comments on previous working drafts of the MS4 permit, the City of Downey indicated that eighty-nine (89) percent of their catch basins tributary to the Los Angeles River are now retrofitted with full-capture trash systems. The remaining eleven (11) percent could not be retrofitted due primarily to physical constraints of the catch basins. Section E.5.b.i(2) (118) appears to indicate that cities installing lesser effective partial control devices may be eligible for a determinate of full compliance while those cities such as Downey that installed the full capture system would not be. This can and should be remedied by including the partial installation of full-capture devices in combination with institutional control as satisfying this item.
4. The Receiving Water Limitations (RWL) must be revised. This is a critical issue for the City. Under the current wording, any exceedance, whether: (1) under an existing TMDL, (2) listed on the 303d impaired waterbody list but where no TMDL is yet developed, or (3) not listed as an impairment but listed as a water quality standard would subject permittees to RWL requirements. For example, runoff would now be immediately subject to limitations on such "pollutants" as aluminum, sulfates, chloride, etc. If these pollutants were priorities, TMDLs or monitoring would have already be in place; and to the City's knowledge, no outfall monitoring has yet occurred. Cities must be given a reasonable opportunity to determine the current level of these "pollutants", and then develop economically and technically feasible control measures, preferably through an iterative adaptive approach. We understand that several statewide efforts are underway and the Regional Board is urged to review the proposed wording of these efforts and remedy the current deficiencies in the Receiving Waters Limitations wording.

5. As mentioned above, the City has a substantial LID program. Credit should be given to cities, such as Downey, that will have lowered the volume of runoff so that miniscule amounts of runoff that may from time to time exceed water quality standard not be considered violations (Water Quality Standards should be mass-bases as well as concentration-based.)
6. Under the construction provisions for sites over 1 acre. Since the SWPPP program (GCP) is in place and applications can now be electronically filed by contractors and since this is a State program, and therefore the State collects permit and inspection fees, cities should not be responsible for ensuring the SWPPP application process and the increased number of inspections unless the State provides a portion of the fees as reimbursement to cities for the additional costs.
7. Table 8, (Page 33): Under the provision for (LACFCD) Los Angeles County Flood Control District to mandate reporting by potable water suppliers should be amended. LACFCD has no legal mechanism to enforce this provision except where the discharge is to a County owned right of way, which is in only a very small number of cases. It makes much more sense and is consistent with the rest of the permit to require each MS4 permittee to have this requirement. Please consider revising the language accordingly, "Whenever there is a discharge of one acre-foot or more into the MS4, the MS4 Permittee shall require advance notification by the discharger to the MS4 Permittee."
8. Under Section D.7.h.ii.(8), the verification that contractors have obtained various State permits (401, 404, 1600, etc.) should not be the responsibility of the City. As owner/operator of the flood control channels where the actual connections will be made, verification of these permits should be the responsibility the Army Corps of Engineers or the County Flood Control District.
9. Attachment A: Please provide definitions for:

   Construction Activity,
   Industrial Parks and
   Commercial Strip malls
   Trash excluders
   AMAL and MDAL (page G-13)

10. Item (4) (page 70): this item should be eliminated. It forces an evaluation of green roofs for every project, whether or not a green roof if proposed.

11. Section d.i. (page 80): whereby the Executive Office is to review and approved LID ordinance retroactively punishes cities like Downey that pro-actively initiated LID programs on their own volition. Existing LID programs should be grandfathered in automatically.
12. Section VI.D.7.f (page 84): land clearing for fire protection should not be considered a construction activity.
13. Having submitted its owner ROWD, Downey recognized that an outfall monitoring program was going to be an integral part of their individual MS4 permit. However, the new outfall monitoring program as outlined in Attachment E of the tentative MS4 represents an extremely expensive endeavor. This needs to be completely revised in order to make it economically viable. As part of several Los Angeles River, San Gabriel River and Los Cerritos Channel TMDL groups, Downey is facing a shared monitoring costs well into the hundreds of thousands of dollar range. The costs for this outfall monitoring will include: (1) TMDL monitoring, (1) post-construction treatment system evaluation and (3) costs for pyrethroid studies. Even if limited to approximately 20 square miles of tributary areas (HUC-12) the costs are extremely high. Attachment E should be listed as "items that could be included in a monitoring plan" and this program will then be developed over the next several years.
14. As Downey is subject to both the USEPA San Gabriel River Reach 1 Metals TMDL and the USEPA Los Cerritos Channel TMDL, the City would like to complement the Regional Board staff for their effort to allow permittees subject to these USEPA TMDLs to prepare a Watershed Implementation Plan (WIP) in lieu of the Time Schedule Order as originally proposed in the original permit drafts. The City is pleased to see the Regional Board's intent to recognize interim efforts as equating to compliance via these WIPs which are anticipated to be submitted to the Regional Board in 2013. The City is concerned that the final TMDL goals will be strict numeric limits. For the purpose of this MS4 permit, it is requested that the final numeric limits be listed as iterative adaptive goals and that as the final date of the implementation period approaches, the Basin Plan be re-opened to review the progress to date and make a determination at that time whether to establish strict numeric limits or a continuation of the iterative adaptive process.
15. Section E.3.a (page 114): It is not clear from the Tentative Permit whether this was a grammatical oversight or a purposeful intent for cities such as Downey subject to a US EPA TMDL not to be given the option of implementing the MCM (as all other permittees are) in lieu of developing a WMP. For permittees such as Downey which are in multiple TMDL watersheds, it should be clear that

Management Area Programs established by permittees for US EPA TMDL do not apply to the entire City unless specifically designated as such within the Watershed Management Program.

16. Section III.A.1 (page 26). "- - prohibit non-storm water discharges through the MS4 - -" , should be changed to: "- - prohibit non-storm water discharges into the MS4 - -". Leaving the wording as is would require permittees to discern non-exempt discharges within comingle flows for upstream sources outside the jurisdiction of the permittee.
17. Finally, the entire section h.ix (page 103) dealing with sanitary sewers should be omitted. Sanitary sewer system operations and maintenance are already addressed by an existing WDR.

Thank you in advance for consideration of these comments. Please call Louis Atwell of my staff at (562) 622-3398 if you have any questions or comments.

Sincerely,

John Oskoui, P.E.
Director of Public Works

JO:rg

cc: Electronically submitted to:
rpurdy@waterboards.ca.gov
jridgeway@waterboards.ca.gov
LAMS42012@waterboards.ca.gov

City of Downey

FUTURE UNLIMITED

October 3, 2012

Maria Mehranian, Chair
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

Subject: Tentative National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer System (MS4)

Dear Chairwoman Mehranian:

I want to thank the Regional Board for providing the City of Downey with an opportunity to raise several issues regarding the Tentative Order. As the Board is aware from presentations and comments the City of Downey has made on several previous occasions, the City of Downey has always taken an active role in NPDES issues. I will restrict my comments to four primary issues.

First, the number of TMDLs the City is facing has steadily risen and is now up to seven. The LA River Trash TMDL, the LA River Bacteria TMDL, the San Gabriel River Metals TMDL to name a few. These TMDLs require a level of expertise and costs that is unprecedented.

Second, the potential cost of the Tentative Order, due to the increased number of programs and new requirements, is financially unachievable. The City of Downey is located in three watersheds. The cost of installation of just two outfall monitoring stations in each watershed will be about $600,000.

Thirdly, Downey's Low Impact Development program has been a prominent feature of our efforts during the past five years which has been articulated in our previous comments. With this level of effort, we feel a BMP-based compliance criteria should be available. It is of critical importance that BMP-based compliance be included in any Receiving Water Limitation language to protect cities with good programs from violations for the random exceedances that will inevitably occur.

And finally, I would like to end on a positive note. As you know, in 2006, the City applied for a separate MS4 permit. We are looking forward to reviewing the proposed Watershed Management Program as a potentially less costly alternative when the final version of the Tentative Order is released for public review and a second round of comments. At that time we intend to provide additional and more detailed comments.

Thank you for your consideration.

Sincerely,

Roger C. Brossmer, Mayor