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

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

19 Petition of NRDC, Los Angeles Waterkeeper, and
Heal the Bay, for Review by the State Water
20 Resources Control Board of the Regional Board
Executive Officer's Action to Conditionally
21 Approve Nine Watershed Management Programs
Pursuant to the Los Angeles County Municipal
22 Separate Stormwater National Pollutant Discharge
Elimination System (NPDES) Permit, Order No.
23 R4-2012-0175, NPDES Permit No. CAS004001
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CITY OF CLAREMONT'S
RESPONSE TO PETITION FOR
REVIEW OF REGIONAL BOARD
EXECUTIVE OFFICER'S ACTION
TO CONDITIONALLY APPROVE
NINE WATERSHED
MANAGEMENT PROGRAMS

1 The City of Claremont (“City”) respectfully submits this Response to the Petition of
2 NRDC, Los Angeles Waterkeeper, and Heal the Bay (collectively, “Petitioners”) for Review of
3 the Regional Board Executive Officer’s Action to Conditionally Approve Nine Watershed
4 Management Programs Pursuant to the Los Angeles County Municipal Separate Stormwater
5 National Pollutant Discharge Elimination System (NPDES) Permit (“Permit”).

6 **I.**

7 **INTRODUCTION**

8 In their Petition, Petitioners request that the Los Angeles Regional Water Quality Control
9 Board (“Regional Water Board”) review and invalidate the Executive Officer’s conditional
10 approvals of nine Watershed Management Programs (“WMPs”) and deny all nine WMPs.
11 (Petition, pp. 1-2.)¹ The City is a member of the East San Gabriel Valley (“ESGV”) watershed
12 management group, and as part of the group, submitted a draft ESGV WMP to the Regional
13 Water Board in June 2014. On October 27, 2014, the Regional Water Board provided fewer than
14 twenty comments on the draft ESGV WMP. (See Petition, Exhibit A.) The group revised the
15 WMP to address all comments, submitted a revised WMP and, on April 28, 2015, received
16 conditional approval of the ESGV WMP. (See Petition, Exhibit B.) The conditional approval
17 imposed eight conditions on the ESGV WMP and required the watershed management group to
18 address the conditions by June 12, 2015. (*Ibid.*) The watershed management group modified the
19 WMP to address all eight comments and submitted the final ESGV WMP on June 12, 2015.²

20 Petitioners challenge the Executive Officer’s conditional approval of all nine WMPs on
21 three grounds: 1) that the Executive Officer acted outside the scope of authority delegated to the
22 Executive Officer by conditionally approving the WMPs because the only authority explicitly
23 delegated to the Executive Officer was to approve or deny the WMPs; 2) that the Executive
24 Officer improperly modified the Permit by failing to comply with substantive and procedural
25 requirements and exceeded statutory limits on delegation; and 3) that the Executive Officer

26 ¹ The Petitioners also petitioned the State Water Resources Control Board (“State Board”) seeking the same
27 action.

28 ² See Final ESGV WMP, available at:
http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/san_gabriel/east_san_gabriel/EastSanGabrielRiverValley_FinalWMP.pdf.

1 improperly imposed conditions on the approvals that are inconsistent with Permit requirements
2 and the Clean Water Act.

3 The Executive Officer’s action to conditionally approve the nine WMPs was an action
4 within the broad scope of authority delegated to the Executive Officer by the Regional Water
5 Board by Resolution No R10-009 and specified further by the Permit. As a result, the Executive
6 Officer’s conditional approval of the WMPs was within the scope of delegated authority and
7 complied with the procedural requirements of the Permit. The Petition fails to allege any specific
8 challenge to the substantive adequacy of the ESGV WMP. As a result, the sufficiency of the
9 ESGV WMP is not properly before the Regional Water Board. Finally, to the extent the Petition
10 asserts that the ESGV WMP did not address the comments provided in the initial comment letter
11 or in the conditional approval, the evidence in the record demonstrates that the ESGV watershed
12 management group revised the WMP to address all comments and conditions.

13 II.

14 FACTUAL BACKGROUND

15 A. Permit Approval

16 The Regional Water Board approved the Permit on November 8, 2012. The Permit
17 regulates discharges to and from municipal separate storm sewer systems (“MS4”), in part, by
18 prohibiting non-stormwater discharges through the MS4 to receiving waters, with limited
19 exceptions (Permit, § III.A.4), prohibiting discharges from the MS4 that cause or contribute to a
20 violation of receiving water limitations (Permit, § V.A) (“Receiving Water Limitations”), and
21 requiring compliance with water quality-based effluent limitations and receiving water
22 limitations, consistent with applicable total maximum daily loads (“TMDL”) (Permit, § VI.E)
23 (“TMDL Provisions”).

24 B. WMP and Enhanced WMP

25 The Permit’s WMP Provision provides an alternative pathway to strict compliance with
26 specific Permit requirements. Provision VI.C provides that participation in a WMP or Enhanced
27 WMP (“EWMP”) allows a Permittee to comply with the Receiving Water Limitations, TMDL
28 Provisions, and other Permit provisions. The purpose of the WMP/EWMP is “to allow

1 Permitees the flexibility ... to implement the requirements of this Order on a watershed scale
2 through customized strategies, control measures, and BMPs.” (Permit, § VI.C.1.a.) Each WMP
3 must prioritize MS4-related water quality issues, identify strategies to comply with Permit
4 requirements, include an integrated monitoring and assessment program to determine progress
5 towards meeting Permit requirements, include an adaptive management strategy and include input
6 from the public and Regional Water Board. (Permit, § VI.C.1.f.)

7 The timeline for developing, approving and implementing WMPs/EWMPs is set out in
8 Table 9 and is further described in the provisions following the table. (Permit, § VI.C.4.b-g.)
9 Once a WMP/EWMP is approved, Permitees begin implementing the approved plan. (Permit,
10 § VI.C.6.)

11 **C. Executive Officer’s Authority Under the Permit**

12 The Permit grants the Executive Officer broad authority to modify the deadlines
13 established in the Permit and to require modifications to WMP/EWMPs. The Executive Officer
14 is authorized to extend the deadlines in Table 9, including the deadline for submission of a final
15 WMP/EWMP. (Permit, § VI.C.4.g.) The Executive Officer may extend deadlines set out within
16 a WMP/EWMP (Permit, § VI.C.6.a), require Permitees to update approved WMP/EWMPs
17 (Permit, § VI.C.8.b.i) and to review and approve the modifications to WMP/EWMPs (Permit,
18 § VI.C.8.b.iii).

19 The Permit was challenged by thirty-seven petitions to the State Water Board. On June
20 16, 2015, the State Water Board adopted an order generally upholding the Permit, but with a
21 number revisions. Revisions to the Watershed Management Program Provision include, in part,
22 the following: (1) clarification that the final date for achieving Receiving Water Limitations
23 incorporated into a WMP/EWMP must be consistent with Provisions VI.C.2.a.ii.(4) and
24 VI.C.2.a.iii.(2)(c), which require establishment of the compliance date by “taking into account the
25 technological, operation, and economic factors that affect the design, development, and
26 implementation of the control measures that are necessary” (State Water Board Order No. WQ
27 2015-0075, pp. 34-35); (2) clarification that Permitees may not request extensions to final
28 compliance deadlines established in a TMDL but may seek a Time Schedule Order pursuant to

1 Water Code section 13300 (*Id.* at pp. 32, 37); and (3) requirement that Permittees
2 comprehensively update the reasonable assurance analysis and the WMP/EWMP as part of the
3 adaptive management process and undertake additional reporting (*Id.* at pp. 37-40). With the
4 exception of clarifying that the Permittees cannot seek an extension to final compliance dates
5 established in a TMDL, the State Water Board did not restrict the Executive Officer’s wide
6 discretion to modify the deadlines and require modifications to WMPs/EWMPs.

7 As a result, the Executive Officer remains authorized to extend the deadlines in Table 9,
8 including the deadline for submission of a final WMP/EWMP (Permit, § VI.C.4.g), to extend
9 deadlines set out within a WMP/EWMP, except for deadlines established in a TMDL (Permit,
10 § VI.C.6.a), to require Permittees to update approved WMP/EWMPs (Permit, § VI.C.8.b.i) and to
11 review and approve the modifications to WMP/EWMPs (Permit, § VI.C.8.b.iii).

12 III.

13 ARGUMENTS

14 A. The Executive Officer’s Delegated Authority Includes the Authority to Issue a 15 Conditional Approval

16 1. **Delegated Authority is Broad Unless Explicitly Restricted**

17 A delegation of authority creates an agency relationship and carries with it the authority
18 “to do everything necessary or proper and usual, in the ordinary course of business, for effecting
19 the purpose of [the] agency[.]” (Civ. Code, §§ 2295, 2318-2319.) The California Supreme Court
20 has described the broad scope of delegated authority as follows:

21 This principle is elementary, . . . every delegation of authority,
22 whether it be general or special, express or implied, unless the
23 contrary be made known, carries with it, as an incident, the power
24 to do all those acts, naturally and ordinarily done in such cases, and
25 which are necessary and proper to be done in the case in hand in
26 order to effectuate the purpose for which the authority in question
27 was created. It embraces all the necessary and appropriate means to
28 accomplish the desired end. This principle is founded on the
manifest intention of the party creating such authority and is in
furtherance of such intention." (*Robbins v. Pacific Eastern Corp.*
(1937) 8 Cal.2d 241, 285.)

29 A general agent’s powers may be express and implied, and delegated powers “are very
30 broad, embracing authority to do all acts customarily connected with the business in which he is

1 engaged.” (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 450; *Miller v. Wood* (1961) 188
2 Cal.App.2d 711, 713.) Only when “specifically deprived thereof by his principal” are these
3 general powers otherwise restricted. (Civ. Code, § 2318.)

4 Petitioners reverse the standard that establishes the delegation of authority, by stating that
5 the Executive Officer was limited “to *only* approve or deny the WMPs on or before April 28,
6 2015.” The Petition improperly argues that because the Permit did not specifically authorize the
7 Executive Officer to conditionally approve the WMPs, the Executive Officer acted beyond the
8 delegated authority. (Petition, at p. 7.)

9 The Regional Water Board delegated nearly all of its powers when it authorized the
10 Executive Officer to “exercise[e] any powers and duties of the Regional Board.” (Regional
11 Water Board Resolution No. R10-009, as amended by R14-00.) This comprehensive delegation
12 of authority is limited in specific ways, including the limitations required by Water Code section
13 13223(a).³ (Resolution R10-009.) Nowhere in the Regional Water Board’s extensive delegation
14 of authority to the Executive Officer has the Regional Water Board limited the delegated
15 authority to those powers specifically enumerated by the Regional Water Board. For this reason,
16 the Executive Officer retains the broad authority “to do everything necessary or proper and usual,
17 in the ordinary course of business, for effecting the purpose of [the] agency[.]” (Civ. Code,
18 § 2319.) Delegated authority is not limited to those “specifically delegated” powers. (Cf.
19 Petition, p. 7.)

20 **2. Delegated Authority Includes Conditional Approval**

21 Where there is a sweeping grant of authority to a third party, and that authority includes
22 the power to determine certain procedural elements together with the authority to approve or deny
23 particular applications, that sweeping authority “includes the authority to condition approval[.]”

24 ³ Water Code 13223(a) states, “(a) Each regional board may delegate any of its powers and duties vested in it
25 by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the
26 issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge
27 requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any
28 hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but
excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c)
of Section 13002 and Sections 13304 and 13340.” The Petition alleges that the Executive Officer’s conditional
approval violates (2) above by modifying waste discharge requirements. (See Petition, p. 9.) These arguments are
addressed in Section III.A.1 and 2 of this Response.

1 (*County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 510.) In *Bowen*, Secretary of State,
2 Debra Bowen, decertified and then immediately recertified a number of voting systems in use
3 throughout the state. As a condition of recertification, the Secretary imposed a system of
4 postelection manual ballot tallying. Counties throughout California challenged the Secretary’s
5 authority to approve the voting systems subject to a manual tallying condition. The Court
6 determined that conditional approval was within the Secretary’s delegated authority in light of the
7 “sweeping grant of authority provided by the Legislature ... with respect to the conduct of
8 elections generally” and in light of the Secretary’s specific authority to approve and “withdraw
9 approval previously granted[.]” (*Id.* at pp. 509-510.) “Given the broad delegation of powers[,]”
10 the Court concluded, “... it cannot seriously be disputed that the Secretary possesses sufficient
11 statutory authority to issue the [conditional approval].” (*Id.* at p. 510.)

12 Like the sweeping delegation of authority in *Bowen*, the Regional Water Board has
13 granted the Executive Officer the authority to “exercise[e] any powers and duties of the Regional
14 Board.” (Regional Water Board Resolution No. R10-009, as amended by R14-00.) This
15 sweeping authority includes with it the power to conditionally approve WMPs/EWMPs,
16 especially in light of the Executive Officer’s specific authority to approve and deny
17 WMPs/EWMPs clarified in the Permit. Because the agency relationship established by the grant
18 of authority from the Regional Water Board to the Executive Officer is broad, specifically
19 includes the power to approve and deny WMPs/EWMPs, to modify the approval schedule, and to
20 require revisions to the WMPs/EWMPs, it cannot seriously be disputed that the Executive Officer
21 possesses sufficient authority to issue a conditional approval.

22 The Petitioners misconstrue the Executive Officer’s conditional approval as an improper
23 extension of the Permit’s WMP deadlines that creates “a new, unauthorized schedule that will
24 only defer compliance with the Permit’s [Receiving Water Limitations] and TMDL-limitations
25 [provisions].” (Petition, at p. 8.) As noted above, the Permit explicitly authorizes the Executive
26 Officer to modify the WMP/EWMP deadlines. However, even if the Permit did not contain such
27 explicit authorization, the power to conditionally approve is a necessary and proper exercise of
28 the Executive Officer’s power to accomplish the purpose for which the Regional Water Board

1 delegated its authority. As noted above, the purpose of the WMP Provision is to provide
2 flexibility in implementing Permit requirements on a watershed basis by allowing Permittees to
3 customize regional strategies. (Permit, § VI.C.1.a.) By granting the Executive Officer the
4 authority to modify schedules and require modifications to WMPs/EWMPs, the Regional water
5 Board has also authorized the Executive Officer to use that authority to accomplish the goal of
6 providing flexibility to Permittees in developing and implementing WMPs. Conditional approval
7 thus falls squarely within the Executive Officer’s authority to use delegated authority to
8 accomplish the Regional Board’s express goals for the WMP Provision and does not modify the
9 Permit.

10 **B. The Petition Does Not Challenge the East San Gabriel Valley WMP**

11 It is well settled that a controversy must be ripe to receive proper review. (*Pacific Legal*
12 *Foundation v. Cal. Coastal Comm’n* (1982) 33 Cal.3d 158, 169, 170-171.) Without specific
13 factual allegations demonstrating that a controversy has “sufficiently congealed to permit an
14 intelligent and useful decision to be made,” a petitioner invites the reviewing body to “speculate
15 as to the type of development for which ... conditions might be imposed, and then to express an
16 opinion on the validity and proper scope of such hypothetical [conditions].” (*Id.* at pp. 171-172.)⁴
17 A general challenge “posed in a vacuum” with an “intense but abstract desire to see the [action]
18 declared violative of [relevant standards]” cannot properly be reviewed. (*Fiske v. Gillespie*
19 (1998) 200 Cal.App.3d 1243, 1245.)⁵

20 _____
21 ⁴ In *Pacific Legal*, the plaintiffs filed an action challenging the validity of guidelines adopted by the
22 California Coastal Commission regarding public access to the beach. The action was not predicated upon any
23 specific application of the guidelines. Rather, the plaintiffs asserted a “general challenge on statutory and
24 constitutional grounds to the Commissions’ access policies.” (33 Cal.3d at p. 169.) In finding that the controversy
25 was not ripe, the Court opined:

26 Plaintiffs are in essence inviting us to speculate as to the type of developments for which access
27 conditions might be imposed, and then to express an opinion on the validity and proper scope of
28 such hypothetical exactions. We decline to enter into such a contrived inquiry. (*Id.* at p. 172.)

29 ⁵ In *Fiske*, taxpayers filed an action against the Commissioner of the California Department of Insurance
30 challenging the constitutionality of state legislation in the Insurance Code. The plaintiffs alleged that a provision
31 requiring insurers to establish different rates for men and women was an equal protection violation. (*Id.* at pp. 1244-
32 1245.) The trial court entered a judgment enjoining the Commissioner of Insurance from expending funds to enforce
33 the challenged provision of the Insurance Code, and the Commissioner appealed. (*Id.*)

34 On appeal, the Commissioner asserted that the suit did not present an actual controversy. (*Id.* at p. 1245.) The Court
35 of Appeal agreed and opined in relevant part:

36 This action is merely a general challenge to a statute, posed in a vacuum; no specific application of
37 the statute is involved. ... [I]t is clear enough that this action presents no actual controversy apart

1 While the Petition alleges that “all nine WMPs ... failed to address virtually all of the
 2 identified non-compliant issues” (Petition, at p. 11, fn. 38), that “the conditions included in the
 3 conditional approvals *fail to address any of the RAA inadequacies identified by RWQCB staff*”
 4 (*Id.* at p. 14 [emphasis in original]), and that a “comprehensive list of the substantive
 5 requirements of the Permit that the conditional approvals fail to address is provided in Exhibit
 6 D[,]” the Petition does not raise any specific challenge to the ESGV WMP. The Petition and
 7 Exhibit D present factual allegations relating only to the Lower San Gabriel WMP, the Los
 8 Angeles River Upper Reach 2 WMP, and the Lower Los Angeles River WMP. (Petition at pp.
 9 13-14, Exhibit D.) By failing to specify the manner in which the ESGV WMP is deficient, the
 10 Petition expresses an intense but abstract desire to see the ESGV WMP declared invalid, but
 11 asserts no substantive factual grounds on which the Executive Officer’s approval may be
 12 reviewed.

13 To the extent that the Petition alleges that the ESGV WMP did not address the comments
 14 provided in the Regional Water Board’s October 27, 2014 comment letter or in the April 28, 2015
 15 conditional approval, the evidence in the record demonstrates that the ESGV watershed
 16 management group revised the WMP to address all comments and conditions. As shown in the
 17 following chart, the ESGV WMP has addressed all comments and conditions provided by the
 18 Regional Board.

Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
Greater detail on the water quality characterization, including (1) a map of the locations of the monitoring sites for each of the four sources of data identified on page 7 relative to the watershed management area, and (2) a tabular summary of the data should be provided.	
In Section 5.1.4, the data used to establish existing concentrations should be described in more detail and	

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 28 from the [taxpayers’] intense but abstract desire to see the statute declared violative of the constitutional guarantees of equal protection. (*Id.*)

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
<p>presented in tabular form. Additionally, Table 5-2 appears to omit from the analysis San Jose Creek. Discharges to San Jose Creek are subject to a dry-weather water quality-based effluent limitation (WOBEL) for selenium; therefore, data on existing concentration should be included for San Jose Creek</p>	
<p>The MS4 permit requires WMPs to include the applicable WQBELS for every approved TMDL within the WMA. The draft WMP does not include the WQBELS for Puddingstone Reservoir for total phosphorus and total nitrogen, total mercury, and PCBs, chlordane, dieldrin, total DDT and 4,4-DDT.</p>	
<p>The WMP needs to address all applicable WQBELS to comply with provisions of Part VIE and Attachment P related to the Los Angeles Lakes TMDLs (specifically, Puddingstone Reservoir for nitrogen, phosphorus, mercury, PCBs, chlordane, dieldrin and DDT compounds). Attachment P identifies wasteload allocations for each of the four municipalities in the ESGV WMG and states these are to be measured at the point of discharge into the receiving waters. Also, if implementation will take more than one year, then interim milestones and dates for their achievement must also be included.</p>	
<p>The WMP needs to specify the applicable receiving water limitations for Category 3 waterbody-pollutant combinations (WBPCs).</p>	
<p>The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. Whereas Tables 5-6</p>	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
through 5-9 present the type of structural BMPs to be implemented by each City, there are no specific dates for installation; the WMP schedule should describe timelines through 2022.	
The WMP proposes to increase frequency of construction site inspections although this appears to apply only for City of San Dimas. The WMP should either increase such frequency for other Cities or provide rationale for no changes for the other cities of the ESGV WMG. The WMP also proposes to require inventory of existing developments for future BMP retrofits; however no timeframe is included.	
The draft RAA addresses WBPCs for the San Gabriel Metals TMDLs; however the RAA does not address activities and control measures to address selenium in San Jose Creek Reach 2, nor pollutants in the Puddingstone Reservoir TMDLs. Greater clarity should be provided on the volume based approach taken by the ESGV WMG.	
Activities and control measures for Category 3 WBPCs for Walnut Creek Wash and San Gabriel River Reach 2 and Reach 3 are not included. To the extent that the group intends to address these through the volume based approach, this should be more clearly stated in the WMP.	
The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least specify the number of projects needed to	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
<p>ensure timely compliance with permit requirements.</p>	
<p>The draft WMP assumes a 10% pollutant reduction from new non-structural controls. Although 10% is a modest fraction of the overall controls necessary, additional support for this assumption should be provided, or as part of the adaptive management process, the Permittees could commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not warranted.</p>	
<p>... it is important that the Group's actions under its Industrial/Commercial Facilities Program—including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities—ensure that all industrial facilities are implementing BMPs as required.</p>	
<p>... the Group should ensure that it is closely coordinating with appropriate Caltrans District staff regarding the identification and implementation of watershed control measures to achieve water quality requirements (i.e. applicable Receiving Water Limitations and WQBELs).</p>	
<p>The required reductions for dry weather were calculated based on the median and the 90th percentile existing concentrations in Section 5.1.4 of the WMP. Specific required reductions for Thompson Creek, San Dimas, and Puddingstone Reservoir were listed in Table 5-2 on page 42 of the draft WMP. However, the required reductions for dry weather for San Jose Creek were not included in the table. The WMP should be revised to include the required reductions for</p>	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
identified priority pollutants for San Jose Creek.	
The predicted runoff volumes presented in Figure 5-12 and Table 5-1 should be presented and explained in more detail to provide clarity on how those values were obtained from the hourly model output results of runoff volume over the 24-hour design event for each subwatershed or city-subwatershed.	
The report did not describe how the model was calibrated, including calibration results compared to calibration criteria in Table 3.0 of the RAA Guidelines, and no historical hydrology data were used for comparison with the model results for the baseline prediction. According to Part G, pages 12-13 of the RAA Guidelines, model calibration is necessary to ensure that the model can properly assess all the variables and conditions in a watershed system. The hydrology calibration is particularly important in the case of the East San Gabriel Valley RAA, since the group is used a volume-based approach.	
The report presents the existing runoff volumes and required volume reductions to achieve the 85 th percentile, 24-hour volume retention standard for each watershed area. The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be re-calibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater	

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Regional Water Board Comment (Oct. 27, 2014)	ESGV WMP Response
<p>that would otherwise be discharged through the MS4 in each watershed area.</p>	
<p>The index of subwatersheds shown in Figure 5-15 does not match that used in the model input file. The ID numbers for 67 subwatersheds from the model input file (and the correspondence of these 67 subwatersheds to the 98 city-subwatersheds) must be provided and be shown in the simulation domain to present the geographic relationship of these subwatersheds and city-subwatersheds that are simulated in the LSPC model.</p>	
<p>In the analysis of the required reduction for lead, zinc, selenium and E. coli under the dry weather condition, more detailed information about the baseline condition for 50th and 90th percentile existing concentration presented in Table 5-2 should be provided.</p>	

Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
<p>Correct Tables 3-3 and 5-5 of the revised draft WMP by removing reference to the dry-weather copper waste load allocations (WLAs). The East San Gabriel Valley Permittees' MS4 discharges are not subject to the dry-weather copper WLAs in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL (Attachment P of the LA County MS4 Permit) assigned to discharges to the San Gabriel River Reach 1 and San Gabriel River Estuary.</p>	<p>Corrected Tables 3-3 and 5-5 to remove reference to dry-weather copper WLAs.</p>
<p>Revise Table 4-3 of the revised draft WMP to include "Interagency coordination," "Hydromodification</p>	

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Regional Water Board Condition (April 28, 2015)	ESGV WMP Response
Control Plan," and "Sewage system maintenance, overflow, and spill prevention," which are requirements of the LA County MS4 Permit. (See Parts VI.A.2.a.viii, VI.A.4.a.iii, and VI.D.2, among others, regarding "interagency coordination"; Part VI.D.7.c.iv regarding "Hydromodification Control Plan"; and Parts VI.D.9.h.ix and VI.D.10.c-e regarding "sewer system maintenance, overflow, and spill prevention.")	
Revise and separate Table 4-2 of the revised draft WMP, "Recently Constructed and Planned BMPs in the WMP Area," into two tables to clearly distinguish between: (a) those best management practices (BMPs) that are already constructed (providing the completion date for each), and (b) those BMPs that are planned (providing the scheduled completion date for each).	
Clarify the responsibilities of each Permittee of the ESGV WMG for implementation of watershed control measures in Table 5-17 of the revised draft WMP, "Control Measures to be Implemented for Attainment of 10% Milestone" and Table 5-18, "Schedule for Implementation of the Rooftop Runoff Reduction Program" to attain the 10% interim milestone in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL.	Revised Table 5-17 to clarify responsibilities.
Correct inconsistencies between Table 5-4 and Table 5-6 of the revised draft WMP, including: (a) information on selenium, which indicates exceedances downstream in Table 5-4 of the revised draft WMP, but indicates that no reductions are necessary in Table 5-6, and (b) missing information on E. coli exceedances in Table 5-4.	

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IV.
CONCLUSION

The City respectfully requests that the Petition be denied on the grounds that the Executive Officer’s action to conditionally approve the nine WMPs was an action within the broad scope of authority delegated to the Executive Officer and within the procedural requirements of the Permit. The Petition also fails to allege any specific challenge to the adequacy of the ESGV WMP and the evidence in the record demonstrates that the ESGV watershed management group revised the WMP to address all comments and conditions.

Dated: July _____, 2015

BEST BEST & KRIEGER LLP

By: _____
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