



March 25, 2015

Via electronic mail

Mr. Sam Unger
Executive Officer and Members of the Board
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Email: losangeles@waterboards.ca.gov

Re: Comments on Revised Watershed Management Plans under the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. R4-2012-0175

Dear Mr. Unger:

On behalf of the Natural Resources Defense Council (“NRDC”), the Los Angeles Waterkeeper (“Waterkeeper”), and Heal the Bay (collectively, “Environmental Groups”), we are writing with regard to the Revised Watershed Management Programs (“WMPs”) submitted by the permittees pursuant to requirements under the Los Angeles County Municipal Separate Storm Sewer System (“MS4”) Permit, NPDES Permit No. CAS004001, Order No. R4-2012-0175 (“2012 Permit”). This comment letter addresses, in general, revised WMPs for the following watershed groups: The Los Angeles River, Upper Reach 2;¹ Lower Los Angeles River;² and Lower San Gabriel River.³

We appreciate the opportunity to submit these comments to the Los Angeles Regional Water Quality Control Board (“Regional Board”). Where we do not address any specific WMP or particular issue within a WMP, that should not be taken as indication of our agreement with the sufficiency or legality of those WMPs or terms, and we urge the Regional Board to review all the submitted management programs in light of our comments here.

¹ Permittees include Bell, Bell Gardens, Commerce, Cudahy, Huntington Park, Maywood, Vernon, and the Los Angeles County Flood Control District.

² Permittees include Downey, Lakewood, Long Beach, Lynwood, Paramount, Pico Rivera, Signal Hill, South Gate, and the Los Angeles County Flood Control District.

³ Permittees include Artesia, Bellflower, Cerritos, Diamond Bar, Downey, Hawaiian Gardens, La Mirada, Lakewood, Long Beach, Norwalk, Pico Rivera, Santa Fe Springs, Whittier, and the Los Angeles County Flood Control District.

I. Introduction

While we provide the following substantive comments on the revised WMPs submitted by the permittees, Environmental Groups maintain that several provisions of the 2012 Permit fail to meet the requirements of the federal Clean Water Act and California Porter Cologne Act, and therefore are inconsistent with both state and federal law. Environmental Groups filed a petition⁴ to the State Water Resources Control Board (“State Board”) that demonstrates the ways in which the 2012 Permit violates these legal requirements. The State Board has yet to make a determination on our petition.

Because of the deficiencies in the submitted revised WMPs, many of which are detailed below, the programs do not ensure that discharges from the permittees’ MS4 systems do not cause or contribute to exceedances of Receiving Water Limitations (RWLs), including applicable water quality standards, or TMDL limitations in the 2012 Permit, and otherwise fail to meet Permit requirements. Specifically, the lack of specificity of the type, location and timing of BMPs is a common problem throughout the revised WMPs. A lack of specificity results in an uncertain future – it is impossible to understand how permittees will ensure compliance at the required deadlines without a clear plan and milestones. This, alone, is enough to deem these revised WMPs incomplete and not in compliance with the 2012 Permit.

Below, we compare the Regional Board’s own comments on the draft WMPs with the permittees’ responses in the revised WMPs. The side-by-side comparison demonstrates the degree of failure in revised WMPs to adhere to both permit requirements and Regional Board demands. This letter is not intended to exhaust the reasons why the submitted revised WMPs fail to meet permit requirements or why the WMPs will not ensure compliance with RWLs.

⁴ For a full explanation of how the permit violates the law, see Memorandum of Points and Authorities in Support of Petition of NRDC, Los Angeles Waterkeeper and Heal the Bay for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region, in Adopting the Los Angeles County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2012-0175; NPDES Permit No. CAS004001(Dec, 10, 2012) (“Environmental Groups’ Petition”), SWRCB/OCC File No. A-2236(m).

II. Los Angeles River Upper Reach 2 – Revised WMP

Permit Condition VI.C.5.a.ii

Regional Board Comment: Identify and address Category 3 Water Body-Pollutant Combinations (WBPCs) in RAA and WMP similar to Category 1 WBPCs; analyze load reductions from proposed watershed control measures.

WMP Response: The recommended action was not done, with the following reasoning (WMP section 2.4, page 33)—

“... Category 3 pollutants overlap significantly with Category 1 or 2 pollutants and in some cases, such as fecal coliform and *E. coli*, or total nitrogen and nitrate, they are essentially the same pollutant. Carrying out separate analyses for these overlapping WBPCs risks producing an RAA with conflicting implementation priorities, based on inaccurate assumptions regarding the independence of the variables and an [*sic*] misapplied implementation effort on duplicative parameters.”

Environmental Groups’ Assessment: The Category 3 pollutants total phosphorus, pH, total suspended solids, chromium, and nickel are not represented on the Category 1 or 2 lists. It is false that total nitrogen (TN) and Category 1 inorganic nitrogen compounds are “the same pollutant” because TN consists of, in addition to inorganic compounds, various organic nitrogen compounds.

Permit Condition VI.C.5.a.iii

Regional Board Comment: Use General Industrial Stormwater Permit monitoring results and other data to refine estimates of pollutant loading from non-MS4 areas in the RAA and WMP.

WMP Response: The recommended action was not done, with the following reasoning (WMP section 2.3, page 30)—

“...the LAR UR2 WMA Permittees were asked to provide summary data resulting from past industrial and commercial inspections ...”

... did not provide useful information ...”

“Monitoring data, from non-MS4 Permittees in the LAR UR2 WMA, were also reviewed, however of 161 General Industrial Permittees within the WMA, only 35 were found to have submitted data ...”

“...did not meet the RAA Guideline criteria for being sustentative [*sic*] and defensible.”

“... TMDL pollutant source assessments and models reviewed during preparation of the WMP were inconclusive and overly broad upon which to take actionable source determinations or source control efforts.”

Environmental Groups' Assessment: Although some of the data may be inadequate, additional data should be used wherever possible, including regional data, data from the literature of the field, and data from permitted industries elsewhere. Using the best available data for this purpose would not be inconsistent with other modeling and analysis strategies pursued in the WMP; e.g., almost all receiving water data relied upon are from outside the reach in question.

Permit Condition VI.C.5.a.iv

Regional Board Comment: Specify why the LA River metals TMDL is not included as Category 1a since some compliance deadlines have passed.

WMP Response: There is no evidence that this comment was considered.

Permit Condition VI.C.5.b

Selection of Watershed Control Measures

Regional Board Comment: The WMP does not specify a strategy to comply with interim LA River metals TMDL WQBELs and specifically needs to be revised to document either that past deadlines have been achieved or provide a strategy to do so.

WMP Response: There is no evidence that this comment was considered.

Regional Board Comment: The WMP needs to include a firm schedule for implementation of trash TMDL BMPs.

WMP Response: There is no evidence that this comment was considered.

Support for Use of Limiting Pollutants

Regional Board Comment: The WMP needs to provide support for the assumption that Category 2 and 3 pollutants will be addressed by focusing on the limiting bacteria and metals pollutants.

WMP Response: There is no evidence that this comment was considered.

Specificity of Proposed Watershed Control Measures

Regional Board Comment: The WMP should provide as much specificity as feasible in describing the locations of LID streets and permittees responsible for them.

WMP Response: Section 4.3.3.2 identifies one proposed LID street BMP in Vernon and one completed and one potential LID street BMP in Commerce.

Environmental Groups' Assessment: this is insufficient.

Adaptive Management Process

Regional Board Comment: The WMP should provide more detail on how the adaptive management process will be implemented.

WMP Response: There is no evidence that this comment was considered, and the subject is crucial to success in reaching compliance.

Assumptions Regarding Non-structural BMPs and Source Control Measures

Regional Board Comment: The WMP needs to include specific commitments to implement the non-structural BMP enhancements, or not rely on the 5 percent load reduction anticipated from their use.

WMP Response: Section 3.1.1 adds a paragraph reasoning that the 55 pages on the subject in the current permit, as compared to 30 pages in the preceding permit, will lead to more permittee actions that will reach the 5 percent reduction. Otherwise, it specifically commits to only one enhanced non-structural BMP -- weekly street vacuuming, and continues to rely on the 5 percent assumption.

Environmental Groups' Assessment: A comparison of page numbers is by no means documentation that load reduction will result. Non-structural BMPs beyond street vacuuming are ignored.

Assumptions Regarding Pollutant Loading from Permitted Industrial Facilities

Regional Board Comment: The WMP is predicated on the assumption that industries will eliminate their contributions to receiving water exceedances as required by their permits. However, it is important that the jurisdictions ensure that industries implement required BMPs through various actions, such as tracking critical sources, education, and inspection.

WMP Response: The closest the WMP comes to responding to this comment is a sentence in the section 3.1.1 paragraph added to the draft WMP stating—

“The Industrial and Commercial Facilities Inspection programs will significantly benefit from the greater emphasis on annual progress reporting and also the tables identified in the Permit and specifying specific BMPs, source controls, MCMs, and watershed control measures that should be apparent during commercial and industrial inspections.”

Environmental Groups’ Assessment: The statement is vague and does not even name, let alone commit to, specific measures such as those mentioned in the Board’s comment.

MEMORANDUM COMMENTS

B3.

Regional Board Comment: Give model output for interim WQBELs.

WMP Response: There is no evidence that this comment was considered.

B8.

Regional Board Comment: Describe how the model was calibrated.

WMP Response: The description consists of one paragraph of five sentences (section 4.5)—

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

Environmental Groups’ Assessment: This does not demonstrate calibration. A calibration adjusts model parameters as needed to bring observed and simulated values into as much agreement as can be accomplished. What the final sentence of the response describes is not calibration but instead a verification step, which is a demonstration of the degree of difference that still exists between an independent observed data set and simulated values after calibration. There is no evidence presented that either operation has been completed.

III. Lower Los Angeles River – Revised WMP

Permit Condition VI.C.5.a.iii(1)(a)(v)

Regional Board Comment: Consider other TMDL source investigations (e.g., for metals).

WMP Response: No difference in draft and revised WMPs in how metals TMDL results were reported or used in section 2.2.4, in particular for source investigation.

Permit Condition VI.C.5.a.iii(1)(a)(vii)

Regional Board Comment: Need: (1) map of major outfalls and structural controls, (2) outfall database, (3) maps of 53 subcatchments or process and schedule to develop.

WMP Response: Page 1-13—

“Drainage areas for individual outfalls are not readily available at this time. Defining these areas would require significant resources. The Group proposes to provide drainages areas for major outfalls with significant discharges and outfalls to be monitored as part of the CIMP. To complete this task, existing drainage maps from the LACFCD and/or cities will be obtained and converted to GIS project files. This task will be completed within one year of WMP approval.”

Environmental Groups’ Assessment: Maps of major outfalls and structural controls is a permit requirement, which is not met here.

Permit Condition VI.C.5.a.iv(2)(a)

Regional Board Comment: Demonstrate schedule ensures compliance as soon as possible.

WMP Response: Section added on page 5-6: “The Participating Agencies understand that targeting subsequent load reductions demands that the process of implementing structural controls begin as soon as possible.”

Environmental Groups’ Assessment: The program needs to more clearly demonstrate that the compliance schedule (section 5) ensures that compliance can be achieved "as soon as possible."

Permit Condition VI.C.5.b.iv(5)(c)

Regional Board Comment: Address if limits for pollutants not addressed by TMDLs could be complied with in a shorter time.

WMP Response: There is no evidence that this comment was considered.

Permit Condition VI.C.5.b.iv(4)(b)-(c)

Regional Board Comment: More specificity on type, number, location, and timing of watershed controls. “The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance.”

WMP Response:

“Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible.

“This is true for all WQPs—by the nature of the limiting pollutant approach, it is expected that each of the remaining WQPs will be controlled at a faster rate than zinc. So the aggressive schedule in place to target zinc provides an equally aggressive schedule to target the remaining WQPs, and as such it is considered to be as short as possible for all WQPs.”

Environmental Groups’ Assessment: As is the case with the Lower San Gabriel River (“LSGR”) WMP, this passage has interpreted the Board’s requirement for ASAP compliance in strictly financial terms, with additional indeterminate delays added for acquisition and “conversion.”

Regional Board Comment: Regional Water Board staff recognizes uncertainties may complicate establishment of specific implementation dates, however there should at least be more specificity on actions within the current and next permit terms.

WMP Response: A new paragraph has been added on page 5-2 (is verbatim to that in the LSGR revised WMP):

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

their progress in attaining targeted load reductions. Table 5-1 lists the nonstructural TCM compliance schedule.”

Environmental Groups’ Assessment: This response, and other statements throughout the document, make it clear that no commitments to “specificity or actions” or associated timelines have been provided. For those actions with starting dates, both the draft WMP and revised WMP (with just 7 months between them) fail to demonstrate that actionable steps have been taken. For example, Table 5-1 in both documents lists the “Nonstructural TCM Compliance Schedule.” However, of the items in the 2014 table with associated 2014 start dates, several are now listed in the 2015 table as having 2015 start dates (e.g., “Enhance tracking through use of online GIS MS4 Permit database” and “Exposed soil ordinance”)—clearly, no assurances can be assumed from these documents. There is also no pathway between scheduled completion dates and interim compliance deadlines, as requested by the Board’s comment and required by the 2012 Permit.

Permit Condition Part VI.C.S.c.iii.(3) (Compliance Schedules -- Bacteria)

Regional Board Comment: “The draft WMP proposes a final compliance date of September 2030 for bacteria in the LA River Estuary. However, the Group does not provide sufficient justification for this date...Additional milestones and a schedule of dates for achieving milestones should be defined for addressing bacteria discharges to the LA River Estuary.”

WMP Response: The following passage was added in section 3.4.1.4 (p. 3-28): “The Agencies within the Lower LAR Watershed Group will submit a LRS in accordance with the deadlines in Table 3-7. The Control Measures discussed in the remainder of this Chapter will address bacteria loads and provide reasonable assurance of meeting WQBELs, however the LRS will outline a more targeted approach to address bacteria in the Lower LAR Watershed.”

Environmental Groups’ Assessment: The response only addresses a schedule for submittals, not for achieving milestones.

COMMENTS ON REASONABLE ASSURANCE ANALYSIS REPORT FOR LOWER LOS ANGELES RIVER WATERSHED MANAGEMENT AREA

Regional Board Comment: “...the WQBELs that are established in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL shall be achieved through implementation of the watershed control measure proposed in the WMP. However, the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL appears to be completely omitted from the draft WMP. The draft WMP did not include and analyze a strategy to implement pollutant controls necessary to achieve all applicable interim and final water quality-based effluent limitations...”

Environmental Groups' Assessment: There is a section in the 2014 WMP (3.4.1.6) on these TMDLs, but no change was made in this section of the document and there is no inclusion or analysis of pollutant controls, as requested.

Regional Board Comment: "Pursuant to Section VI.C.5.a., the WMP should be revised to include an evaluation of existing water quality conditions, classify them into categories, identify potential sources, and identify strategies, control measures, and BMPs as required in the permit for San Pedro Bay unless MS4 discharges from the LLAR WMA directly to San Pedro Bay are being addressed in a separate WMP."

Environmental Groups' Assessment: There is only one reference in the document to San Pedro Bay, as follows and unchanged from the 2014 version: "In addition, the Cities of Signal Hill and Long Beach, and the LACSD developed a Contaminated Sediment Management Plan to support the long-term recovery of sediment and water quality in the Long Beach Harbor, Eastern San Pedro Bay, and the LAR Estuary." (p. 3-30). This is an insufficient response.

Regional Board Comment: "The draft WMP provided corresponding implementation schedules for nonstructural BMPs, which are assumed to result a 10% reduction in pollutant load. For structural BMPs, general implementation timeframes are given...to meet 31% and 50% of the compliance target by 2017 and 2024, respectively. However, greater specificity should be provided with regard to these dates, and additional milestones and dates for their achievement between 2017 and 2024 should be included."

Environmental Groups' Assessment: Identical wording as in the LSGR WMP was added here as well; it is no more responsive to the comment on this plan as it is for the LSGR WMP.

IV. Lower San Gabriel River – Revised WMP

Permit Condition VI.C.S.a.iv (Watershed Control Measures)

Regional Board Comment: Although section 3 includes a compliance strategy, the program needs to more clearly demonstrate that the compliance schedules (section 5) ensure compliance is "as soon as possible."

WMP Response: Two new paragraphs have been added to the introduction to the chapter on Compliance Schedule (p. 5-1):

"Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no

funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible.

“This is true for all WQPs—by the nature of the limiting pollutant approach, it is expected that each of the remaining WQPs will be controlled at a faster rate than zinc. So the aggressive schedule in place to target zinc provides an equally aggressive schedule to target the remaining WQPs, and as such it is considered to be as short as possible for all WQPs.”

Environmental Groups’ Assessment: This passage has interpreted the Board’s requirement for ASAP compliance in strictly financial terms, with additional indeterminate delays added for acquisition and “conversion.” It also expresses the judgment (drawn from section 5.3.1 of the RAA [Appendix 4-1]) that compliance schedules need only be evaluated for zinc, since other pollutants will be reduced at least as rapidly.

Regional Board Comment: “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. The WMP schedule should at the least provide specificity on actions within the current and next permit terms.”

WMP Response: A new paragraph has been added on p. 5-2:

“Uncertainties associated with the targeted nonstructural controls complicate establishment of specific implementation dates. Despite this uncertainty, the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions. In addition, the status of these controls will be included in the annual watershed reports as well as through the adaptive management process in order to assess their progress in attaining targeted load reductions. Table 5-1 lists the nonstructural TCM compliance schedule.”

Environmental Groups’ Assessment: This response, and other statements throughout the document, make it clear that no commitments are made to “specificity or actions” or associated timelines. For those actions with starting dates, even the draft and revised WMPs with just 7 months between them, demonstrate a failure to perform. For example, Table 5-1 in both documents lists the “Nonstructural TCM Compliance Schedule.” However, of the items in the 2014 table with associated 2014 start dates, several are now listed in the 2015 as having 2015 start dates (e.g., “Enhance tracking through use of online GIS MS4 Permit database”; “Exposed soil ordinance”)—clearly, no assurances can be assumed from these documents. There is also no cross-walk between scheduled

completion dates and interim compliance deadlines, as requested by the Board's comment and required by the 2012 Permit.

Permit Condition VI.C.5.b.iv.(S)(c) (Selection of Watershed Control Measures)

Regional Board Comment: "For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate...that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible. The RAA ...does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame."

WMP Response: The Executive Summary of the RAA (section 4.1) states "The RAA has determined that the metal zinc will be the primary or "limiting" pollutant and that by implementing the structural and non-structural measures in Chapter 3 to reduce zinc, the remaining pollutant goals will be achieved for the Water Quality Priorities defined in Chapter 2. The rationale for this modeling approach is included Section 5.3.1 of the RAA (Appendix 4-1)." There are no text changes in the RAA between the 2014 and 2015 versions—just a change of date on the cover page of each section, and a few additional maps in a few sections.

Environmental Groups' Assessment: There is no response to this comment; the RAA continues to not address whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.

Permit Condition VI.C.5.b.iv.(4)(b)-(c) (Selection of Watershed Control Measures)

Regional Board Comment: "...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."

WMP Response: Wording changes acknowledge this requirement without actually meeting it:

"Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible." (p. 5-1)

“Uncertainties associated with the targeted nonstructural controls complicate establishment of specific implementation dates. Despite this uncertainty, the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions. In addition, the status of these controls will be included in the annual watershed reports as well as through the adaptive management process in order to assess their progress in attaining targeted load reductions.” (p. 5-2)

Environmental Groups’ Assessment: This response clearly implies no commitment beyond good intentions and a (mandated) willingness to track progress (or its lack thereof) through the permit cycle.

Permit Condition VI.C.5 .b.iv.(4)(d) (Watershed Control Measures - Milestones)

Regional Board Comment: “The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance.”

WMP Response: Table 5-1, the “Nonstructural TCM Compliance Schedule” has been modified with a new column headed “Milestones,” presumably in response to this comment. Here is the list of the “milestones”:

- Complete first round by 7/1/2016 Continue periodic staff training
- Develop by 12/28/2015 If practicable adopt by 12/28/2016
- Develop documents by 7/1/2015 Revise documents as needed
- Enforce TCM-TSS-3 once adopted
- Milestones are independent of participating agency actions (2 instances)
- Modify database to reflect MS4 Permit provisions by 7/1/2016
- Ongoing; no interim or final milestones (2 instances)
- Report on status with annual report submittal (8 instances)
- Reprioritize facilities as new water quality data is collected
- Schedule is listed in draft amendments, est. 10-15 year schedule
- Suitable grants are pursued when practicable
- When practicable, adopt ordinance by 12/28/2016
- When practicable, adopt ordinance by end of permit term

Regional Board Comment: “...there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met: (1) a 10% reduction in metals loads during wet weather and a 30% reduction in dry weather by 2017 and (2) a 35% reduction in metals loads during wet weather and a 70% reduction during dry weather by 2020.”

WMP Response: These requirements are articulated in Table 2-4 of the RAA (both 2014 and 2015), and several of the following sections summarize the model results that define the necessary treatment volumes to achieve them. There are no apparent wording changes between the two drafts of the WMP that directly address this comment.

Environmental Groups' Assessment: Given the vague nature of nearly all of the "milestones" (see above), there is no direct linkage between actions, meeting interim requirements, and schedule to ensure even the 2017 targets.

Permit Condition VI.C.S.b.iv.(5) (Reasonable Assurance Analysis – limiting Pollutant)

Regional Board Comment: "The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants. If the Group believes that that this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant."

WMP Response: The 2014 draft WMP does not appear to have been modified in response to this comment. Both 2014 and 2015 versions cite the RAA as justification for using zinc as a limiting pollutant, with control of this pollutant occurring with the identified suite of control measures.

Environmental Groups' Assessment: As with other issues, there is no linkage between identified control measures and compliance schedule or milestones. Although there is a plausible set of measures to control zinc (and, by association, all other pollutants), there is no indication that they will ever be implemented.

Permit Condition VI.C.5.b.iv.(5) (Reasonable Assurance Analysis—Irrigation Reductions)

Regional Board Comment: "For dry weather, the WMP assumes a 25% reduction in irrigation (RAA, section 7.1.2). Additional support should be provided for this assumption, particularly since the group appears to be relying almost entirely on this non-structural BMP for near-term pollutant reductions to meet early interim milestones/deadlines."

WMP Response: Section 4.3 was added to the 2015 WMP, which summarized the results of 4 studies (1997, 1998, 2004, 2010) on reductions in residential water use, which suggest that 25% reduction is a plausible outcome. The referenced RAA section is only

one page and was not changed between 2014 and 2015.

Environmental Groups' Assessment: The justification for 25% reductions may be plausible but is hardly "conservative" (as stated in the text); it also presupposed implementation of actions that would lead to such an outcome. The text also invokes emergency drought regulations as an example of how public education can reduce water use, although its applicability to long-term reductions is nowhere clarified.

Permit Condition VI.C.S.c (Compliance Schedules)

Regional Board Comment: "Page 6-1 notes that "[t]he final non-TMDL water quality standard compliance date is projected to be sometime in 2040." However, the pollutant reduction plan milestones in Section 5 only appear to go up to the year 2026. For watershed priorities related to addressing exceedances for receiving water limitations, the permit requires milestones based on measureable criteria or indicators, a schedule with dates for achieving the milestones, and a final date for achieving the receiving water limitations as soon as possible. These need to be included in the revised WMP."

WMP Response: The offending phrase in section 6.1 ("The final non-TMDL water quality standard compliance date is projected to be sometime in 2040.") was simply deleted in the 2015 draft. The only mention of the year 2040 in the revised WMP is in the added section 5.4.14 ("The State of Bacteria"): "For bacteria, the existing Los Angeles River Bacteria TMDL is applicable. This results in a final wet and dry weather deadline of 2040, which extends beyond the 2026 deadline for the limiting pollutant zinc. If it is determined through the adaptive management process (e.g., due to future model simulations) that required bacteria load reductions may not be met by controlling for zinc, then the WMP will be modified to incorporate bacteria milestones with measureable criteria or indicators with a final deadline of 2040."

Environmental Groups' Assessment: There are no milestones, based on measureable criteria or indicators, an explicit schedule, or a final compliance date.

COMMENTS ON REASONABLE ASSURANCE ANALYSIS

A. General comments

Regional Board Comment: "As proposed in the WMP, the 10% load reduction was assumed to result from the cumulative effect of nonstructural BMPs. There is uncertainty in the ability of these BMPs to meet the required reductions by September 2017.

Additional support for the anticipated pollutant load reductions from these non-structural BMPs and source control measures over the next two to three years should be provided to increase the confidence that these measures can achieve the near-term interim WQBELs by September 2017.” (emphasis added)

WMP Response: As noted above, a new passage was added to section 4.3 to acknowledge this uncertainty directly.

Environmental Groups’ Assessment: No “additional support” was provided.

Regional Board Comment: “Section 5 Compliance Schedule of the draft Watershed Management Plan only provided implementation schedule for non-structural targeted control measures up to 2017. The LSGR Watershed Management Group must provide measureable milestones for implementing each one of the proposed control measures that will allow an assessment of progress toward the interim and final WQBELs and receiving water limitations every two years.”

WMP Response: As noted above, a new column (“Milestones”) has been added to Table 5-1, Nonstructural TCM Compliance Schedule. A new section was added to the 2015 WMP (“Approach to Implementing Structural Controls” in Section 5.3.2), with the following additions for schedule:

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

Environmental Groups’ Assessment: While this issue has been acknowledged through the changes in the WMP, it has not been addressed.

B. Modeling comments regarding analysis of copper, lead, zinc, DDT, PCB, PAH, and bacteria concentrations/loads

Regional Board Comment: “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...”

WMP Response: There is no evidence in either the 2015 RAA or the revised WMP that this comment was addressed.

V. Conclusion

Based on the deficiencies noted above, the revised WMPs are not in compliance with the WMP requirements under the 2012 LA MS4 Permit, and have not properly responded to Regional Board comments on draft WMPs. Accordingly, these WMPs should not be approved as submitted. Environmental Groups appreciate this opportunity to comment on documents submitted under the 2012 Permit. Please feel free to contact us with any questions or concerns you may have.

Sincerely,



Liz Crosson
Executive Director
Los Angeles Waterkeeper



Peter Shellenbarger
Water Resources Manager
Heal the Bay



Becky Hayat
Staff Attorney
Natural Resources Defense Council