

**California Regional Water Quality Control Board, Los Angeles Region  
 Consideration of Action to Void and Set Aside Order No. R4-2006-0074  
 Response to Comments (03-30-2011)**

Comment No.	Commenter(s)	Comment Summary	Response
1	Joyce Dillard	<p>“The Watershed Management Areas WMAs are:</p> <p>Malibu Creek and Rural Santa Monica Bay WMA            Ballona Creek and Urban Santa Monica Bay WMA            Los Angeles River WMA            San Gabriel River WMA            Dominguez Channel/Los Angeles Harbor WMA, and            Santa Clara River WMA”</p> <p>“Deleted is the Santa Monica Bay Dry Weather Bacteria TMDLs and the responsibility of the County of Los Angeles and parties.”</p>	<p>Pursuant to the Peremptory Writ of Mandate in <i>County of Los Angeles and Los Angeles County Flood Control District v. State Water Resources Control Board and Los Angeles Regional Water Quality Control Board</i>, Los Angeles Superior Court Case No. BS122724, the Regional Board is required to void and set aside Order No. R4-2006-0074, which amended the Los Angeles County MS4 Permit (Order No. 01-182) by incorporating requirements to implement the Santa Monica Bay Beaches Dry Weather Bacteria TMDL (“SMB Bacteria TMDL”). Thus, the Regional Board is required to take this action in response to a court order. Further, this proposed action only affects certain Permit provisions, namely Parts 1.B. and 2.5, and portions of Part 2.1. These Permit provisions only pertain to the Malibu Creek and Rural Santa Monica Bay Watershed Management Area (WMA) and the Ballona Creek and Urban Santa Monica Bay WMA. This action does not delete the responsibility of any Permittee. All Permittees, including the County of Los Angeles, must continue to comply with all remaining Permit provisions.</p>

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2	Joyce Dillard	<p>“United States Ninth Circuit Court of Appeals filed an Opinion No. 10-56017 in the case Natural Resources Defense Council Inc. and Santa Monica Baykeeper v. County of Los Angeles, Los Angeles Flood Control District et al.”</p> <p>“This places the responsibility of discharge into the receiving waters, the responsibility of the Defendants for the Los Angeles River WMA and San Gabriel River WMA; that stormwater is channeled in the MS4 to various watercourses including the four Watershed Rivers; and that the Watershed Rivers drain into the Pacific Ocean at Santa Monica Bay, Los Angeles Harbor, and Long Beach Harbor.”</p>	<p>Comment noted. Regional Board staff is aware of the recent U.S. Court of Appeals for the Ninth Circuit decision in <i>Natural Resources Defense Council (NRDC) et al. v. County of Los Angeles et al.</i>, Case No. 10-56017.</p>
3	Joyce Dillard	<p>“The jurisdiction over stormwater is the County of Los Angeles and the Los Angeles Flood Control District. Not clear is how recapture of stormwater runoff and urban runoff for recycling fits into this picture, as is the plans in the Los Angeles Department of Water and Power Draft 2010 Urban Water Management Plan compared to how the sources of contamination is being monitored and source points determined.”</p>	<p>Jurisdiction over MS4 stormwater discharges in Los Angeles County is partly held by the County of Los Angeles, for its unincorporated areas, and by the Los Angeles County Flood Control District as the owner and operator of the MS4. Jurisdiction is also shared with the other municipalities within Los Angeles County Flood Control District. Non-stormwater and stormwater discharges from these jurisdictions enter into the MS4 and ultimately discharge to surface waters.</p> <p>Pursuant to Water Code section 13260, the Regional Board cannot prescribe the manner in which MS4 Co-permittees comply with Permit provisions, including those implementing the Santa Monica Bay Summer Dry Weather Bacteria TMDL waste load allocations (WLAs). However, the Regional Board encourages the capture and reuse of stormwater, where feasible, and has provided incentives through extended implementation timeframes to MS4 Permittees that employ an integrated water resources approach to TMDL compliance.</p>

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4	Joyce Dillard	<p>“With that decision, we question how this order would still be implemented since the Ninth Court decision is from a higher court.”</p>	<p>While both cases concern the Los Angeles County MS4 Permit, the <i>County of Los Angeles</i> case (No. BS122724) and the <i>NRDC</i> case (No. 10-56017) are two separate cases. The <i>County of Los Angeles</i> case is in state court and the <i>NRDC</i> case is in federal court. Each case also concerns different Permit provisions of the Los Angeles County MS4 Permit. Accordingly, the decision in the <i>NRDC</i> case has no impact on the <i>County of Los Angeles</i> case, and vice versa. The Regional Board is still required to comply with the peremptory writ of mandate in the <i>County of Los Angeles</i> case by voiding and setting aside Order No. R4-2006-0074.</p>
5	<p>Cities of Baldwin Park, Carson, Claremont, Duarte, El Monte, Gardena, Inglewood, Irwindale, Lawndale, San Fernando, San Gabriel, South El Monte, and West Covina</p>	<p>The City opposes the tentative order for several reasons, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>● It ignores the report of waste discharge (ROWD) application, which serves as an application for permit renewal, submitted by the City as part of a group of permittees in June of 2006, which the City believe [<i>sic</i>] is impermissible under federal law.</li> <li>● It ignores the fact that federal stormwater regulations only authorize permitting agencies to issue 5-year MS4 permits - not eighteen month permits.</li> <li>● It does not reference the application of water quality based effluent limitations (WQBELs) to the Santa Monica Bay Beaches Dry Weather Bacteria TMDL and to the Los Angeles River Trash TMDL, expressed either in the form of best management practices or surrogate parameters that use flow and impervious</li> </ul>	<p>These comments are outside the scope of this proposed action to void and set aside Order No. R4-2006-0074, as required by the peremptory writ of mandate. The Cities’ opposition pertains to the tentative order for the proposed reissuance of the Los Angeles County MS4 Permit, which had also been scheduled for April 14, 2011. On March 23, 2011, the Executive Officer notified all Permittees and interested persons that the proposed action to reissue the Los Angeles County MS4 Permit had been canceled. Accordingly, comments relating to the now-canceled reissuance of the MS4 Permit, including comments on the implementation of the SMB Bacteria TMDL, are not germane to this specific action to void and set aside Order No. R4-2006-0074.</p>

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		<p>cover reduction are [<i>sic</i>] proxies for pollutant loadings.</p> <ul style="list-style-type: none"> <li>It denies that none of its provisions represent an unfunded mandate under the California Constitution even though the order contains several requirements that exceed federal requirements, including but not limited to: strict compliance with the TMDL waste load allocations (WLAs) by any means necessary, with the application of WQBELs; prohibiting nonstormwater discharges to watercourses (receiving waters); establishing the compliance determinant for TMDLs in the receiving water instead of at the end-of-pipe (excluding the trash TMDL); and requiring monitoring in the receiving water instead of at the outfall or other location sanctioned under federal stormwater regulations.</li> </ul>	
6	<p>Cities of Baldwin Park, Carson, Claremont, Duarte, El Monte, Gardena, Inglewood, Irwindale, Lawndale, San Fernando, San Gabriel, South El Monte, and West Covina</p>	<p>The City understands the need to vacate and set aside the current MS4 permit and replace it with an active order. Nevertheless, it believes that using a "reopened" order is the best way of achieving this objective, while carrying with it fewer disadvantages than issuing a so-called time-limited, eighteen-month MS4 permit. The City also understands that non-governmental organizations and USEPA are concerned about re-opening, in effect, an expired permit. We share that concern, but at the same recognize that the Regional Board had ample time (four years) to reissue the permit.</p>	<p>This proposed action is to void and set aside Order No. R4-2006-0074, which amended the Los Angeles County MS4 Permit by incorporating requirements to implement the SMB Bacteria TMDL. Accordingly, this action will neither vacate nor set aside the current Los Angeles County MS4 Permit. Rather, the voiding and setting aside of Order No. R4-2006-0074 will only remove the provisions that were actually added into the Los Angeles County MS4 Permit by Order No. R4-2006-0074 on September 14, 2006.</p> <p>See response to Comment No. 5. Comments relating to the now-canceled reissuance of the MS4 Permit, including comments on whether that action should have been conducted through a reopening of the MS4 Permit rather than a reissuance of the entire Permit, as well as comments on the implementation and effectiveness of the SMB Bacteria TMDL, are outside the scope of this proposed action to</p>

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		<p>Another concern lies with the City's best interests and the matter of representation due to the City's geographical location. The City urges you to reopen the MS4 to reincorporate the judicially invalidated requirements, but with the proviso to translate the TMDL waste load allocations through WQBELs, and to remove from it language that requires non-stormwater discharges to be prohibited to watercourses.</p> <p>As to the need to adopt a new permit containing the SMBB-DW-BTMDL before this summer is concerned, the City is not convinced that an exigent need to take such action exists. The City is aware that since this TMDL was placed into the current MS4 permit in 2007, there have been several Santa Monica Bay beach closures during summer months. It is our understanding; however, that none of them was due to not having a TMDL in place. The closures were due to sewer system overflows and to septic tank failures in Malibu. As you are aware septic tanks and SSOs are regulated under waste discharge orders, not the MS4 permit. Thus, the effectiveness of a TMDL would be questionable.</p>	<p>void and set aside Order No. R4-2006-0074.</p>
7	<p>Cities of Baldwin Park, Carson, Claremont, Duarte, El</p>	<p>The City opposes the tentative order which proposes to re-incorporate the summer dry weather waste load allocations for bacteria pursuant to the Santa Monica Bay Beaches Dry Weather</p>	<p>See responses to Comment Nos. 5 and 6. Comments relating to the now-canceled reissuance of the MS4 Permit, including comments on whether that action should have been conducted through a reopening of the MS4 Permit rather than a reissuance of the entire Permit, as well as comments on the implementation and effectiveness of the</p>

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	<p>Monte, Gardena, Inglewood, Irwindale, Lawndale, San Fernando, San Gabriel, South El Monte, and West Covina</p>	<p>Bacteria TMDL (SMBB-DW-BTMDL) for reasons that are more particularly described in their letter and recommends that the Los Angeles Regional Water Quality Control Board (Regional Board) conduct a workshop to enable it and other permittees to propose an alternative mode of compliance.</p>	<p>SMB Bacteria TMDL or Los Angeles River Trash TMDL, are outside the scope of this proposed action to void and set aside Order No. R4-2006-0074.</p> <p>As noted above, on March 23, 2011, the Executive Officer notified all LA County MS4 Permittees and interested persons that the proposed action to reissue the Los Angeles County MS4 Permit had been canceled. After receiving assurances from a number of Permittees affirming their full commitment to implementing the SMB Bacteria TMDL, including operation and maintenance of low-flow diversions, Regional Board staff has opted to spend its limited staff resources developing an updated MS4 permit. Regional Board staff is committed to engaging in a dialogue with Permittees and interested persons during the development of the updated MS4 permit, which will include one or more scheduled workshops.</p>