



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

TO: Los Angeles County MS4 Permittees and Other Interested Persons

FROM: *Joan K. Ridgeway for*
Renee A. Purdy
Regional Programs Section Chief

DATE: February 5, 2016

SUBJECT: NOTICE OF AVAILABILITY OF REVISED ENHANCED WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175) AND OF UPCOMING PUBLIC WORKSHOP ON REVISED EWMPs

By January 29, 2016, eleven of the twelve Permittee groups that elected to develop an Enhanced Watershed Management Program (EWMP) submitted a revised Enhanced Watershed Management Program to the Los Angeles Water Board addressing the Los Angeles Water Board's comments on their draft EWMP. The Dominguez Channel Watershed Management Area Group was granted an extension to submit their revised EWMP, which is now due on February 29, 2016.

Pursuant to Part VI.A.5.b, the above-referenced documents are available on the Los Angeles Water Board's web site at:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/index.shtml

The Dominguez Channel Watershed Management Area Group's revised EWMP will be made available on the Los Angeles Water Board's website as soon as possible after receipt.

Persons wishing to comment on the revised Enhanced Watershed Management Programs are invited to participate in a public workshop which will be held on:

**Thursday, March 3, 2016
9:00 AM – 12:30 PM
California Regional Water Quality Control Board
First Floor Carmel Room
320 W. 4th Street
Los Angeles, CA 90013**

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Please contact Mr. Ivar Ridgeway at (213) 620-2150 or Ivar.Ridgeway@waterboards.ca.gov with any questions regarding these documents or the upcoming public workshop.

Brandes, Deborah@Waterboards

From: Ridgeway, Ivar@Waterboards
Sent: Monday, February 08, 2016 11:10 AM
To: 'skatsouleas@elsegundo.org'; 'lxu@elsegundo.org'; 'dkrauss@cityofhawthorne.org'; 'ashadbehr@cityofhawthorne.org'; 'lamimoto@cityofinglewood.org'; 'alfredo.magallanes@lacity.org'; 'ageorge@dpw.lacounty.gov'; 'shahram.kharaghani@lacity.org'; 'HMERENDA@santa-clarita.com'; 'TLANGE@santa-clarita.com'; 'gcoon@dpw.lacounty.gov'; 'ADANGELO@dpw.lacounty.gov'; 'PALVA@dpw.lacounty.gov'; 'AshliD@lwa.com'; 'AmyS@lwa.com'; 'dustin.bambic@paradigmh2o.com'; 'JWen@downeyca.org'; 'kvivanti@lakewoodcity.org'; 'Anthony.Arevalo@longbeach.gov'; 'emurga@lynwood.ca.us'; 'sho@paramountcity.com'; 'gderas@pico-rivera.org'; 'SteveMyrter@cityofsignalhill.org'; 'acervantes@sogate.org'; 'Wu, Robert@DOT'; 'LLEE@dpw.lacounty.gov'; 'gosmena@dpw.lacounty.gov'; 'JGUERRER@dpw.lacounty.gov'; 'dwall@baldwinpark.com'; 'vcastro@covina.gov'; 'ddavies@ci.glendora.ca.us'; 'jburke@ci.glendora.ca.us'; 'jdballas@cityofindustry.org'; 'jdimario@lapuente.org'; 'dlazzaretto@ci.arcadia.ca.us'; 'ttait@ci.arcadia.ca.us'; 'vhevener@ci.arcadia.ca.us'; 'tle@ci.arcadia.ca.us'; 'DBobadilla@ci.azusa.ca.us'; 'PFlores@ci.azusa.ca.us'; 'MKeith@cityofbradbury.org'; 'dgilbertson@rkagroup.com'; 'sloriso@rkagroup.com'; 'gosmena@dpw.lacounty.gov'; 'georged@accessduarte.com'; 'hensley@accessduarte.com'; 'rcasillas@accessduarte.com'; 'Ochi@ci.monrovia.ca.us'; 'TCherry@ci.monrovia.ca.us'; 'SGallant@ci.monrovia.ca.us'; 'ATy@ci.monrovia.ca.us'; 'JCervantes@ci.monrovia.ca.us'; 'eaguilar@cityofsierramadre.com'; 'binman@cityofsierramadre.com'; 'jcarlson@cityofsierramadre.com'; 'hubertus.cox@lacity.org'; 'hamid.tadayon@lacity.org'; 'rick.valte@smgov.net'; 'Neal.Shapiro@smgov.net'; 'vijay.desai@lacity.org'; 'robert.vega@lacity.org'; 'TAVALOS@dpw.lacounty.gov'; 'DDOLPHIN@cityofalhambra.org'; 'acruz@ci.burbank.ca.us'; 'afarassati@cityofcalabasas.com'; 'moillataguerre@ci.glendale.ca.us'; 'jbellomo@willdan.com'; 'ehitti@lcf.ca.gov'; 'ykwan@lcf.ca.gov'; 'NSalinas@cityofmontebello.com'; 'Ho, Amy'; 'swalker@cityofpasadena.net'; 'ssullivan@cityofrosemead.org'; 'dgrilley@sgch.org'; 'kjserv@aol.com'; 'SFurukawa@ci.south-pasadena.ca.us'; 'bcook@templecity.us'; 'wisam.altowajji@redondo.org'; 'abrozyna@hermosabch.org'; 'rsaenz@citymb.info'; 'jdettle@TorranceCA.gov'; 'Geraldine.Trivedi@redondo.org'; 'dcartagena@beverlyhills.org'; 'charles.herbertson@culvercity.org'; 'lamimoto@cityofinglewood.org'; 'Sperlstein@weho.org'; 'JThorsen@malibucity.org'; 'rduboux@malibucity.org'; 'JBrown@malibucity.org'; 'kfisher@ci.agoura-hills.ca.us'; 'afarassati@cityofcalabasas.com'; 'charles.herbertson@culvercity.org'; 'andyw@rpv.com'; 'arigg@pvestates.org'; 'gregg@ci.rolling-hills-estates.ca.us'; Genevieve Osmena; Maria Slaughter (mslaughter@carson.ca.us); Ken Farfsing (kfarfsing@cityofsignalhill.org); fsenteno@lawndalecity.org; smandoki@lawndalecity.org

Cc: Purdy, Renee@Waterboards; Unger, Samuel@Waterboards; Smith, Deborah@Waterboards

Subject: EWMP Coordinators

Attachments: Public Notice of Revised EWMP Availability and Public Workshop.pdf

Dear EWMP Permittees,

Los Angeles Regional Water Board staff will be holding a workshop regarding the revised EWMPs on March 3, 2016, at the Los Angeles Regional Water Board Office (see attached notice for details). The workshop will provide opportunity for public input on the revised EWMPs. Permittees should plan to attend the Workshop and be prepared to explain how the draft EWMPs were revised to address Los Angeles Regional Water Board staff comments. Each EWMP Group will be allotted ~10 minutes to present the key revisions that they made in response to our comments. Thank you in advance for your participation. Please contact me if you have any questions.

Ivar K. Ridgeway
Senior Environmental Scientist
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343
(213) 620-2150
Ivar.Ridgeway@waterboards.ca.gov



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Regional Programs Section Chief

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CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

RB-AR 4658

RECYCLED PAPER

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Brandes, Deborah@Waterboards

From: Ridgeway, Ivar@Waterboards
Sent: Monday, February 08, 2016 12:13 PM
To: Hayat, Becky (bhayat@nrdc.org); rkampalath@healthebay.org; Daniel Cooper (daniel@lawyersforcleanwater.com); 'sfleischli@nrdc.org'; 'bruce@lawaterkeeper.org'
Cc: Unger, Samuel@Waterboards; Smith, Deborah@Waterboards; Purdy, Renee@Waterboards
Subject: March 3, 2016 Revised EWMP Workshop
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Los Angeles Regional Water Quality Control Board

PUBLIC WORKSHOP ON REVISED ENHANCED WATERSHED MANAGEMENT PROGRAMS (EWMPs) PURSUANT TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT (ORDER NO. R4-2012-0175 as amended by STATE BOARD ORDER NO. WQ 2015-0075)

Los Angeles Regional Water Quality Control Board, First Floor Carmel Room
320 W. 4th Street, Los Angeles, CA 90013
Thursday, March 3, 2016, 9:00 AM – 12:30 PM

Agenda

- 1) *Welcome & Los Angeles Water Board Staff Presentation(15 minutes)*
- 2) *Heal the Bay, LA Waterkeeper & NRDC: Presentation/Comments on Revised EWMPs (15 minutes)*
- 3) *Elected Officials' Comments on Revised EWMPs (3 minutes each)*
- 4) *EWMP Groups: Responses to Regional Board Comments on Draft EWMPs (up to 10 minutes each)*
 - a. *Ballona Creek WMA*
 - b. *Dominguez Channel WMA*
 - c. *Santa Monica Bay J2-J3*
 - d. *Upper Los Angeles River WMA*
 - e. *Beach Cities WMG*
 - f. *Malibu Creek WMG*
 - g. *Marina del Rey Subwatershed*
 - h. *North Santa Monica Bay Coastal Watershed*
 - i. *PV Peninsula*
 - j. *Rio Hondo-San Gabriel River WQ Group*

k. Upper San Gabriel River Watershed

l. Upper Santa Clara River WMA

m. Upper Santa Clara, Upper San Gabriel and Upper Los Angeles, Group's

Response to RAA Issues, Dustin Bambic, Paradigm Environmental

5) Mr. Ray Tahir's Comments on Revised EWMPs (10 minutes)

6) Open Discussion



EWMP Workshop

March 3, 2016



RB-AR 4665

EWMP Review Process





Los Angeles River (Credit: I. Ridgeway)

EWMP Comments and Revisions

RB-AR 4667

Key Staff Comments on Draft EWMPs

1. **Reasonable Assurance Analysis (RAA)**
 - Approaches and Assumptions
2. **Water Quality Characterization and Priorities**
 - Water-Body Pollutant Combinations
3. **Control Measures**
4. **Financial Strategy**
 - Details on Funding Sources
5. **Implementation Timelines**
 - Control Measure Implementation

Examples – RAA / Control Measures Effectiveness

Table ES-11. Dominguez Channel Watershed – Reasonable Assurance Analysis Results - Interim and Final Compliance

Pollutant	Date	Implementation Benefits (average load reduction as % of baseline for the critical condition ¹)						TLR	Compliance (TLR Met)?	
		Non-Structural BMPs (Non-Modeled)	Public Retrofit Incentives + Redevelopment	Non-MS4	Regional BMPs	Distributed BMPs	Distributed BMP Implementation Level			Estimated Load Reduction
Analysis Region DC-RB/MB										
Zinc	2032 (Final)	5%	9%	6%	39%	20%	14% SFR, MFR, COM, IND	79%	76%	Yes
Copper	2032 (Final)	24% ²	0%	5%	30%	26%		85%	62%	Yes
Fecal coliform	2022 (Interim)	2.1%	1.5%	0.7%	0%	4.1%	3% SFR, MFR, COM, IND	8.4%	8.3%	Yes
	2027 (Interim)	3.5%	2.4%	1.3%	0%	10%	7% SFR, MFR, COM, IND	17%	17%	Yes
	2032 (Final)	5%	3.2%	1.8%	45%	20%	14% SFR, MFR, COM, IND	74%	33%	Yes
Analysis Region DC-Torrance										
Zinc	2032 (Final)	5%	0%	0%	0%	75% per filter	Catch basin inlet filters	See note 3	76%	See note 3
Copper	2032 (Final)	14% ²	0%	0%	0%	75% per filter	Catch basin inlet filters	See note 3	62%	See note 3
Fecal coliform	2022 (Interim)	2.1%	0%	0%	0%	33% per filter	Catch basin inlet filters	See note 3	8.3%	See note 3
	2027 (Interim)	3.5%	0%	0%	0%	33% per filter	Catch basin inlet filters	See note 3	17%	See note 3
	2032 (Final)	5%	0%	0%	0%	33% per filter	Catch basin inlet filters	See note 3	33%	See note 3

¹ The critical condition is TMDL year 1995 for fecal coliform, 11/30/2007 for copper, 2/5/2010 for lead, and 2/26/2006 for zinc.

² Load reduction attributable to copper brake pad phase-out, after accounting for other BMPs, up to 55%.

³ Load reduction sum cannot be estimated at this time. The individual load reduction for each inlet filter's drainage area is shown under the "Distributed BMPs" column. Initially, 200 of 643 catch basins are planned to be retrofitted in high priority catchments. The total load reduction from inlet filters will be evaluated in the future through CIMP monitoring, as part of the EWMP adaptive management process. At that time, the catch basin BMPs will be modified, with additional filters installed as necessary and additional structural/non-structural BMPs proposed as needed to meet the TLRs required to achieve water quality objectives by the compliance deadlines.

Beach Cities Revised EWMP – Table ES-11 (pg. ES-27)

Examples – Compliance Deadlines

Table 3-5. Compliance Schedule for Category 1 and 2 Water Quality Priorities that are not Included in a Regional Board Adopted TMDL

Constituent	WQP Category and Water Body	Compliance Schedule Source	Weather Condition	Compliance Dates and Compliance Milestones (Bolded numbers indicated milestone deadlines within the current Permit term) ^{1,2}									
				2013	2014	2015	2016	2019	2020	2024	2028	2032	2037
2,3,7,8-TCDD (Dioxin)	C2: Reach 3 C2: Burbank Western Channel	LAR Bacteria TMDL	Dry	See Table 3-6 for Interim and Final Compliance Milestones									
			Wet										

Upper Los Angeles River Draft EWMP – Table 3-5 (pg. 3-10)



Table 3-13. Compliance Schedule for Category 1 and 2 Water Quality Priorities that are not Included in a Regional Board Adopted TMDL

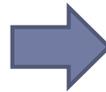
Constituent	WQP Category and Water Body	Compliance Schedule Source	Weather Condition	Compliance Dates and Compliance Milestones (Bolded numbers indicated milestone deadlines within the current Permit term) ^{1,2}										
				2013	2014	2015	2016	2019	2020	2024	2028	2032	2037	
2,3,7,8-TCDD (Dioxin)	C2: Reach 3 C2: Burbank Western Channel	LAR Metals TMDL	Dry						75%	100%				
			Wet							50%	100%			

Upper Los Angeles River Revised EWMP – Table 3-13 (pg. 3-21)

Examples – Compliance Deadlines

7.3 SCHEDULING OF CONTROL MEASURES AND EWMP MILESTONES

As described in Section 6.4.3, the scheduling of control measures for the EWMP Implementation Plan is based on the BMP-based milestones created by the USCR EWMP Group. The SCR Bacteria TMDL, which is the primary TMDL for this EWMP, does not have reduction milestones or a schedule of interim requirements. As a result, the Group defined a set of milestones based on aggressive yet realistic implementation of enhanced MCMs, high priority regional projects and green streets over the next two Permit terms. Three interim milestone dates were set to correspond approximately with the requirement to evaluate progress on a watershed scale every two years: (1) 2017 to reflect the end of the current permit term, (2) 2020 to reflect the middle of the second permit term, and (3) 2022 to reflect the end of the second permit term. To reflect final EWMP compliance milestones, the dry and wet weather final TMDL compliance deadlines for the Bacteria TMDL are used (2023 and 2029 respectively) for all constituents except metals. A final deadline of 2035 is included for any additional control measures needed to address metals after the controls to address bacteria and other constituents are implemented. This final date was determined to be as soon as possible given the additional structural control measures that may need to be implemented.



7.3 SCHEDULING OF CONTROL MEASURES AND EWMP MILESTONES

As described in Section 6.4.3, the scheduling of control measures for the EWMP Implementation Plan is based on the BMP-based milestones created by the USCR EWMP Group. The SCR Bacteria TMDL, which is the primary TMDL for this EWMP, does not have reduction milestones or a schedule of interim requirements. As a result, the Group defined a set of milestones based on aggressive yet realistic implementation of enhanced MCMs, high priority regional projects and green streets over the next two Permit terms. Three interim milestone dates were set to correspond approximately with the requirement to evaluate progress on a watershed scale every two years: (1) 2017 to reflect the end of the current permit term, (2) 2020 to reflect the middle of the second permit term, and (3) 2022 to reflect the end of the second permit term. Additional interim milestones during the current permit term were identified where appropriate. To reflect final EWMP compliance milestones, the dry and wet weather final TMDL compliance deadlines for the Bacteria TMDL are used (2023 and 2029 respectively) for all constituents except metals. A final deadline of 2035 is included for any additional control measures needed to address metals after the controls to address bacteria and other constituents are implemented. This final date of 2035 was determined to be as soon as possible based on the following considerations:

- Additional monitoring data will need to be collected and assessed to determine if metals are still exceeding water quality objectives and if additional BMPs are necessary (approximately 2-3 years).
- Time is needed to secure funding, complete the planning process, and construct additional BMPs (approximately 4-5 years).

The final date was determined to be as soon as possible given the time needed to confirm additional structural control measures are needed and design and construct those additional facilities.

Upper Santa Clara River Draft EWMP – Section 7.3 (pg. 7-14)

Upper Santa Clara River Final EWMP – Section 7.3 (pg. 7-14)



San Gabriel Forest Gateway Interpretive Center –
From Rio Hondo / San Gabriel River EWMP (pg. 68)

Implementation – Financial Strategy

Implementation – Financial Strategy

- ▶ Obtaining financing for projects necessary to achieve pollutant reductions
-

- ▶ **Evaluation of Funding Sources**
- ▶ **Near-Term and Long-Term Focus**
- ▶ **Milestone Commitments**
- ▶ **Funding and Project Milestone Contingencies**

Implementation – Financial Strategy

Table 9-6 Green Streets Projects Funding Sources Prioritization

Funding Source	Estimate of Potential Annual Available Funding in the Watershed	Scope/ Scale		Potential/ Feasibility	
		Project	Program	Near Term (<5 years)	Long Term (>5 years)
Clean Water State Revolving Fund ¹	\$\$\$\$	●	●	High	High
Service Related Fees ¹	\$\$-		●	High	High
Federal/ State Grants ¹	\$	●		Moderate	Moderate
Property Based Fees ¹	\$\$-\$\$\$		●	Moderate	High
Special Assessment Districts ¹	\$\$-\$\$\$	●	●	Moderate	High
Public Private Partnerships	\$	●	●	Low	Moderate
Sales Tax Measure ¹	\$\$-		●	Low	Moderate
Environmental Impact Fees ¹	\$\$-		●	Low	Moderate

1. Subject to local, state, and federal restrictions on use of funds. May not be eligible for property acquisition.

Available Funding Key:

\$ = \$1-5M

\$\$ = \$5-25M

\$\$\$ = \$25-100M

\$\$\$\$ = >\$100M

Upper Los Angeles River EWMP – Table 9-6 (pg. 9-14)

Low Interest Loans

- ▶ **Clean Water State Revolving Fund (CWSRF)**
 - ▶ Interest Rate – $\frac{1}{2}$ most recent General Obligation Bond Rate
 - ▶ Financing Term – Up to 30 years or useful life
 - ▶ Financing Amount – No maximum funding or disbursement limit
 - ▶ Repayment – Begins 1 year after construction completion

- ▶ **California Infrastructure and Economic Development Bank**
 - ▶ Low-cost financing option for a wide range of infrastructure projects
 - ▶ Funding Amount – \$50,000 to \$25 million
 - ▶ Funding Terms – Up to 30 years

Fee Based Programs

▶ Service-related Fees

- ▶ Increase or establish fees for new development and redevelopment, inspections, maintenance, etc.

▶ Property-based Fees

- ▶ Establish parcel tax based on certain factors (e.g. size, impervious area, etc.)

▶ Special Assessment Districts

- ▶ Form a district to fund improvements over a defined area

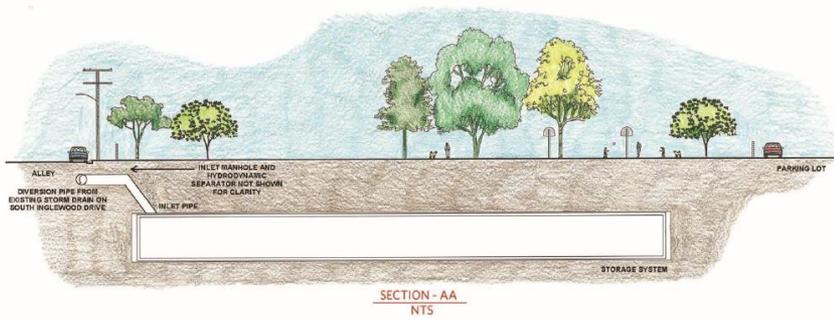
Grants

- ▶ **Example:**

- ▶ Proposition I Stormwater Grant Program

- ▶ **Concerns:**

- ▶ Limited Amount of Funding Available (e.g. \$200 million available under Proposition I Stormwater Grant Program)
- ▶ Competitive
- ▶ Grant Administration Time and Costs
- ▶ Project Readiness
- ▶ Operations and Maintenance not typically covered



Ramona Park – From Dominguez Channel Revised EWMP Figure 4-8 (pg. 4-25)

Implementation – Timelines

Implementation – Timelines

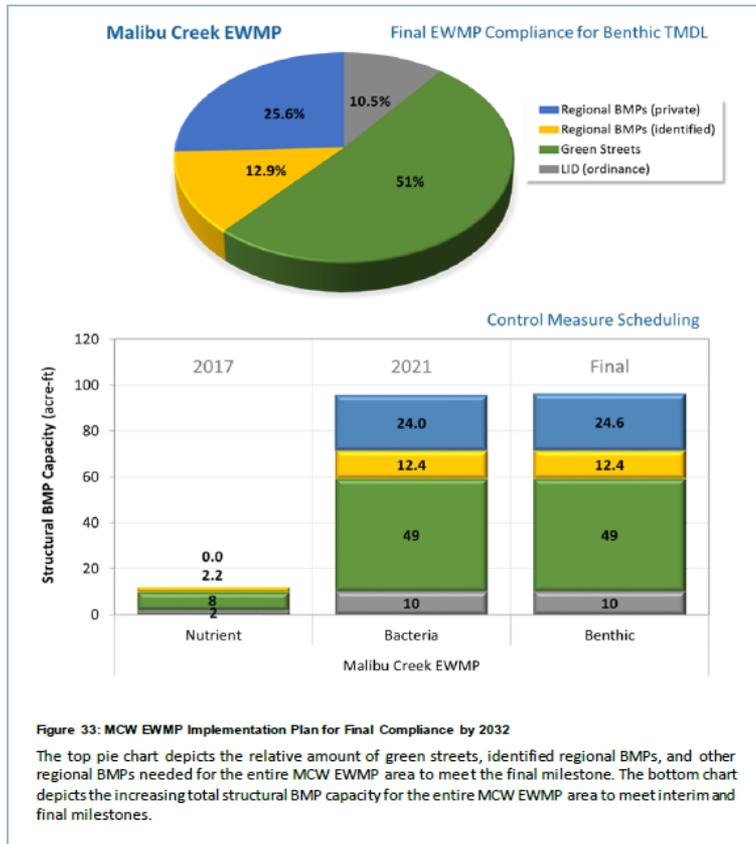


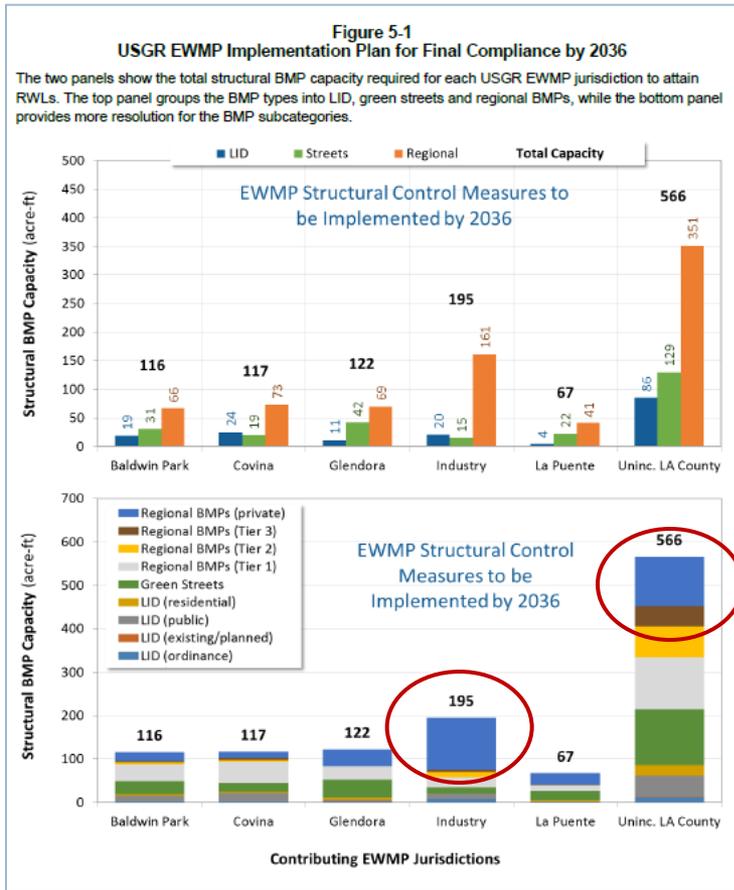
Table 47: EWMP Compliance Cost Summary

BMP Scenario	Capital Cost (\$)	Annual O&M Cost (\$)
Regional	21,058,000	251,000
Green Streets	108,643,000	2,173,000
Private Regional	64,883,000	1,298,000
Total	194,584,000	3,722,000

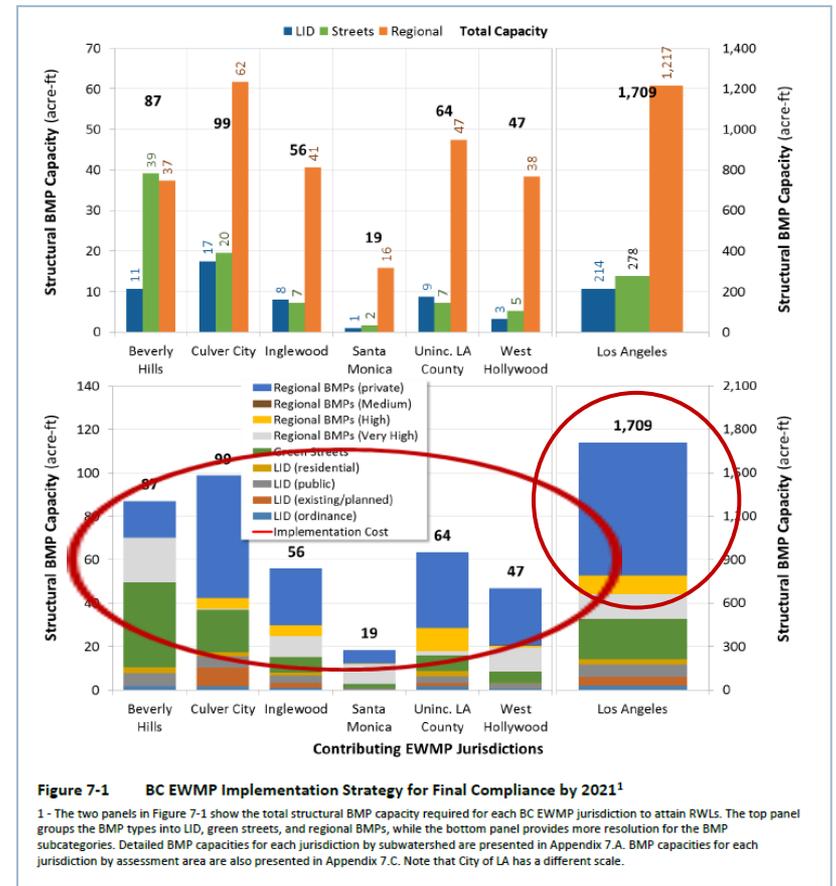
Malibu Creek Revised EWMP – Table 47 (pg. 108)

Malibu Creek Revised EWMP – Figure 33 (pg. 93)

Implementation – Timelines



Upper San Gabriel River Revised EWMP – Figure 5-1 (pg. 101)

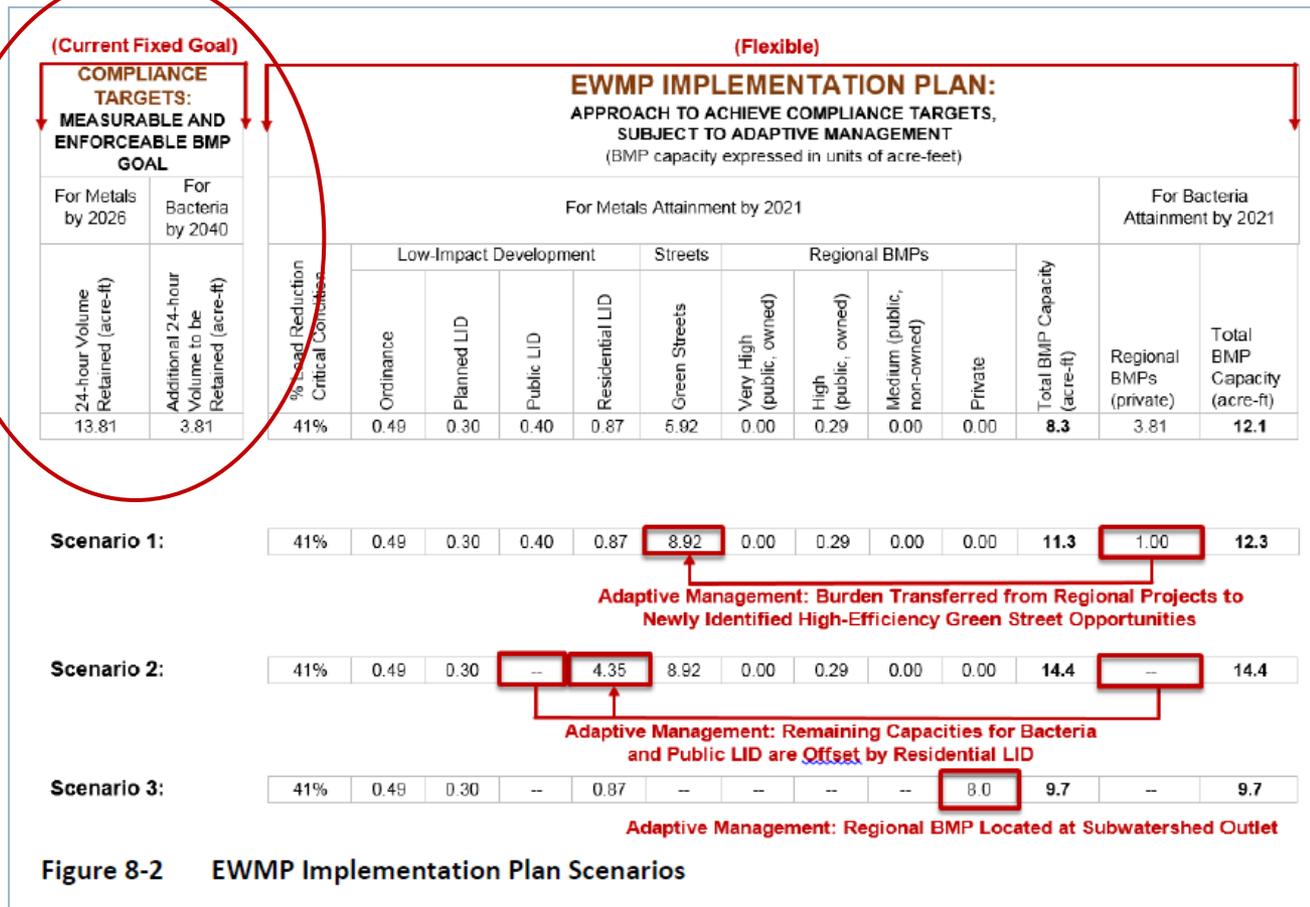


Ballona Creek Revised EWMP – Figure 7-1 (pg. 7-3)

Implementation - Timelines

- ▶ Strategies to complete an adequate number of projects in the required timeframes
-
- ▶ **RAA-Based Milestones (e.g. Volume Based Milestones)**
 - ▶ **Milestones for “High-Priority” Projects**
 - ▶ **Commitment, Project Substitutions, and Partnerships**
 - ▶ **Funding and Project Milestone Contingencies**

Examples – RAA Milestones



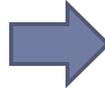
Ballona Creek Revised EWMP – Figure 8-2 (pg. 8-7)

Examples – Project Milestones

**Table 3-4
Example Regional EWMP Project Sites**

Regional EWMP Project Site	Address
Finkbiner Park	160 N. Wabash Ave, Glendora, CA 91741
Bassett Park	510 Vineland Avenue, La Puente, CA 91746
Kahler Russell Park	735 North Glendora Avenue, Covina, CA 91724
San Angelo Park and Vacant Lot	245 San Angelo Avenue, Bassett, CA 91746
Allen J Martin Park	14830 East Giordano Street, La Puente, CA 91744
Barnes Park	3251 Patriitti Avenue, Baldwin Park, CA 91706
La Puente Park	15538-15598 E Temple Ave, La Puente, CA 91744
Adventure Park (aka Gunn Ave. Park)	10130 S. Gunn Avenue, Whittier, CA 90605
Downtown Properties	Foothill Blvd. and Glendora Ave., Glendora, CA 91741
San Jose Properties	Burnaby Dr, Lawford St., Glendora, CA 91741

Upper San Gabriel River Draft EWMP – Table 3-4 (pg. 45)



**Table 3-4
Example Regional EWMP Project Sites**

Regional EWMP Project Site	Implementation Agency	Address	Milestones (Contingent Upon Funding)
Bassett Park	County	510 Vineland Avenue, La Puente, CA 91746	Design and permitting by December 2021; completion by December 2023
Kahler Russell Park	Covina	735 North Glendora Avenue, Covina, CA 91724	Design and permitting by December 2018; completion by December 2023
San Angelo Park and Vacant Lot	Industry	245 San Angelo Avenue, Bassett, CA 91746	Design and permitting by December 2018; completion by 2020
Allen J Martin Park	County	14830 East Giordano Street, La Puente, CA 91744	Design and permitting by December 2021; completion by December 2023
Barnes Park	Baldwin Park	3251 Patriitti Avenue, Baldwin Park, CA 91706	Design and permitting by December 2021; completion by December 2023
La Puente Park	La Puente	15538-15598 E Temple Ave, La Puente, CA 91744	Feasibility determination of an alternative project at Bassett High School by June 2016; Design and permitting by December 2021; Completion by December 2023
Adventure Park (aka Gunn Ave. Park)	County	10130 S. Gunn Avenue, Whittier, CA 90605	Completion by December 2020
Downtown Properties	Glendora	Foothill Blvd. and Glendora Ave., Glendora, CA 91741	Design and Permitting by December 2018; Completion by December 2023

Upper San Gabriel River Revised EWMP – Table 3-4 (pg. 51)

Next Steps

- ▶ Review
- ▶ Approval/Denial
- ▶ Implementation
- ▶ EWMP Compliance and Adaptive Management

Rosemead Boulevard Improvement Project – From
Rio Hondo / San Gabriel River Revised EWMP (pg. 68)



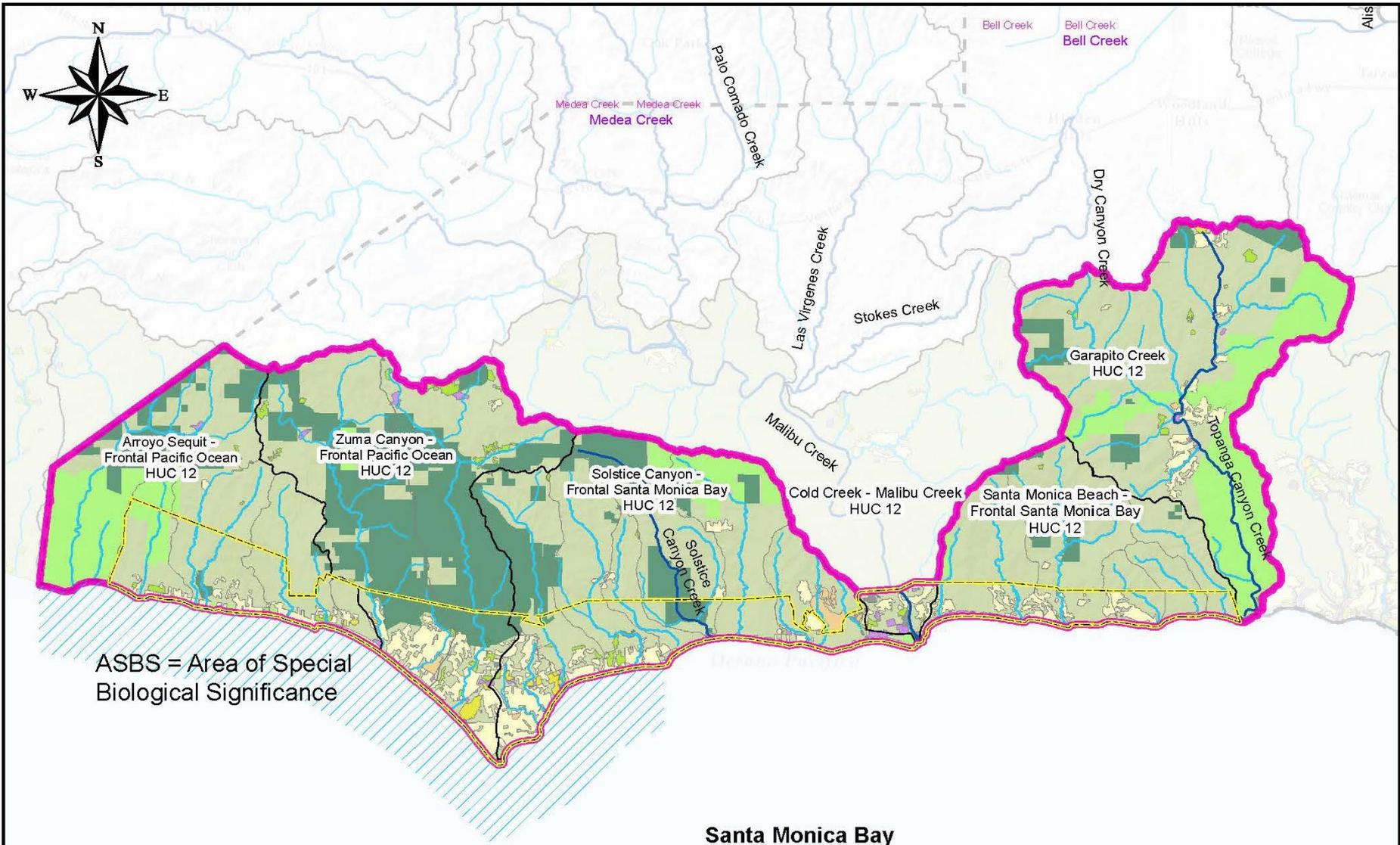
End

North Santa Monica Bay Coastal Watersheds EWMP Response to Comments

March 3, 2016



RE-AR 4686



Santa Monica Bay

NSMBCW EWMP Area

RB-AR 4687



NSMCW EWMP Area

- 55,121 Acres
- Largely undeveloped
 - 93% vacant land use
 - Extensive park land including State and Federal Parks
- Portions of 6 HUC-12
- Limited MS4 infrastructure (rural)
- Only 9 “major” outfalls
- Geologic hazards
- Low permeability soils
- ASBS (approximately 12 miles)
- Malibu Valley - only defined groundwater basin



NSMBCW Agencies:

City of Malibu

County of Los Angeles

Los Angeles County Flood Control District



Regional Board Comments

Major Comments	Incorporated
Integrate and clarify ASBS requirements and unique measures, and include Compliance Plan	✓
Provide additional Project milestones	✓
Summarize Source Assessment Studies	✓
Include a table detailing MS4 outfalls and their sizes and include text regarding outfalls in subwatershed descriptions	✓
RAA – Clarifications, controlling pollutant is bacteria	✓
General clarifications, references, additional details (e.g. MCMs costs)	✓

Submitted revised EWMP on January 19, 2016

with comment response matrix



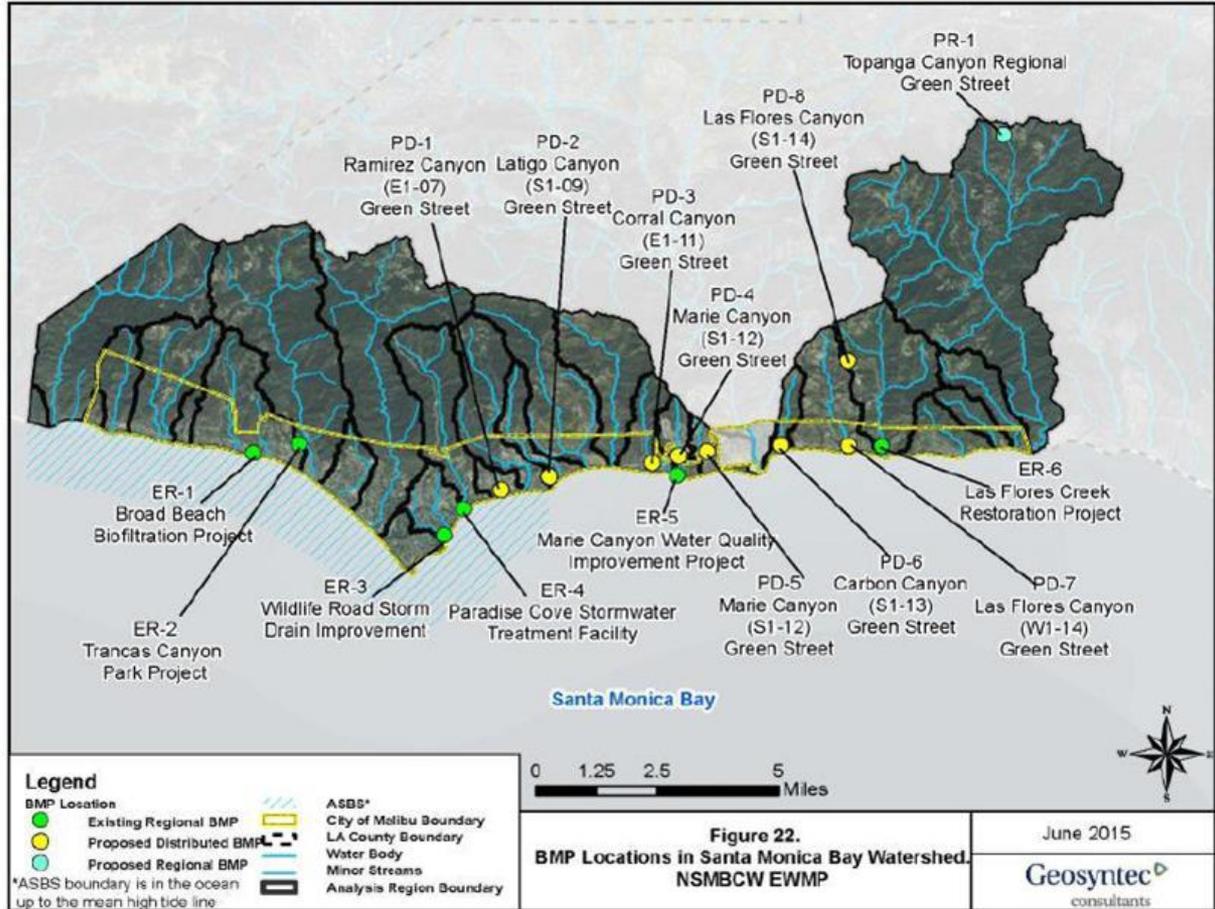
Water Quality Priorities

Category	Water Body	Pollutant
1: Highest Priority (TMDLs)	Malibu Creek	Trash
	Malibu Creek and Lagoon	Nutrients
		Indicator Bacteria
	SMB Beaches	Dry Weather Bacteria
		Wet Weather Bacteria
	SMB	Trash/Debris
		DDTs
PCBs		
2: High Priority (303[d] listings)	Topanga Canyon Creek	Lead
	Malibu Creek	Sulfates & Selenium
	Malibu Lagoon	pH
3: Medium Priority (WQ Data)	None	



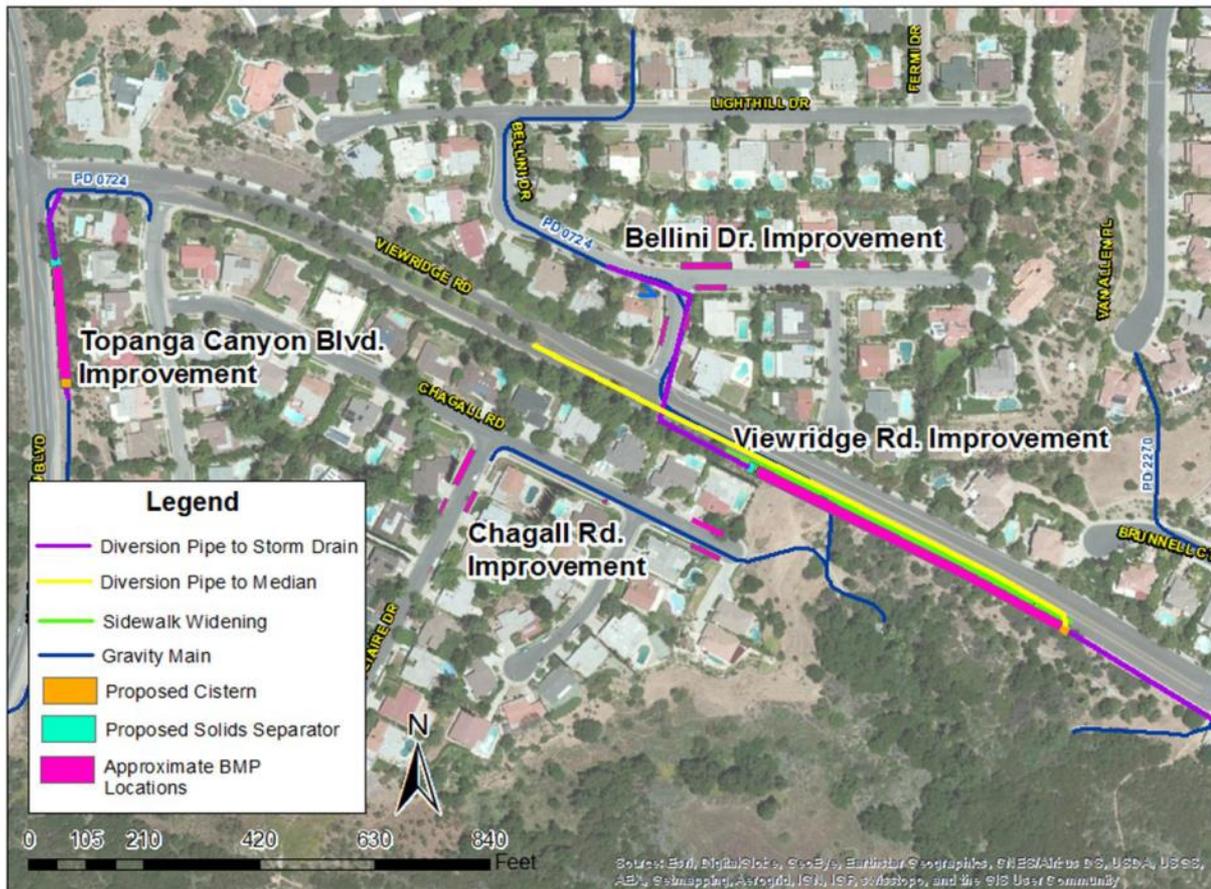
Existing Regional Projects

- Paradise Cove Treatment Facility
- Marie Canyon Treatment Facility
- Legacy Park/SWTF (Regional EWMP project)
- Broad Beach Road Biofiltration
- Wildlife Road – Biofiltration, Infiltration, and ASBS Outreach
- Las Flores Creek Restoration
- Trancas Canyon Park



Example Project Moving Forward: (LA County)

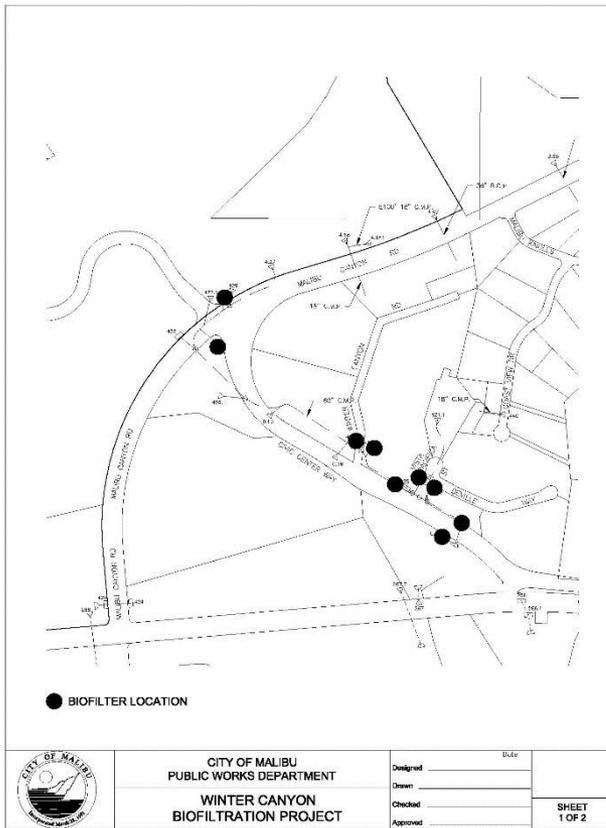
Viewridge Super Green Street



- Will treat design storm from 81 Acres
- Runoff used for irrigation.
- Incorporates passive recreation
- Applied for \$500,000 SMMC Prop 1 Grant



Example Project Moving Forward: (City of Malibu) Winter Canyon Biofiltration Project



- Will treat design storm from 55 Acres
- Use of biofiltration to remove pollutants
- Applied for \$1.5million Prop 84 Grant



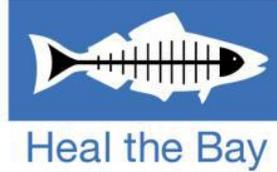
THANK YOU

Questions/Comments

RB-AR 4694

Audio File of March 3, 2016

3rd EWMP Workshop



Ms. Renee Purdy
Environmental Program Manager
Los Angeles Regional Water Quality Control Board
320 West 4th Street
Los Angeles, CA 90013

March 8, 2016

RE: Written Responses to Comments Received on Enhanced Watershed Management Programs

Dear Ms. Purdy:

We are submitting this letter as a follow-up to the testimony delivered by Los Angeles Waterkeeper, Heal the Bay, and the Natural Resources Defense Council, (collectively, "Environmental Groups") at the March 3 revised EWMPs workshop. The purpose of the letter is to provide citations and a written explanation of our position that both federal and California law require the Regional Board to issue written responses to comments prior to any decision by the Board or Executive Officer approving or denying the Enhanced Watershed Management Programs ("EWMPs") currently under review submitted by various permittees pursuant to Part VI.C.4 of the Los Angeles County Municipal Separate Storm Sewer System ("MS4") Permit (NPDES Permit No. CAS004001) ("2012 MS4 Permit").

We appreciate your assurances during a February 29 conference call that the Regional Board staff have considered comments submitted by the Environmental Groups on the EWMPs. The Environmental Groups spent significant time and resources reviewing the draft EWMPs, including retaining outside technical experts, participating in last November's workshop, and reviewing the revised EWMPs submitted by the permittees, again retaining outside experts and participating in a workshop. Despite participating in the review process, it is very difficult to determine which EWMP groups have even considered our comments, or have taken steps to address those comments. From the EWMPs we have reviewed, it appears that no EWMP group has specifically responded to our consultant's technical comments on the draft EWMPs. To the extent that some EWMP groups might have responded to certain aspects of our comments, it appears to be because those comments were similar to or incorporated into comments made by Regional Board staff. Moreover, the consideration of comments from stakeholders other than the Regional Board staff seems highly variable among EWMPs, and the process itself of considering those comments has lacked uniformity, accountability, rigor, and

transparency mainly because the Regional Board has not prepared written responses to comments. We understand from our call that the Regional Board does not intend to prepare written responses, or require EWMP groups to prepare such written responses, prior to the decision to approve or deny EWMPs in April. We urge the Regional Board to reconsider this position.

I. The Public Participation Process Provided by the Regional Board, Devoid of Written Responses to Comments, Does Not Ensure “Rigor and Accountability” in the EWMP Review Process.

The Regional Board’s refusal to prepare written responses to comments frustrates the intent of the State Water Resources Control Board (“SWRCB”) Order WQ 2015-0075 approving the 2012 MS4 permit establishing the WMP and EWMP alternative compliance approach. The SWRCB recognized that the WMPs and EWMPs require a “public review and comment period.” (See Order WQ 2015-0075, p. 37.) In a section entitled “Rigor and Accountability in the Process,” the SWRCB called the public review and comment period associated with the WMPs/EWMPs “essential to ensuring” the success of the EWMPs. The SWRCB set clear expectations for public comment.ⁱ “We expect this public process to *vet the proposed WMPs/EWMPs and facilitate revisions to strengthen the program as needed.*” (See *Id.*, emphasis added.) This concern from the SWRCB mirrors EPA’s concern that technical issues with NPDES permits be decided in “the most open, accessible forum possible.” (See 44 Fed. Reg. 32,854, 32, 885.) Yet the process allowed by the Regional Board—which includes only verbal assurances that the Regional Board staff has considered comments on the EWMPs, and no assurances of any kind that the EWMP groups have considered these comments—falls far short of ensuring a proper vetting and facilitation of revisions.

We reiterate, for the reasons discussed on March 3 at the workshop, why we believe the EWMPs as currently drafted must be denied by the Executive Officer as inconsistent with the terms of the underlying permit. The inadequate “vetting” provided by an informal and irregular approach to public comment is a major procedural shortcoming. Especially given the clear direction from the SWRCB, the Environmental Groups expected that revised EWMPs would include written responses to comments, and are disappointed by the lack thereof. We believe the Regional Board should consider the lack of responses to comments as part of its decision-making process. Nonetheless, regardless of the EWMP groups’ responsibilities to respond to comments as permittees, both federal and state law impose upon the Regional Board a legal duty to respond *in writing* to comments received prior to any decision approving or denying the EWMPs.

II. The Clean Water Act Requires the Regional Board to Prepare and Circulate Written Responses to Comments Received on Draft EWMPs.

The Clean Water Act requires public participation be provided for in the revision of any plan or program developed pursuant to the Act. (33 USC 1251(e) [“Public participation in...development, revision, and enforcement...of any plan or program established...under this Act...shall be provided for, encouraged, and assisted...”]) The EWMPs are clearly subject to this public participation requirement, because if approved, they would become enforceable provisions of a NPDES permit.

While the workshops help meet the public participation requirement, the Clean Water Act regulations impose much more specific requirements with which the Board has yet to comply. For

example, the Regional Board must issue a response to comments at the time any final permit decision is issued, describing and responding to all significant comments on the draft permit and specifying which provisions have been changed, either in response to comments or otherwise. (See 40 C.F.R. 124.17, Responses to Comments.) “Final permit decision” includes any final decision to modify an existing permit. (See 40 CFR 124.15(a).) Approval by the Regional Board or by its Executive Officer on behalf of the Board of the EWMPs would clearly constitute a final decision to modify the underlying MS4 permit. The Regional Board or Executive Officer’s approval of the EWMPs would add a large addendum with substantive requirements and timelines to the 2012 MS4 permit, and would greatly affect how the Board pursues permit enforcement. (See 2012 MS4 Permit, Part VI.C.4.e.)ⁱⁱ

The 9th Circuit has held that subsequent agency review of substantive plans allowed by an underlying NPDES permit and adding substantive components to the permit are subject to the same public participation requirements as the underlying permit itself. *Environmental Defense Center et. al. v. EPA* 344 F. 3d 832 (9th Cir. 2003)(“*EDC*”) involved a challenge to an EPA permitting regime that allowed small MS4 permit holders to submit Notices of Intent (“NOI”) for enrollment in a NPDES General Permit without an opportunity for a public hearing and comment process. In *EDC*, EPA had argued that NOI were not “permits” and therefore not subject to the full public review requirements of the Clean Water Act. The Court roundly rejected this argument. (*EDC, supra*, 344 F. 3d at 856-57.) Much like the EWMPs now under consideration, in *EDC* it was the NOI, rather than the permit itself, that contained the detailed “substantive information.” (*Id.* at 857.) The Court, therefore, ruled that the NOI were the “functional equivalent” of permits and thus would benefit from the “greater scope, greater certainty, and greater uniformity” of a review process that included an opportunity for a hearing and a requirement for a formal evaluation of comments. (*Ibid.*) Here, the EWMPs, like the NOI at issue in *EDC*, serve as the functional equivalent of MS4 permits and thus are also subject to the Clean Water Act’s public participation requirements.

Furthermore, in *Waterkeeper Alliance, Inc. v. United States EPA* 399 F 3d. 486 (2nd Cir. 2005) (“*Waterkeeper Alliance*”), the Court was confronted by a situation analogous to the current EWMP review process. *Waterkeeper Alliance* involved a rulemaking regarding Concentrated Animal Feeding Operations (“CAFO”) and required subsequent development of a nutrient plan, but did not include a rigorous formal process of public participation in subsequent reviews of the nutrient plans. The CAFO regulation instead relied on an “expectation” by EPA that authors of the nutrient plans would accommodate public access to and review of the plans. (*Waterkeeper Alliance, supra*, 399 F. 3d at 504.) The Court vacated that section of the CAFO regulation as inconsistent with the plain language of 33 U.S.C §1251(e). (*Ibid.*) Like the Plaintiffs in *Waterkeeper Alliance*, the Environmental Groups here are forced to rely on assurances by a government agency that comments have been considered. The lack of written responses to comments on the EWMPs forestalls, rather than encourages, public participation, as it did in *Waterkeeper Alliance*, and is inconsistent with the Clean Water Act.

The Clean Water Act and its regulations therefore require the Regional Board to consider and respond, in writing, to comments received on the EWMPs.

III. State Law Includes Two Independent Statutory Requirements for the Regional Board to Prepare and Circulate Written Responses to Comments Received on the EWMPs.

a. *The Porter-Cologne Act Requires Written Responses to Comments from The Regional Board.*

The Porter-Cologne Water Quality Act (Cal. Water Code Section 13020 et seq.) incorporates all federal Clean Water Act requirements, including federal regulations, and thus also requires written responses to comments for the same reasons discussed above. (See Cal. Water Code Section 13370(c).)

b. *The California Environmental Quality Act (CEQA) Applies to the Approval or Denial of the EWMPs, and Independently Requires Written Responses to Comments from the Regional Board.*

Approval of the EWMPs, which would add substantive plans and requirements to an existing NPDES permit, would clearly qualify as an action related to a NPDES permit. The Water Code exempts actions related to NPDES permits from *Chapter 3* of CEQA. (See Cal. Water Code Section 13389.) Thus, Chapter 3 of CEQA (containing the mechanical elements of an Environmental Impact Reports) is clearly inapplicable. However, the plain language of the Water Code does not exempt NPDES-related actions from other sections of CEQA, including Chapter 2, which remains applicable to these proceedings. It is *Chapter 2* of CEQA—outside the scope of the Water Code exemption—that requires written responses to comments received. Chapter 2 mandates include good faith, reasoned written responses to comments, especially if the agency is considering an action at variance with recommendations made in the comments. (See Pub. Res. Code Section 21092(d)(1); 14 Cal. Code Regs. Section 15088.)

In *County of Los Angeles v. State Water Resources Control Board* 143 Cal. App. 4th 985 (2006) (“*County of Los Angeles*”), the petitioner municipalities argued that a requirement in Chapter 2 of CEQA that agencies develop procedures for preparation of EIR review of discretionary projects had the effect of rendering the exemption from Chapter 3 superfluous. (See *Id.* at 1003.) Giving effect to both CEQA provisions, the Court of Appeal held that the more specific Water Code exemption from Chapter 3 of CEQA is not negated by the more general procedural requirements to develop EIR review procedures in Chapter 2 of CEQA. (See *Id.* at 1005.) The Court of Appeal said nothing about an exemption from Chapter 2 requirements to respond to comments, or an exemption from any of the other substantive requirements of CEQA. Indeed, construing the Court of Appeal decision as allowing or creating a broad CEQA exemption would create a direct conflict between *County of Los Angeles* and the California Supreme Court’s unambiguous holding that CEQA exemptions be narrowly construed. (See *Mountain Lion Foundation v. Fish and Game Commission* 16 Cal. 4th 105, 125 (1997).) Therefore, CEQA also requires written responses to EWMPs comments from the Regional Board prior to any approval of the EWMPs.

IV. Written Responses to Comments Received on the EWMPs from the Regional Board are Critical to Provide Uniformity and Transparency to the EWMP Approval Process.

The SWRCB expected “rigor and accountability” in the public review of the EWMPs. The Regional Board invited public comments in its Notices of Availability on both the draft EWMPs last November and most recently the February 5 notice on the revised EWMPs. Having invited comment, as it is legally required to do, the Regional Board cannot now avoid the legal obligation to consider and respond to comments received. The highly variable approach taken by the EWMP groups in considering comments, and the difficulty in ascertaining whether the EWMP groups have considered some comments at all, only further underscores the need for the Regional Board to respond to the comments received in a formal, written manner. This is the only way to ensure the degree of uniformity, transparency, accountability, and rigor that is required by the SWRCB but is currently lacking from the EWMP approval process.

The Regional Board has an active role in approving or denying the EWMPs, and that decision will have a major impact on how the Regional Board enforces the underlying NPDES permit. That role also comes with a duty under both state and federal law to respond in writing to the comments received on the EWMPs. The Regional Board has yet to comply with the requirements for written responses to comments, but the decision timetable on the EWMPs allows for the Regional Board to cure this error. We urge the Board to do so.

Sincerely,

Arthur Pugsley
Senior Attorney
Los Angeles Waterkeeper

Cc: Jennifer Fordyce, Office of Chief Counsel

ⁱ Regional Board Member Madelyn Glickfeld also expressed frustration at the public review process for the WMPs, and urged a more transparent approach to the EWMPs review. (See Transcript of September 10, 2015 Regular Board Meeting, pp. 318-321.)

ⁱⁱ The Environmental Groups continue to maintain that this section creates an illegal “safe harbor” provision. LA Waterkeeper and NRDC are currently pursuing state court litigation over this issue, and several others. See *Natural Resources Defense Council and Los Angeles Waterkeeper v. State Water Resources Control Board et al*, Los Angeles County Superior Court Case BS156962.

Los Angeles Regional Water Quality Control Board

April 12, 2016

Arthur Pugsley
Los Angeles Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401
arthur@lawaterkeeper.org

RESPONSE TO “WRITTEN RESPONSES TO COMMENTS RECEIVED ON ENHANCED WATERSHED MANAGEMENT PROGRAMS” (NPDES PERMIT NO. CAS004001; ORDER NO. R4-2012-0175)

Dear Mr. Pugsley:

The Los Angeles Regional Water Quality Control Board (Regional Board or Board) received your letter dated March 8, 2016, wherein you assert that both federal and California law require the Regional Board to issue written responses to comments prior to any decision by the Board or Executive Officer approving or denying the Enhanced Watershed Management Programs (EWMPs) submitted by various permittees pursuant to Part VI.C.4 of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (LA County MS4 Permit). As explained below, the Regional Board disagrees with your position. While the Board disagrees that written responses to comments are legally required prior to a decision on the adequacy of the EWMPs, the Board will nevertheless provide responses to written comments as a courtesy given the public interest on the adequacy of the EWMPs.

For ease of reference, the Regional Board’s responses below follow the format of your letter.

Contention I: The public participation process provided by the Regional Board, devoid of written responses to comments, does not ensure “rigor and accountability” in the EWMP review process

The Regional Board disagrees with this assertion. Whether the Regional Board prepares written responses to comments received on the draft EWMPs or not, the Board’s public participation process in reviewing the EWMPs is wholly consistent with the State Water Resources Control Board’s (State Water Board) expectation that there be “rigor and accountability” in the review process. As detailed below, the proposed EWMPs underwent an extensive and rigorous review by the Regional Board and the public prior to any determination on the EWMPs.

In discussing one of the components of the WMPs/EWMPs that are “essential to ensuring that the proposed WMPs/EWMPs are in fact designed to achieve receiving water limitations within the appropriate time frame,” the State Water Board noted that the proposed WMPs/EWMPs would be subject to a “public review and comment period.” As support for that statement, the State Water Board cited certain provisions of the LA County MS4 Permit, including Parts VI.A.5,

VI.C.4, VI.C.6, and Table 9. None of these provisions state or imply that written responses to comments would be prepared. In fact, nowhere in its Order did the State Water Board modify the Regional Board's public review process in the LA County MS4 Permit, or indicate any intent or expectation that the process must include written responses to comments. To read such a requirement where there is none is misplaced. As such, the assertion that the Board's review process, if the Board were not to respond to written comments, "frustrates the intent" of the State Water Board's Order lacks merit.

The Regional Board's public participation process for the proposed EWMPs has been rigorous and, in fact, has exceeded the requirements stated in the LA County MS4 Permit. Part VI.A.5.b. of the LA County MS4 Permit requires a 30-day public comment period for all documents submitted to the Regional Board's Executive Officer for approval. On July 1, 2015, the Regional Board provided public notice and a 61-day period to allow for public review and written comment on the draft EWMPs. A separate notice of availability regarding the draft EWMPs was directed to State Senators and Assembly Members within the coastal watersheds of Los Angeles County. At its regularly scheduled Board meeting on July 9, 2015, the Board held its first public workshop on the draft EWMPs, where permittees and interested persons were provided an opportunity to address the Board. By the end of the written comment period, the Board had received four written comment letters in total.¹ These comment letters were immediately posted on the Regional Board's website for all permittees, as well as other stakeholders, to see.

During the public comment period, the draft EWMPs underwent extensive review by Regional Board staff. In conducting its review, Board staff developed a list of review and evaluation questions, which was used to ensure a comprehensive and consistent review of the draft EWMPs relative to permit requirements. Each EWMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. C.P. Lai. Lead staff were overseen by the MS4 Unit Chief, Mr. Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy. On the basis of Board staff's review, and in consideration of written and oral comments made by interested persons during the public comment period and first workshop, the Board sent letters to each EWMP group in October 2015 detailing the Board's comments on the draft EWMP and identified the revisions that needed to be addressed prior to the Board's approval of the EWMP. Where Board staff agreed with public comments, the comments were incorporated into the Board's review letter on the draft EWMP to ensure that the public's comments were addressed in the revised EWMPs. The EWMP groups were directed to submit revised draft EWMPs addressing the Board's comments.

On November 5, 2015, again during its regularly scheduled Board meeting, the Board held a second public workshop on the draft EWMPs. Board staff made a presentation on their review of, and comments on, the draft EWMPs. Permittees gave brief presentations on their draft EWMPs and interested persons were also provided an opportunity to comment. After the permittees' submitted their revised EWMPs, the Board held a third public workshop on March 3, 2016 for permittees and interested persons to comment on and discuss the revised EWMPs with the Board's Executive Officer, Board members, and Board staff. In reviewing the revised

¹ The comment letter submitted by the Construction Industry Coalition on Water Quality (CICWQ) had comments on the twelve EWMPs generally. The comment letter submitted jointly by NRDC, Heal the Bay, and Los Angeles Waterkeeper contained specific comments on four of the twelve EWMPs. The two remaining letters, from the Los Angeles County Sanitation Districts and Ms. Joyce Dillard, contained specific comments on various EWMPs.

EWMPs, the Board again considered the written comments received and oral comments made at the three public workshops.

In addition to the written public comment period and Board workshops, during the EWMP review process, Board staff also had several meetings, telephone exchanges, and email exchanges with permittees and interested persons to discuss the draft and revised EWMPs, including, but not limited to, Board's staff's questions and comments, comments received, and potential revisions to the draft and revised EWMPs.

Lastly, the Regional Board's rigorous public participation process is wholly consistent with the State Water Board's clear expectation that the process "vet the proposed WMPs/EWMPs and facilitate revisions to strengthen the programs as needed." Through the process described above - including a two-month public review and written comment period, three public workshops, detailed review by Regional Board staff, and numerous phone calls, emails, and meetings with permittees and interested persons over an approximately 11-month period - there is no doubt that the proposed EWMPs have been fully vetted. Throughout the process, either based on its independent review and/or in response to written and oral comments, the Board has requested that permittees revise their proposed EWMPs as necessary in order to comply with the LA County MS4 Permit.

Contention II: The Clean Water Act requires the Regional Board to prepare and circulate responses to comments received on draft EWMPs

Neither the Clean Water Act, nor its regulations, require the Regional Board to prepare written responses to comments on the draft EWMPs. Much of your assertion is premised on the belief that an approved EWMP modifies or amends the LA County MS4 Permit, because an approved EWMP becomes substantive terms of the permit, and therefore is subject to the response to comments requirement in Title 40, Code of Federal Regulations (40 CFR), section 124.17. As purported support for your assertion, you state that approval of an EWMP constitutes a "final permit decision" as defined in 40 CFR section 124.15(a). This is incorrect. The U.S. Environmental Protection Agency (USEPA) defines a "final permit decision" in 40 CFR section 124.15(a) as "a final decision to issue, deny, modify, revoke and reissue, or terminate a permit." The decision to approve or deny an EWMP does not constitute any of these.² An approved EWMP is not issuance of a new permit and it does not modify the LA County MS4 Permit or amend any of its terms. The terms of the Permit remain unchanged, including the non-stormwater discharge prohibitions, receiving water limitations, and water quality-based effluent limitations. Approved EWMPs implement the terms of the Permit by detailing the specific actions and milestones a Permittee will abide by to achieve compliance with the specific requirements of the Permit, including receiving water limitations and, in some cases, numeric effluent limitations.

² Further, it must be noted that the definition of "final permit decision" is not applicable to States. 40 CFR section 124.17 distinguishes between when USEPA is the permitting authority and when States are the permitting authority. When USEPA is the permitting authority, it must issue responses to comments at "the time that any *final permit decision* is issued under §124.15." (emphasis added.) When States are the permitting authority, as in the case of California, they are "only required to issue a response to comments when a final permit is issued."

Moreover, *Environmental Defense Center, Inc. v. EPA*³ is not on point here and is clearly distinguishable. In that case, environmental, municipal, and industry groups sought judicial review of USEPA's rule regarding Phase II MS4s. Under the rule, small MS4s could seek permission to discharge by submitting an individualized set of best management practices (BMPs) in six specific categories, either in the form of an individual permit application or in the form of a notice of intent (NOI) to comply with a Phase II general permit. The NOI required the inclusion of a proposed storm water management program (SWMP). The general permitting approach, however, did not require that permitting authorities actually review a NOI before the party who submitted the NOI was allowed to discharge. According to the rule, submitting a NOI constituted compliance with the maximum extent practicable (MEP) standard for small MS4s. The environmental groups contended that the general permitting scheme of the rule allowed small MS4s to design their own stormwater pollution control programs without adequate regulatory and public oversight, and that it contravened the Clean Water Act because it did not require USEPA to review the contents of the NOIs to ensure that it complied with the MEP standards and did not contain express requirements for public participation in the NPDES permitting process. As such, the environmental groups argued that, by allowing permitting authorities to grant dischargers permits based on unreviewed NOIs, the rule created an impermissible self-regulatory system.⁴ The Ninth Circuit Court of Appeal agreed with the environmental groups in that respect, holding that USEPA had failed to require review of NOIs assuring compliance with Clean Water Act standards prior to discharge.⁵ The court found that the procedures for submitting NOIs and obtaining approval to discharge were defective because, it concluded, the NOI itself was in essence a permit where a small MS4 could decide for itself what reduction in discharges would meet the MEP standard; therefore, the NOI must be subject to public review and participation.⁶ The court held: "[S]tormwater management programs that are designed by regulated parties must, in every instance be subject to meaningful review by an appropriate regulatory entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable."⁷

An EWMP for the LA County MS4 Permit is not subject to the same level of public participation as the Ninth Circuit determined was required for the NOI for the Phase II MS4 rule in the *Environmental Defense Center* case. As an initial matter, the *Environmental Defense Center* case concerned issuance of a new permit to a discharger, which is not applicable here. Unlike the Phase II NOI (where mere submittal of the NOI authorized the party who submitted the NOI to discharge), submittal of a proposed EWMP is not a request to discharge nor is approval of an EWMP authorization to discharge. The LA County MS4 Permit itself, which was issued in November 2012 and was subject to all legally required public participation requirements, already authorizes permittees to discharge subject to the terms of the Permit. In addition, the court's decision is limited to permits where the permit allows the discharger to craft its own requirements absent detailed requirements and criteria from the permitting entity. The LA County MS4 Permit is nothing like the general permitting scheme discussed in that case. The LA County MS4 Permit contains clear performance standards in order to meet the federal

³ (9th Cir. 2003) 344 F.3d 832.

⁴ *Id.* at p. 854.

⁵ *Id.* at p. 858.

⁶ *Id.* at p. 855.

⁷ *Id.* at p. 856.

technology-based and water quality-based standards of the Clean Water Act, including, a non-stormwater discharge prohibition, receiving water limitations, minimum control measures, and water quality-based effluent limitations. Although Part VI.C. of the permit gives permittees the option to develop an EWMP to implement permit requirements on a watershed scale through customized strategies, control measures, and BMPs, the permit itself contains detailed requirements and criteria for what an EWMP must include and what standards permittees must meet. Permittees must perform reasonable assurance analyses demonstrating that the watershed control measures (i.e., BMPs) that they propose to implement through the WMPs/EWMPs are reasonably expected to lead to attainment of the numeric limitations to which their MS4 discharges are subject. Permittees must also continue to adapt their EWMP, as necessary, to ultimately ensure that MS4 discharges do not cause or contribute to exceedances of applicable receiving water limitations. Clearly, this is not a situation where the permittees are “writing their own permits.” Further, as described above, the EWMPs have been subject to “meaningful review.” The EWMPs have undergone extensive review by the Regional Board to assure compliance with the standards set forth in the Permit. The public has also had a meaningful opportunity to participate in the EWMP review process, including at Board workshops, as well as an opportunity to submit written comments. Moreover, the public has had ample access to EWMP documentation via the Regional Board’s website, including, but not limited to, the draft EWMPs, public comments on the draft EWMPs, the Board’s comments on the draft EWMPs, and the revised EWMPs. Therefore, as the actions are distinguishable, it is not appropriate to extend the court’s decision on the Phase II NOIs to the EWMPs.

Reliance on *Waterkeeper Alliance, Inc. v. United States EPA*⁸ is likewise misplaced. There, environmental and farm groups challenged USEPA’s confined animal feeding operation (CAFO) rule. The rule included the requirement that each CAFO develop and implement a nutrient management plan that was, in part, required to meet non-numeric effluent limit guidelines in the form of BMPs. However, again, the rule did not require that permitting authorities review the nutrient management plans developed by CAFOs to ensure that each plan complied with all applicable requirements in the rule prior to issuing a permit that authorizes discharges. The environmental groups argued that the CAFO rule created an “impermissible self-regulatory permitting regime” by empowering permitting authorities to issue permits to large CAFOs in the absence of any meaningful review of the nutrient management plans the CAFOs developed, and that the permitting scheme violated the Clean Water Act’s public participation requirements. For essentially the same reasons given in *Environmental Defense Center*, which the court discussed, the court agreed that the CAFO rule violated the Clean Water Act because it allowed dischargers to write their own nutrient management plans without public review.⁹ For the same reasons given for the *Environmental Defense Center* case, an EWMP for the LA County MS4 Permit is not subject to the same level of public participation as the Second Circuit Court of Appeal determined was required for nutrient management plans under the CAFO rule as: 1) the LA County MS4 Permit, rather than the individual EWMPs, authorize discharges and therefore EWMPs are not new permits, 2) the LA County MS4 permittees are not “writing their own permit” as the permit contains specific and detailed performance standards that EWMPs must meet in order to comply with Clean Water Act requirements, 3) the proposed EWMPs have been subject to meaningful review, both by the Regional Board and members of the public, and 4) the public has had access to relevant EWMP documentation through the Regional Board’s website.

⁸ (2d Cir. 2005) 399 F.3d 486.

⁹ *Id.* at 499-504.

Because the approval of an EWMP does not constitute the permit or amend the permit, the Clean Water Act does not require the Regional Board to prepare written responses to comments on the draft EWMPs.

Assuming, *arguendo*, that federal regulations require the Regional Board to issue written responses to comments on the draft EWMPs, 40 CFR section 124.17 does not require that responses to comments be issued *prior to* any determination approving or denying the EWMPs as you assert. When applicable, 40 CFR section 124.17 provides that responses to comments shall be issued “when a final permit is issued,” not “before a final permit is issued” or even “at the same time that the permit is issued.” The Regional Board interprets section 124.17 as allowing issuance of responses to comments prior to an EWMP determination, at the same time as the determination, or within a reasonable time after the determination.

Contention III.a: The Porter-Cologne Act requires written responses to comments from the Regional Board

You assert that the Porter-Cologne Water Quality Control Act also requires written responses to comments because the Porter-Cologne Water Quality Control Act incorporates all federal Clean Water Act requirements, including federal regulations. For the reasons explained above, the Regional Board disagrees that the federal Clean Water Act, and federal regulations, requires written responses to comments prior to any decision on the adequacy of the EWMPs.

Contention III.b: The California Environmental Quality Act (CEQA) applies to the approval or denial of the EWMPs, and independently requires written responses to comments from the Regional Board

The Regional Board disagrees that CEQA applies to the approval or denial of EWMPs and requires written responses to comments.¹⁰ CEQA does not apply to the Regional Board’s issuance of NPDES permits, except permits for new sources.¹¹ As such, the Regional Board was not required to conduct an environmental review and issue either an environmental impact report or negative declaration when issuing the LA County MS4 Permit. Actions related to the NPDES permit, such as approval or denial of plans, are likewise exempt from CEQA.

As you note, this issue was previously addressed in relation to the 2001 LA County MS4 Permit in *County of Los Angeles v. State Water Board*. There, the municipalities alleged that, while the Regional Board was exempt from Chapter 3 of CEQA, the Regional Board was nevertheless required to comply with the “policy” requirements in Chapter 1. The Los Angeles County Superior Court disagreed, concurring with the Regional Board that the issuance of the permit “was exempt from all aspects of CEQA.”¹² As the court stated, requiring the Regional Board to comply with certain policy aspects of CEQA “would render the Regional Board’s exemption from

¹⁰ In your letter, you assert that Chapter 2 remains applicable to the Regional Board. Chapter 2 of CEQA concerns the short title to CEQA. We assume that you intended to assert that Chapter 2.6 remains applicable.

¹¹ See Cal. Code Regs., tit. 14, § 15263; Wat. Code, § 13389; Cal. Code Regs., tit. 23, § 3733. Stormwater and non-stormwater discharges regulated by the MS4 permit are not new sources as defined in Title 40, Code of Federal Regulations, sections 122.2 and 122.29.

¹² *In re L.A. County Municipal Storm Water Permit Litigation* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005), Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, p. 10.)

this requirement illusory.”¹³ On appeal, the municipalities argued that the Regional Board was required to comply with both Chapters 1 and 2.6. The Second District Court of Appeal agreed with the Los Angeles County Superior Court. After discussing the legislative history of Water Code section 13389 and certain provisions in Chapter 2.6 of CEQA, the court specifically rejected the argument that the California Legislature, in enacting Water Code section 13389, did not intend to obviate duties pursuant to Chapter 2.6 of CEQA.¹⁴ Further, the court noted that the municipalities cited “no evidence the Legislature ever intended to: impose a duty of regional boards to prepare environmental impact reports; require regional boards to engage in any other form of environmental review specified in the California Environmental Quality Act; or to otherwise modify Water Code section 13389.”¹⁵

Further, the Regional Board’s position is not in conflict with the California Supreme Court’s decision in *Mountain Lion Federation v. Fish and Game Commission*.¹⁶ In that case, the California Supreme Court determined that nothing in the language or history of CEQA or the California Endangered Species Act (CESA) indicated that the Legislature intended the Fish and Game Commission to be exempt from CEQA when carrying out its responsibilities under CESA.¹⁷ In contrast, the Legislature expressly created a statutory CEQA exemption for the Water Boards’ issuance of NPDES permits. The California Supreme Court noted that the “Legislature has provided that certain projects are exempt from the requirements of CEQA” and that it was evident that “the Legislature knows how to create such an exception when one is intended.”¹⁸ Notably, the court specifically cited Water Code section 13389 as an example of a statutory CEQA exemption. Further, while the court found that the Fish and Game Commission was not impliedly exempt from CEQA, it did find that the Commission’s delisting program was subject to a more limited environmental review through a certified regulatory program under Public Resources Code section 21080.5.

The petitioners in *County of Los Angeles v. State Water Board, supra*, specifically argued that modification of a stormwater management plan and the permittees’ development planning program, a component of the stormwater management plan, were subject to CEQA. The court found the entire permit to be exempt from all aspects of CEQA. Therefore, as a regional water board’s issuance of NPDES permits or modification of stormwater management plans is completely exempt from CEQA, CEQA does not require the Regional Board to prepare written responses to comments before making determinations on the adequacy of the EWMPs.

Lastly, even if CEQA applied, it would only require responses to CEQA comments, not to comments on the draft EWMPs and whether they comply with the Clean Water Act or the LA County MS4 Permit.

¹³ *Id.* at 11.

¹⁴ *County of Los Angeles v. California State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 1004-1006.

¹⁵ *Id.* at 1007.

¹⁶ (1997) 16 Cal.4th 105.

¹⁷ *Id.* at 116.

¹⁸ *Ibid.* -

Contention IV: Written responses to comments received on the EWMPs from the Regional Board are critical to provide uniformity and transparency to the EWMP approval process

In addition to providing "rigor and accountability," the Regional Board's EWMP review process, with or without written responses to comments, also provided uniformity and transparency. As previously described, the proposed EWMPs have undergone extensive review by the Regional Board. This level of review has been consistent for all proposed EWMPs. In conducting its review of the draft EWMPs, Board staff developed a list of review and evaluation questions, which was used to ensure a comprehensive and consistent review of the draft EWMPs relative to permit requirements. Each EWMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. C.P. Lai. Lead staff were overseen by the MS4 Unit Chief, Mr. Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy.

Further, the Regional Board's review of the draft EWMPs has been transparent. On the basis of Board staff's review, and in consideration of written and oral comments made by interested persons during the public comment period and first workshop, the Board sent letters to each EWMP group in October 2015 detailing the Board's comments on the draft EWMP and identified the revisions that needed to be addressed prior to the Board's approval of the EWMP. Where Board staff agreed with public comments, the comments were incorporated into the Board's review letter on the draft EWMP to ensure that the public's comments were addressed in the revised EWMPs. The EWMP groups were directed to submit revised draft EWMPs addressing the Board's comments. Using the consistent review process described above, Board staff reviewed each revised EWMP to ensure that the Board's comments were addressed. Moreover, the public has had ample access to EWMP documentation via the Regional Board's website, including, but not limited to, the draft EWMPs, public comments on the draft EWMPs, the Board's comments on the draft EWMPs, and the revised EWMPs.

Conclusion

For the foregoing reasons, the Regional Board disagrees that federal and/or state law require the Regional Board to issue written responses to comments prior to any determination approving or denying the EWMPs. Nevertheless, as there is public interest in the determinations on the adequacy of the EWMPs, the Board will provide responses to written comments received as a courtesy. The Regional Board will issue such responses either before, at the same time, or within a reasonable time after determinations on the EWMPs have been made. Responses to comments will be emailed to permittees and interested persons via the LYRIS list and also posted on the Regional Board's website.

Sincerely,



Jennifer Fordyce
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