

Exhibit I

Dr. Maria de la Paz Carpio-Obeso
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Division of Water Quality
Watersheds, Oceans, and Wetlands Unit
P.O. Box 100
Sacramento, CA, 95812-0100
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Re: Los Angeles Waterkeeper and
Natural Resources Defense Council Comments;
ASBS 24 Draft Los Angeles County Compliance Plan,
Pollution Prevention Plan

Dear Dr. Carpio-Obeso,

In September of 2014, consistent with a one-year extension granted by State Board staff, Los Angeles County (“County”) and the Los Angeles County Flood Control District (“Flood District”) submitted a draft Compliance Plan (“CP”) and a draft Pollution Prevention Plan (“PPP”) pursuant to the requirements of the ASBS Exception, Resolution Number 2012-0012 as amended by 2012-0031 (“Exception”).

Los Angeles Waterkeeper (“Waterkeeper”) and Natural Resources Defense Council (“NRDC”) have had an opportunity to review the draft plans. Unfortunately, the plans fail to comply with the requirements of the Exception in numerous basic ways that prevent them from providing a means of eliminating the discharge of Waste to the ASBS. In summary, while the plans identify 1) non-stormwater discharges to the ASBS; 2) alterations of natural water quality caused by storm water discharges; and 3) storm water discharges above Ocean Plan objectives, the plans fail to propose measures to address them.

Given these failures, the plans do not comply with the requirements of the Exception and cannot serve as a basis for the County and the Flood District’s implementation of the Exception’s other substantive provisions. Waterkeeper and NRDC request that the State Board reject the draft plans, with direction to the County and Flood District to correct the plans’ deficiencies. Given that a Final CP is due in September of 2015 at the latest, Waterkeeper and NRDC request that State Board Staff act on this request promptly.

Waterkeeper and NRDC’s detailed comments follow.

I. The CP and PPP Fail to Address Non-Stormwater Discharges

The Exception allows the discharge of Waste to the ASBS only when in compliance with the terms and conditions of the Exception. Exception Att. B at I.A.1.a-d. Further, the Exception does not cover non-stormwater discharges, except for six limited categories of dry weather discharges:

- (a) Discharges associated with emergency fire fighting operations.
- (b) Foundation and footing drains.
- (c) Water from crawl space or basement pumps.
- (d) Hillside dewatering.
- (e) Naturally occurring groundwater seepage via a storm drain.
- (f) Non-anthropogenic flows from naturally occurring stream via a culvert or storm drain, as long as there are no contributions of anthropogenic runoff.

Exception Att. B at I.A.1.e. And in all events these authorized non-stormwater discharges cannot cause or contribute to violations of Ocean Plan objectives or contribute to alterations of natural water quality. Id.

Pursuant to the Exception requirements, a Compliance Plan must “describe the measures by which all non-authorized non-storm water runoff (e.g., dry weather flows) has been eliminated.” Id. at I.A.2.b. The County and the Flood District’s CP reports dry weather outfall inspections during January, February, March and April of 2012, and February, March, May and July of 2013. CP at 50-51, Table 3-3 and 3-4. The County observed dry weather discharges on 73¹ occasions on these inspections, many of them repeat observations. Some of these discharges are characterized as “Hillside dewatering,” or “Natural stream,” but the plan provides no data to support these characterizations, nor does it categorize any of the discharges as permitted or unpermitted. The CP also distinguishes, without basis, between discharges that land on the beach in the ASBS, and those that flow to the surf line. CP at 49. The CP proposes no measures beyond existing outreach programs to address these continuing violations of the Exception and Ocean Plan standards—particularly the numerous dry weather flows that the plan reports as not reaching the “surf.”

The PPP reports no dry weather inspections, and as with the CP, proposes no additional measures to address non-storm water discharges.

Given the unabated dry weather discharges from the County and Flood District’s outfalls to the ASBS, continuing the existing failed outreach and education programs will not achieve compliance with the Exception, the LA County MS4 Permit, and the Clean Water Act. The County must propose in the CP and PPP, and immediately implement, appropriate structural BMPs, such as infiltration swales, trenches, or basins, to stop dry weather discharges.

¹ This total includes non-stormwater discharges from 10 outfalls that the CP identifies as “ownership unknown.” CP at 19.

II. The CP and PPP Fail to Address the County and Flood District's Contribution to Alteration of Natural Water Quality

The Exception prohibits discharges that alter natural water quality in an ASBS. Exception Att. B. at I.A.1.b; I.A.1.e.3. The Exception provides 6 years to achieve compliance with these prohibitions. Exception Att. B. at I.A.3.e. However, the draft CP must include a strategy to comply with all special conditions, including maintaining natural water quality. Exception Att. B. at I.A.3.b; *id.* at I.A.2, 2.d., and 2.g. The draft CP must describe a time schedule to implement structural controls to meet the special conditions, and ultimately be included in the County and Flood Districts' SWMP submitted pursuant to the County MS4 Permit. *Id.* at I.A.3.b.

Further, where receiving water monitoring indicates that storm water runoff is causing or contributing to alteration of natural water quality, the County and Flood District are required to submit an additional report within 30 days of receiving the results. Exception Att. B. at I.A.2.h. The report must:

- 1) identify the constituents in storm water altering natural water quality and the source of the constituents;
- 2) describe BMPs in place, proposed in SWMPs for future implementation, and any additional BMPs to prevent alteration of natural water quality; and
- 3) provide an implementation schedule. *Id.*

Based on safety limitations and lack of discharge to receiving waters, the CP and PPP report receiving water sampling primarily at one location, S02, at a 36 inch storm drain at Escondido Beach. A single sample was collected at S01, a 60 inch storm drain at Zuma Beach. S02 was sampled during storm events on 19 February and 8 March 2013, and 28 February 2014. S01 was also sampled on 28 February 2014. CP at 61-70.²

Using the analysis required by the Exception, the CP reports that stormwater discharges from S01 and S02 contributed to alteration of natural water quality for selenium, total PAH, and mercury. CP at 67-69.

Despite this admission by the County and the Flood District that discharges from their outfalls are causing or contributing to alteration of natural water quality, neither the CP nor the PPP propose any strategy to address this violation, let alone a time schedule to implement structural controls identified by that strategy, in violation of the Exception. Exception Att. B at I.A.1.b, I.A.2, I.A.3.b and e. The CP and PPP fail to address in any way this core requirement of the Exception. The County and Flood District seem to conflate two independent requirements of the Exception. One is not to alter natural water quality. *See id.* Another is to implement BMPs to

² This sampling scheme itself violates the Exception's monitoring requirement that three samples must be collected during "each storm season." *See* Exception Att. B. at IV.B.2.b. February 2013 and February 2014 are different storm seasons.

achieve Ocean Plan limits or a 90% pollutant load reduction. *See id.* at I.A.2.d. The County and Flood District instead assume that *if* natural water quality is exceeded, then *only* the constituents that exceed natural water quality must achieve Ocean Plan limits. *See* CP at 71, 76-77. That is a misreading of the Exception.

Further, information currently available to Waterkeeper and NRDC indicates that the County and Flood District have failed to submit to the State Board the report required by Exception section I.A.2.h, due within 30 days of receiving results indicating the alteration of natural water quality. At the latest the County and Flood District received the S01 and S02 sampling results 30 days after the February 2014 sampling event, or March of 2014. All documents relating to ASBS Exception compliance for the County and Flood District in the possession of the State Board were produced to Waterkeeper in September 2014 and no such report was included. Therefore the County and Flood District have not complied with this additional reporting requirement.

III. The CP and PPP Fail to Propose BMPs to Achieve Either Ocean Plan Limits or 90% Pollutant Reduction

The Exception requires that the CP include:

BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm [that] shall be designed to achieve on average the following target levels:

- 1) Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or
- 2) A 90% reduction in pollutant loading during storm events, for the applicant's total discharges.

Exception Att. B at I.A.2.d. The County and the Flood District conducted end of pipe monitoring in 2013 and early 2014 at between 17 and 21 outfalls to the ASBS, with smaller outfall samples analyzed for a limited range of constituents. CP at 71-75. In these samples the County and the Flood District report repeated exceedances of Ocean Plan Instantaneous Maximum limits, including ammonia, cadmium, chromium, copper, lead, nickel, zinc, and high concentrations of PAH, pyrethroids, and TSS. *Id.* The County had previously reported elevated concentrations of copper, chromium, and PAH in its exception application, and the State Board documented exceedances of Ocean Plan standards of these parameters, as well as acute and chronic toxicity, in County discharges to the ASBS. *See Program Final Environmental Impact Report, Exception to the California Ocean Plan for ASBS Discharge Prohibition for Storm Water and Non-Point Source Discharges, with Special Protections* (SWRCB, 21 Feb 2012) at 212-228.

Despite reporting sampling results documenting ongoing and alarming levels of toxic and conventional pollutants discharging to the ASBS, the CP and PPP propose no strategy either to

reduce baseline pollutant loads by 90%, or to meet Ocean Plan limits. Instead, the CP argues that because discharges from S01 and S02, the only two of the County's 57 outfalls to ASBS 24 analyzed, were determined to contribute to alteration of natural water quality for selenium, total PAH, and mercury, only those pollutants need to be addressed by comparing them to Ocean Plan limits. CP at 77. This cramped and erroneous interpretation is contrary to the plain language of the Exception, which makes no link between the design standard for BMPs in the CP, and the parameters identified in the natural water quality analysis.

Because the CP and PPP fail to include a BMP strategy designed to comply with the requirements of Section I.A.2.d of the Exception, they are inadequate and must be revised.

IV. The CP and PPP Attempt to Exempt Pipes Less than 18 Inches from NPDES Permit Requirements

Under the heading *Pollution Prevention Plan Objective and Scope*, the PPP states:

This Plan focuses on source discharges not regulated under the National Pollutant Discharge Elimination System (NPDES) permit (SWRCB, 2012a). The Parties have prepared a Compliance Plan, under a separate cover, to evaluate sources regulated under the NPDES permit that include outfalls that have associated storm networks that drain significant areas and entirely or partially maintained by an agency. These NPDES permit regulated sources coincide with conveyances that are equal to or greater than 18 inches in size that discharge directly to the ASBS shoreline.

PPP at 1. The CP contains a similar statement. CP at 1 (“point sources identified in this document coincide with conveyances that are equal to or greater than 18 inches in size”).

Based on this novel definition of point source discharge and an MS4 system under the Clean Water Act, the PPP includes storm water pipes or other man made conveyances (point sources) (see, e.g., PPP at 35)—a plan limited under the terms of the Exception to Nonpoint Source Discharges. Exception at Att. B at I.B.2.

Neither the LA County MS4 Permit (NPDES Permit No. CAS004001), nor the Clean Water Act definition of Point Source Discharges include an exemption for storm water pipes of 18 inches or less, or that drain “insignificant areas.” See MS4 Permit, Attachment A (Definitions); 40 CFR 122.2; 40 CFR 122.26(b)(8)-(9). In fact 18 inch storm water pipes discharging to the Pacific Ocean are without question man made conveyances discharging to waters of the United States, and MS4 pipes covered by the LA County MS4 Permit. Similarly, gutters and drains are man-made conveyances of storm water. Further, any point source discharges not covered by the MS4 Permit are not eligible for coverage under the Exception. See Exception Att. B at I.A.1.a(1).

Because the PPP improperly includes point source discharges in a planning document limited to non-point source discharges, and the CP improperly excludes certain point source discharges, both the CP and the PPP are inconsistent with the requirements of the Exception.

V. Conclusion

The County and Flood District's draft Exception compliance documents are inconsistent with the requirements of the Exception, and as a result fail to achieve compliance with the immediate requirement for elimination of non-storm water discharges, and will fail to prevent alteration of natural water quality within the timeline set out in the Exception compliance schedule. Therefore Waterkeeper and NRDC request that State Board staff reject the plans, and direct the County and Flood District to redraft the plans to include:

- 1) An immediate plan to implement a comprehensive inspection program to identify all County and Flood District non-storm water discharges to ASBS 24;
- 2) An immediate plan to implement structural BMPs to eliminate non-storm water discharges to ASBS 24, including an implementation schedule not to exceed 12 months;
- 3) A plan to implement structural BMPs, including an implementation schedule, to achieve natural ocean water quality by 2018;
- 4) Submission of reports in accordance with Exception Att. B at I.A.2.h;
- 5) A plan to implement structural BMPs, including an implementation schedule, to achieve either compliance with Ocean Plan Objectives, or 90% reduction from baseline, on or before 2018, from *all* outfalls to the ASBS and for *all* parameters;
- 6) Proper inclusion of all point source discharges that are part of the County/Flood District MS4 in the CP, with only non-point source discharges in the PPP;
- 7) All revisions to be submitted within 120 days, to ensure approval of a compliance Final CP and PPP by September 2015.

Thank you again for your anticipated attention to this matter. Please call Liz Crosson, Executive Director of Los Angeles Waterkeeper at (310) 394-6162 x100 with questions about any of the above.

Regards,



Liz Crosson
Los Angeles Waterkeeper