

Exhibit J: Upper Santa Clara River Enhanced Watershed Management Program Work Plan and Coordinated Integrated Management Program

The Natural Resources Defense Council (“NRDC”), Heal the Bay, and Los Angeles Waterkeeper (“LAWK”) (collectively, “Environmental Groups”) have identified several concerns with the Enhanced Watershed Management Program Work (“EWMP Work Plan”)¹ and the Draft Coordinated Integrated Monitoring Program (“Draft CIMP”)² for the Upper Santa Clara River Watershed submitted by the City of Santa Clarita, County of Los Angeles, and Los Angeles County Flood Control District, collectively the Upper Santa Clara River Watershed Management Group, which we discuss below.

This discussion, however, is not intended to provide an exhaustive list of deficiencies of the EWMP Work Plan and the Draft CIMP. For Environmental Groups’ additional comments in response to the Upper Santa Clara River Watershed EWMP Work Plan and Draft CIMP, please see Environmental Groups’ September 16th letter to the Los Angeles Regional Water Quality Control Board (“Regional Board”),³ submitted under separate cover.

I. Specific Comments to the EWMP Work Plan for the Upper Santa Clara Watershed

A. The Source Assessment Improperly Determines Criteria for Pollutant Removal from the Priority List

In addition to evaluating existing water quality conditions, permittees are required to classify and prioritize pollutants in each sub-watershed. (Permit, at VI.C.5.a.ii.) Permittees must prioritize pollutants into three categories: (1) TMDL pollutants (highest priority), (2) 303(d) listed pollutants with no applicable TMDL (high priority), (3) pollutants with insufficient data to determine impairment, but which exceed receiving water limitations (“RWLs”) (medium priority). Category (1) must also include non-TMDL pollutants that have similar fate and transport mechanisms as TMDL pollutants. (*Id.* at VI.C.2.a.i.)

Permittees in the Upper Santa Clara River Watershed Management Group suggest an improper process for changing the priority status of pollutants. Specifically, the EWMP Work Plan states

¹City of Santa Clarita, County of Los Angeles, and Los Angeles County Flood Control District (June 2014) EWMP Work Plan for the Upper Santa Clara River Watershed Management Area Group (“Upper Santa Clara River EWMP”).

²City of Santa Clarita, County of Los Angeles, and Los Angeles County Flood Control District (June 2014) CIMP for the Upper Santa Clara Watershed Management Area Group (“Upper Santa Clara River CIMP”).

³Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay. "Comments on Enhanced Watershed Management Program Work Plans and Monitoring Plans Pursuant to Requirements under the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. R4-2012-0175." Letter to California Regional Water Quality Control Board, Los Angeles Region. 16 Sept. 2014.

that “as the monitoring progresses, source assessments occur, and BMP implementation begins, constituents may change subcategories. Constituents for which exceedances decrease over time will be removed from the priority list and moved to the monitoring priority categories; or, dropped from the priority list.”⁴ However, a decrease in exceedances is not an acceptable standard for re-categorizing pollutants. Under the 2012 Permit, a pollutant’s classification is determined by a TMDL, its 303(d) status, or the presence of RWL exceedances. (2012 Permit, at VI.C.2.a.i.)

B. Water Quality Priorities are not in Compliance with Permit Requirements

The EWMP Work Plan states that “the City of Santa Clarita is identified in Attachment K as being a responsible party for the Los Angeles River Trash, Nitrogen Compounds and Related Effects, Metals and Bacteria TMDLs. However, as discussed in the geographic scope, the City has no MS4 discharges to the Los Angeles River.”⁵ If a permittee is a responsible party with associated waste load allocations, these waterbody/pollutant concentrations must be prioritized in accordance with section VI.C.2.a.i. of the Permit. However, the EWMP Work Plan fails to include priority pollutants for Los Angeles River TMDLs despite the City of Santa Clarita’s inclusion as a responsible party under those TMDLs.

C. Watershed Control Measures are not in Compliance with Permit Requirements

a. Distributed BMPs

The Permit allows additional time for program development where permittees elect to develop an *enhanced* Watershed Management Program (EWMP) that

comprehensively evaluates opportunities, within the participating Permittees’ collective jurisdictional area in a Watershed Management Area, for collaboration among Permittees and other partners on multi-benefit **regional projects that, where ever feasible**, retain (i) all non-storm water runoff and (ii) all storm water runoff from the 85th percentile, 24-hour storm event for the drainage areas tributary to the projects, while also achieving other benefits including flood control and water supply, among others.

(Permit, at VI.C.1.g., emphasis added). The EWMP Work Plan states that “It is important to note that retention of the design storm volume could be achieved through networks of distributed BMPs (not just regional BMPs).”⁶ The Work Plan should clarify that regional projects must be prioritized where ever feasible.

b. Minimum Control Measures (“MCMs”) Appear to be Improperly Eliminated

⁴ Upper Santa Clara EWMP Work Plan, at 4-9.

⁵ *Id.*, at 3-4.

⁶ *Id.*, at 5-1.

The Permit allows for customization of MCMs: “Each Permittee shall implement the requirements in Parts VI.D.4 through VI.D.10 below, or may in lieu of the requirements in Parts VI.D.4 through VI.D.10 implement customized actions within each of these general categories of control measures as set forth in an approved Watershed Management Program per Part VI.C. Implementation shall be consistent with the requirements of 40 CFR § 122.26(d)(2)(iv).” (Permit, at VI.D.1.a.) However, the EWMP Work Plan suggests that MCMs may be eliminated entirely.⁷ While customization with appropriate justification is acceptable under the Permit, elimination of MCMs is not contemplated. Thus, the Work Plan should be modified accordingly.

Further, it is unclear how the permittees will have sufficient data to consider a modification to MCMs, as the EWMP Work Plan plainly states that “stormwater and non-stormwater discharges have not been well characterized within the watershed. No data were available for assessment...”⁸ The EWMP Work Plan should show how data will be reviewed to evaluate the MCMs that have been implemented in accordance with the previous MS4 permits.

c. Insufficient Identification of Potential Regional EWMP Projects

The Upper Santa Clara River EWMP Work Plan⁹ describes how, after initial potential BMP site identification and characterization, “the top 5 sites” identified as potential regional projects will be further investigated.¹⁰ This process appears arbitrary, as the five specific projects have yet to be identified or evaluated to see whether they will be sufficient for compliance with Permit requirements, and no justification is provided as to why additional projects would not be investigated or would be deemed infeasible. Additionally, the Upper Santa Clara River EWMP Work Plan states that distributed BMPs may achieve the retention requirement.¹¹ However, the permit requires multi-benefit *regional* projects wherever feasible and the EWMPs must therefore prioritize and evaluate the technical feasibility of regional projects throughout the watershed. (*Id.*, at VI.C.1.g.)

⁷ *Id.*, at 5-7.

⁸ *Id.*, at 4-2.

⁹ The Upper Santa Clara River EWMP Work Plan has additional deficiencies that must be addressed in the EWMP submitted in July 2015. For example, permittees state that enhanced street sweeping and irrigation control as well as break pad replacement may be included in modeling. *See* Upper Santa Clara River EWMP Work Plan, at 5-19. If so, permittees must also include justification for any assumed pollution reduction from these activities. The Upper Santa Clara River EWMP Work Plan also suggests that MCMs may be eliminated and that details on distributed and institutional BMPs will not be provided. While MCMs may be modified with justification, the 2012 Permit does not contemplate elimination. Further, BMP specificity is required by the permit for *all* proposed BMPs. Upper Santa Clara River EWMP Work Plan, at 5-7.

¹⁰ *Id.* EWMP Work Plan, at 5-9.

¹¹ *Id.* at 5-1.

D. The RAA Contains Numerous Deficiencies

a. Load-based Numeric Goals

The EWMP Work Plan states that the modeling will include “an evaluation of [the] potential impact of incorporating a high flow suspension” and “a potential water effects ratio.”¹² The Los Angeles Basin Plan¹³ does not provide a high-flow suspension provision for the Santa Clara River and for waterbodies without engineered channels. Thus, there is no reason for high flow suspension to be modeled. Further, relying on future legislative or policy changes to reduce current pollutant loads and to justify proposed management actions is speculative and improper.

b. Institutional BMPs

The EWMP Work Plan states that enhanced street sweeping, enhanced irrigation control, and break pad replacement may be included in the modeling.¹⁴ If this is the case, the EWMP should provide evidence or analysis to substantiate how these practices will actually achieve reduction in pollutant loads. Specificity must be provided on how these practices will differ from baseline programs and where and when they will be implemented. There must also be a guarantee that these programs will be implemented in an effective and comprehensive manner.

c. Additional Capacity

The EWMP Work Plan states that “in some cases, the suite of BMPs...may not be sufficient to meet the Numeric Goals for some watersheds...Over the course of the EWMP implementation, this additional capacity will be sought and identified.”¹⁵ Under this scenario, it is unclear how the RAA will demonstrate compliance with load-based and volume-based requirements, and the EWMP Work Plan should clarify this issue.

d. Structural and Non-Structural BMPs

The EWMP Work Plan states that details will be provided for Regional BMP projects but not for distributed and institutional BMPs. However, BMP specificity is a requirement of the Permit. The Permit requires that, “[e]ach plan shall include...[f]or each structural control and non-structural best management practice, the number, type, and location(s) and/or frequency of implementation.” (Permit, at VI.C.5.b.iv(4).) Permittees must also specify interim milestones and dates for achievement for each structural and non-structural BMP. The EWMP must also outline an estimate of the water supply benefit from the selected BMP.

¹² *Id.*, at 5-16.

¹³ Amendment to the Water Quality Control Plan – Los Angeles Region to Suspend the Recreational Beneficial Uses in Engineered Channels during Unsafe Wet Weather Conditions, July 10, 2003.

¹⁴ Upper Santa Clara River EWMP, at 5-19.

¹⁵ *Id.*, at 5-22.

II. Draft Coordinated Integrated Monitoring Program

A. Stormwater Outfall Monitoring is Inadequate

a. Stormwater Outfall Monitoring Locations

The Permit requires: (1) at least one outfall monitoring location per permittee per subwatershed (HUC 12); (2) selected outfall(s) be representative of land uses within Permittee's jurisdiction. (Permit, Attachment E, at VII.A.1). The CIMP, however, does not include any maps delineating MS4 catchment drainages and outfalls, subwatershed boundaries (i.e., HUC-12 boundaries), or land uses within the EWMP Group area, all of which are Permit requirements. Without the inclusion of the required information noted above, it is difficult for the Regional Board and the public to properly assess whether there are a sufficient number of outfall monitoring locations per HUC-12 and whether monitoring locations are representative of land uses.

The CIMP states that six outfalls were selected as representative of the seven HUC-12s that have major outfalls within their drainage area.¹⁶ It is unclear how many HUC 12 subwatersheds are located within the EWMP group area. The EWMP Work Plan should clarify whether the Upper Santa Clara River Watershed Management Group is only targeting HUC-12s with major outfalls located within them. To do so would fail to comply with Permit requirements. Further, the Upper Santa Clara River CIMP identifies several unmonitored tributaries within the EWMP area, which, without a land use map, prevents adequate evaluation.¹⁷ Additionally, the Draft CIMP states that land use calculations for representative outfall monitoring are taken from 2005 data.¹⁸ Permittees should explain their reasoning for using data that are nearly 10 years old, particularly given that significant new development has occurred in Santa Clarita since 2005. The Draft CIMP compares HUC-12 land use with outfall drainage land use;¹⁹ Salt Canyon, Sand Canyon, and South Fork Santa Clara River outfall monitoring locations are not representative of land uses within the HUC-12.

b. Stormwater Outfall Monitoring Schedule

The Draft CIMP states that "stormwater outfall monitoring will follow a phased approach, with two outfalls being monitoring the first year, an additional two outfalls the second year, and finally all outfalls the third year."²⁰ The Draft CIMP, however, does not justify this monitoring schedule, which includes an excessively long timeframe to commence data collection of all stormwater outfalls six years after permit adoption. Additionally, the Draft CIMP proposes to conduct all monitoring via grab samples. Grab sample monitoring does not warrant a three phased stormwater outfall monitoring schedule. Furthermore, given that all sampling will be

¹⁶ Upper Santa Clara River CIMP, at 11.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 11.

¹⁹ *Id.* at 15 (Figure 5).

²⁰ *Id.* at 19.

done via grab samples (except at mass emission site SNTCR_6_ME), it is a matter of concern whether the EWMP group will be able to conduct timely sampling at all monitoring locations during a single storm event.

B. Non-Stormwater TMDL Outfall Monitoring may not be Representative

The Draft CIMP states that “the stormwater outfall monitoring sites identified in Section 4.2 [of the Draft CIMP] will be used for NSW TMDL outfall compliance monitoring locations. Per the Bacteria TMDL, the outfall monitoring sites shall be “an adequate number of representative outfalls.”²¹ Using unsupported “representative” stormwater outfall monitoring sites, reason noted above (a. Stormwater Outfall Monitoring Locations), for non-stormwater water quality-based effluent limits compliance is inappropriate.

C. Non-Stormwater TMDL Outfall and Significant Non-Stormwater Outfall Monitoring are Inadequate

a. Non-Stormwater TMDL Outfall and Significant Non-Stormwater Outfall Monitoring Locations

The Permit requires outfalls not subject to dry weather TMDLs to be monitored four times per year (approximately quarterly) during dry weather. (Permit, Attachment E, at IX.G.3). The Draft CIMP only proposes non-stormwater TMDL outfall and significant non-stormwater outfall monitoring twice annually to coincide with receiving water monitoring.²² This approach does not follow Permit requirements, which state that four dry weather sampling events must be conducted annually for non-stormwater TMDL outfall and significant non-stormwater outfall monitoring. (Permit, Attachment E, at IX.G.3)

b. Significant Non-Stormwater Outfall Monitoring Methods

The Draft CIMP states that “[f]or significant [non-stormwater] outfalls identified through the non-stormwater outfall screening process, samples will only be collected if the discharge could reach the receiving water. If the receiving water is not flowing or if it is not possible for the discharge to reach the receiving water, then the non-stormwater discharge will not impact the receiving water and does not need to be monitored.”²³ The Santa Clara River is one of the last remaining natural river systems in southern California. There is no justification for not monitoring its non-stormwater flows because the receiving water is not flowing or if it is not possible for the discharge to reach the receiving water, as the non-stormwater flows should not exist. Further, the Draft CIMP does not define “flow” to clarify whether it includes subsurface flows. If so, it is important to note that a lack of surface flow does not denote no flow in fluvial systems. Additionally, it is unclear who will determine if a discharge will reach a receiving water. The reasoning for not conducting monitoring for significant non-stormwater is invalid.

²¹ *Id.*, at 15.

²² *Id.*, at 18.

²³ *Id.*, at 28

All significant non-stormwater flow must be monitored to ensure that water quality standards are not exceeded.

D. Timing and circumstances of Wet Weather Sampling Collection are Improper

The Permit requires permittees to monitor receiving water and outfalls during the first storm event of the storm year with a predicted rainfall of at least 0.25 inch at a 70 percent probability of rain at least 24 hours prior to event start time.” (Permit, Attachment E, at VI.C.1.b.iii. and VIII.B.1.b.iii.). The Draft CIMP states that “wet weather sampling will be triggered by the prediction of a storm of 1 inch or greater with a 70 percent probability of rainfall at least 24 hours prior to the event start time.”²⁴ The proposed wet weather sampling collection trigger does not comply with Permit requirements. In addition, the reasoning in Attachment F for a 1 inch or greater precipitation trigger is insufficient to warrant this monitoring change. Further, as proposed, it is uncertain if any wet weather rain events will be monitored in the EWMP Group area, as monitoring triggers for wet weather events other than the first storm are not defined in the submitted CIMP. From the language, it appears that only storm events of 1 inch or greater will be monitored. If so, this monitoring schedule does not comply with Permit requirements.

E. Table E-2 Monitoring Parameters do not Comply with Permit Requirements

The Draft CIMP states that “parameters in Table E-2 of the MRP will not be monitored during the first year if they have not been detected at any monitoring location in the past ten year of monitoring.”²⁵ This approach to table E-2 pollutant monitoring in receiving water and outfall locations does not comply with Permit Requirements. All E-2 parameters must be monitored during the first significant storm event, as defined by the 2012 Permit.

F. Toxicity Monitoring is Inadequate

Permittees are required to conduct aquatic toxicity testing as part of their receiving water, storm water outfalls, and non-stormwater outfalls monitoring. When conducting aquatic toxicity monitoring, Permittees are required to select the most sensitive species, from a list of Regional Board- designated vertebrate, invertebrate, and plant species, for toxicity testing in fresh and saline environments. (Permit, Attachment E, at XII.G.3.). However, the Draft CIMP forgoes the sensitivity screening process for freshwater species, and defers to the *Ceriodaphnia dubia* (water flea) as the most sensitive species.²⁶ U.S. Environmental Protection Agency (“EPA”) studies show that water fleas are more sensitive to metals and pesticides compared to other screening species required by the Permit.²⁷ However adopted Santa Clara River TMDLs are for salts, nutrients, bacteria, and trash. Although high concentrations of pesticides and metals are present

²⁴ *Id.*, at 20.

²⁵ *Id.*, at 21.

²⁶ *Id.*, at F-10.

²⁷ United States Environmental Protection Agency (EPA). 2007. Aquatic Life Ambient Freshwater Quality Criteria – Copper. February. EPA-822-R-07-001.

in EWMP Group area water bodies, this does not warrant the dismissal of other sensitivity screenings for toxicity testing.

The Draft CIMP also fails to include wet weather freshwater chronic toxicity testing because “[u]tilization of chronic tests to assess wet weather samples generates results that are not representative of receiving water conditions...”²⁸ This statement is unsubstantiated; indeed, receiving water pollutant loading can last up to seven days during and following rain events. In addition, both acute and chronic toxicity testing must be conducted to identify stormwater impacts on aquatic species.

When aquatic toxicity testing indicates survival or sublethal Percent Effects Values equal to or greater than 50 percent for the instream waste concentration, TIE and subsequent TRE, if triggered, analyses are required to identify management options for toxic pollutants. No later than 30 days after the sources of toxicity and appropriate BMPs are identified, Permittees are required to submit a TRE Corrective Action Plan to the Regional Water Board Executive Officer for approval. (Permit, Attachment E, at XII.). The Draft CIMP proposes to conduct follow up, confirmation, and aquatic toxicity analyses, within two weeks of receiving initial sample results, before then conducting a TIE when sublethal Percent Effect Values are equal to or greater than 50 percent. This is concerning, as water chemistry can fluctuate greatly between initial sampling and following-up sampling. Furthermore, the Draft CIMP proposes to meet TRE requirements through the bi-annual adaptive management process, rather than through the submittal of a TRE Corrective Action with CIMPs. Thus, management actions addressing aquatic toxicity may take up to two years for implementation. These aquatic toxicity methodology modifications fail to comply with the Permit.

G. The Draft CIMP Improperly Relies on Adaptive Management

The Draft CIMP proposes to use the adaptive management process annually to evaluate the CIMP and update their monitoring requirements as necessary.²⁹ Adaptive management should only occur every two years as denoted in Section VI.C.8. of the 2012 Permit. Furthermore, the Upper Santa Clara River CIMP identifies several components of the monitoring program that are likely to change in the future (i.e. monitoring frequency, constituent monitoring, relocating outfalls, etc.), however the CIMP states that it will not be necessary to obtain Regional Board approval for these modifications, as they will have been identified in the CIMP.³⁰

²⁸ Upper Santa Clara River CIMP, at F-11.

²⁹ Upper Santa Clara River CIMP, at 45.

³⁰ *Id.* at 45.