



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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August 3, 2015

IN REPLY PLEASE
REFER TO FILE **WM-11**

Ms. Renee Purdy, Chief
Regional Programs Section
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Dear Ms. Purdy:

**LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM
SEWER SYSTEM PERMIT – RESPONSE TO PETITION
FOR REVIEW OF WATERSHED MANAGEMENT PROGRAM APPROVALS**

Enclosed are the County of Los Angeles' and Los Angeles County Flood Control District's written comments in response to the Petition For Review of the Los Angeles Regional Water Quality Control Board Executive Officer's action to approve, with conditions, nine Watershed Management Programs pursuant to Order No. R4-2012-0175, NPDES Permit No. CAS004001, waste discharge requirements for Municipal Separate Storm Sewer System Permit (MS4) discharges within the coastal watersheds of Los Angeles County, except those discharges originating from the City of Long Beach Municipal Separate Storm Sewer System Permit ("2012 MS4 Permit" or "Permit").

If you have any questions or need additional information, please contact me at (626) 458-4300 or ageorge@dpw.lacounty.gov or your staff may contact Ms. Jolene Guerrero at (626) 458-4364 or jguerrer@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Chief Engineer, Los Angeles County Flood Control District

ANGELA R. GEORGE
Assistant Deputy Director
Watershed Management Division

JFG:sw

**Comments of the County of Los Angeles and Los Angeles County Flood
Control District
In Response to Petition for Review of the Executive Officer's Approval of
Nine Watershed Management Plans**

These comments are submitted in response to the Petition for Review Of The Los Angeles Regional Water Quality Control Board Executive Officer's Action To Approve, With Conditions, Nine Watershed Management Programs ("Petition") submitted to the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") by NRDC, Los Angeles Waterkeeper, and Heal the Bay (collectively "Petitioners"). The Petition seeks review of the Regional Board Executive Officer's April 28, 2015 action approving nine Watershed Management Programs ("WMPs"). The County of Los Angeles ("County"), the Los Angeles County Flood Control District ("District"), or both, are participants in six of the challenged WMPs.

Pursuant to Part VI.C of 2012 MS4 Permit, permittees may develop a WMP or an Enhanced Watershed Management Program ("EWMP") that includes control measures and best management practices to address the highest watershed priorities. (2012 MS4 Permit, Part VI.C.) The Executive Officer's action in approving the WMPs should be upheld.

I. Approved WMPs at Issue with County/District Participation

The County and District are permittees under the 2012 MS4 Permit and jointly submitted with other permittees six of the nine approved WMPs at issue in this petition. They are:

- Los Angeles River Upper Reach 2 Sub Watershed WMP (District);
- Lower Los Angeles River Watershed WMP (District);
- Alamitos Bay/Los Cerritos Channel WMP (County/District);
- Los Cerritos Channel Watershed WMP (District);
- Lower San Gabriel River WMP (District);
- Santa Monica Bay Jurisdictional Group 7 WMP (District).

II. The Executive Officer Acted Within His Delegated Authority in Approving the WMPs with Conditions

A. The Executive Officer Had the Authority to Attach Conditions to His Approval of the WMPs

A Regional Board has authority to delegate any of its powers and duties, with limited exceptions, to its Executive Officer. (Water Code § 13223(a).) Petitioners contend that the Executive Officer did not have the authority to attach conditions to his approval of the WMPs. (Petitioners' Memorandum of Points and Authorities ("Petitioners' Mem."), at 7.) The imposition of conditions, however, is

inherent in the National Pollutant Discharge Elimination System ("NPDES") program. For example, section 402(a)(1) of the Clean Water Act (33 U.S.C. § 1342(a)(1)) provides that an NPDES permit may be issued that will either meet applicable requirements under various sections of the Act or "such conditions as the administrator determines are necessary" to carry out the Act. The permit issuer shall "prescribe conditions" for such permits to assure compliance with the requirements of the Act "including conditions on data and information collection, reporting, and such other requirements as he deems appropriate." 33 U.S.C. § 1342(a)(2).

Indeed, it is an established principle of administrative law that an agency's power to approve or disapprove implicitly includes the power to conditionally approve. The petitioners in *Connecticut Fund for the Environment, Inc. v. Environmental Protection Agency*, 672 F.2d 998 (2nd Cir.), cert. denied, 459 U.S. 1035 (1982), made the identical argument that Petitioners are making to this Board, there that the U.S. Environmental Protection Agency could not conditionally approve a state implementation plan under the Clean Air Act because the governing statute required the EPA Administrator to "approve or disapprove [the] plan" within four months of submission. Former 42 U.S.C. § 7410(a)(2) . The Second Circuit Court of Appeals disagreed:

Petitioners claim that the literal "approve or disapprove" language of § 7410(a)(2) and the absence of any mention of conditional approvals in the Clean Air Act preclude EPA's conditional approval of a Part D submission. But this Court has held that an agency's power to approve conditionally is inherent in the power to approve or disapprove.

(T)he power to condition ... approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove. We would be sacrificing substance to form if we held invalid any conditional approval but affirmed an unqualified rejection accompanied by an opinion which explicitly stated that approval would be forthcoming if modifications were made.

McManus v. CAB, 286 F.2d 414, 419 (2d Cir.), cert. denied, 366 U.S. 928, 81 S. Ct. 1649, 6 L. Ed. 2d 388 (1961). *McManus* involved the administration of a different statute by a different agency, but the underlying principles of administrative law are fully applicable here. Conditional approval offers administrative agencies a measured course that may be more precisely tailored to particular circumstances than the all-or-nothing choice of outright approval or disapproval. Cf. *United States v. Chesapeake & Ohio*

Ry., 426 U.S. 500, 514, 96 S. Ct. 2318, 2325, 49 L. Ed. 2d 14 (1976).

In the context of the Clean Air Act, the conditional approval mechanism gives EPA the necessary flexibility to work more closely with the states, which, even after the 1977 Amendments, retain the primary responsibility for assuring air quality. § 7407(a). . . . We have in the past been careful to defer to EPA's choice of methods to carry out its "difficult and complex job" as long as that choice is reasonable and consistent with the Act. *Friends of the Earth v. USEPA*, 499 F.2d 1118, 1124 (2d Cir. 1974). . . . Accordingly, we decline to construe the statute as permitting only outright approval or disapproval of state plans. Conditional approval is a direct adjunct of EPA's general responsibility for administration of the Act, § 7601(a), and the more specific authority to approve or disapprove state plans, § 7410(a)(2).

The principle described above is not limited to EPA's powers under the Clean Air Act. The United States Supreme Court's expressed the same principle in *United States v. Chesapeake & Ohio Ry.*, involving the Interstate Commerce Commission's powers under the Interstate Commerce Act. And EPA has itself promulgated policies and procedures that provide for conditional approvals under the Clean Water Act. For example, in section 6.2.1 of its Water Quality Standards Handbook - Chapter 6: Procedures for Review and Revision of Water Quality Standards (40 CFR 131 - Subpart C), the EPA specifically sanctions use of conditional approvals in carrying out its review of a state's water quality standards under section 303(c) of the Clean Water Act, notwithstanding the lack of any express "conditional approval" language in Section 303(c). See also *EPA's Guidance for the Use of Conditional Approvals for State Water Quality Standards (1989)*, in which EPA states that this guidance is modeled after that applied to EPA approval of state implementation plans under the Clean Air Act.

Regional Boards throughout the state, as well as this Board itself, have issued formal approvals of plans and other implementation documents subject to conditions. For example, the Executive Officer of this Board issued a conditional approval of a sampling plan for the El Segundo Generating Station operated by El Segundo Power, LLC (Letter dated December 6, 2005 from Jonathan S. Bishop to Roy Craft). Similarly, the Executive Officer of the Santa Ana Water Board issued a conditional approval of an integrated watershed monitoring program and quality assurance program plan for San Bernardino County's stormwater program required under that program's MS4 permit (Letter dated December 16, 2011 from Kurt V. Berchtold to Granville M. Bowman). Also, the Central Valley Water Board issued a conditional approval of a monitoring and

reporting program required for the Southern San Joaquin Valley Water Quality Coalition (Letter dated July 26, 2010 from Pamela C. Creedon to David Orth.¹

These approvals with conditions reflect a common practice by Executive Officers around the State. To argue that the Executive Officers cannot conditionally approve would be to strictly limit the ability of this and the other regional boards to manage their programs.

All nine approval letters clearly state that the letter is an “[a]pproval, with conditions.” (Letters of Approval With Conditions (“Approval Letters”), at 3.) Approval with conditions allowed the Executive Officer to more precisely tailor his approval to the needs of the 2012 MS4 Permit. The Executive Officer had the authority to issue this approval.

B. The Executive Officer’s Approval Did Not Create a New Schedule

The Executive Officer required that his conditions be met by a specified date. Contrary to Petitioners’ assertion, the Executive Officer’s deadlines did not “indefinitely extend” any Permit deadline, nor did it create “endless extensions without ever achieving Permit compliance.” (Petitioners’ Mem. at 7-8.) The deadline to address the conditions was just that: a date certain by which certain required changes to the language of WMPs must have been made. Indeed, the deadlines have already been met — the permittees all submitted the requested WMP revisions by the stated deadline and the Executive Officer has confirmed that the conditions have been met, at least with respect to the revisions for which review has been completed. (See Letters dated July 21, 2015 for the Lower San Gabriel River and Los Cerritos Channel WMPs.)²

¹ These letters are attached as Exhibit A for the convenience of the Regional Board and the parties. The County and District request the Regional Board to take official notice of these letters as official acts of the executive branch of this state pursuant to 23 Cal. Code Reg. § 648.2. The letters in Exhibit A can be found in the following files:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/power_plants/el_segundo/el_segundo_documents.shtml;

http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/san_bernardino_permit_iwmp.shtml; and

http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/monitoring_plans_reports_reviews/monitoring_reporting_program_plans/coalitions/south_sanjoaquin/index.shtml.

² Moreover, the fact that the Executive Officer has confirmed that there are final, approved WMPs means that this Board does not have to address Petitioners’ argument that an approval with conditions could indefinitely extend the Permit’s deadlines (Petitioners’ Mem. at 7). The Executive Officer’s letters confirming that the submitted WMPs are final, approved WMPs renders this issue moot.

Nor did the conditions accompanying the approvals create a new permit schedule. The conditions did not relieve permittees of any substantive Permit requirements or create any additional grace period for WMP participants. Instead, the letters specifically provided that WMP participants must “fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP.” (E.g., Lower San Gabriel Approval Letter dated April 28, 2015, p. 4.) Such implementation “shall begin . . . immediately.” (E.g., Lower Los Angeles River Approval Letter dated April 28, 2015, p. 4.)

Finally, contrary to Petitioners’ assertions, the form of the approval letters will not “fail to put Permittees on a rigorous path to achieving Permit compliance” (Petitioners’ Mem. at 9.), including receiving water limitations or TMDL requirements (Petitioners’ Mem. at 8). The Executive Officer clearly stated in his letters that, in the event that “Permittees fail to meet **any requirement or date** for its achievement in **the approved WMP**... the [Permittee] shall be subject to the baseline requirements of the LA County MS4 Permit” (E.g., Approval Letters dated April 28, 2015 at p. 5, emphasis added.)

A permitting agency is given substantial deference in interpreting its own permits. “In construing a permit provision, the Court should defer to the interpretation of the agency charged with enforcement of the terms.” (*Natural Resources Defense Council, Inc. v. Texaco Refining & Marketing, Inc.*, 20 F. Supp. 2d 700, 709-10 (D. Del. 1998); also see *Beazer East, Inc. v. United States Environmental Protection Agency*, 963 F.2d 603, 606 (3rd Cir.1992) (discussing agency’s interpretation of its own regulations); *New Jersey Department of Environmental Protection and Energy v. Circuit Foil USA, Inc.* (D.N.J. Apr.12, 1993) 1993 WL 118195 (deferring to state agency’s interpretation of the permit language).)

Here, the Regional Board has delegated its authority to approve the WMPs to the Executive Officer. Before the Executive Officer acted, the WMPs underwent extensive review by both Regional Board staff and the public. The Executive Officer issued letters of review, which included requested revisions. Permittees then submitted revised WMPs in response to these letters and, where requested, submitted additional revised WMPs reflecting the terms of the approval letters. He found that the WMPs meet the Permit’s requirements, both substantively and procedurally. The form of the Executive Officer’s approval has not created a new permit schedule.

III. WMP Approval Is Explicitly Authorized Under the Permit and Was Not A Modification of the Permit

Petitioners argue that the Executive Officer’s approvals modify the 2012 MS4 Permit, asserting that the Executive Officer did not approve or deny the WMPs,

but instead created a new process (Petitioners' Mem. at 9-10). This argument lacks merit.

First, this argument ignores the doctrine of *Connecticut Fund* and other cases (as well as EPA Guidance) that the power to attach conditions is inherent in the power to approve granted by the Regional Board to the Executive Officer. Attaching conditions to the approval of the WMPs was not a modification or amendment of any Permit terms.

Second, the approvals did not create a new process. The 2012 MS4 delegates to the Executive Officer the authority to approve WMPs. The WMP approvals were in accordance with those provisions. In this regard, it is well settled law that regulatory agencies must be given deference to interpret their own requirements and regulations, including their own permits. (See *NRDC v. Texaco Refining & Marketing, Inc.*, 20 F. Supp.2d at 709-10.) Here, the Executive Officer has found that the WMPs comply with Permit requirements, while requiring certain additional clarifications and information.

There is, moreover, “a **strong presumption of correctness** concerning . . . administrative findings.” (*California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal. App. 4th 1438, 1453; quoting *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1384.) (emphasis added).³ The Executive Officer's approvals were authorized by the Permit. The approvals did not extend any compliance dates or otherwise modify the Permit requirements. Indeed, the letters specifically provided that WMP participants must “fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP.” (Approval Letters at 4.)

IV. The Terms of the Conditional Approvals are Consistent with Permit Requirements and the Clean Water Act

³ Petitioners cite *Environmental Defense Center, Inc. v. EPA*, 344 F.3d, 832, 853 (9th Cir. 2003), arguing that the WMP provisions are substantive terms of the Permit, and once approved, become enforceable (Petitioners' Mem. at 9 n. 28).

Environmental Defense Center is completely inapposite. In that case, the court concluded that a Notice of Intent was improper because it was “unreviewed” by the regulatory agency and had not been subject to meaningful public review. (*Environmental Defense Center*, 344 F.3d at 853.) Here, as previously noted, the WMPs were submitted to the Regional Board and were subject to public comment. Petitioners themselves submitted comments letters, ranging in length from two to 27 pages, on at least 14 of the WMPs as well as twice submitting “General Comments on Group WMPs,” and the Regional Board held a public workshop on the draft WMPs.

Petitioners argue that, with respect to three of the nine WMPs at issue, the approved WMPs failed to address alleged inadequacies previously cited by Regional Board staff relating to Reasonable Assurance Analyses and other alleged substantive failures. (Petitioners' Mem. at 11-15.)

The process followed by Regional Board staff and the Permittees for the review and approval of the WMPs refutes these allegations. Upon receiving the Regional Board's comment on the draft WMPs in October 2014, the watershed groups each met with the Regional Board staff to ensure a full comprehension of the comments. The WMPs were then revised and resubmitted in January 2015. Because many of the Regional Board's comments required clarifications or explanations, rather than a change to the WMP, the permittees also submitted Responses to Comments in January 2015.

VI. Conclusion

The WMPs approved by the Executive Officer are detailed, complete and modeled programs to address bacteria, nutrients, toxics, metals and other pollutants in stormwater and urban runoff. These programs include appropriate water quality priorities, compliance measures and aggressive schedules. The plans fully comply with the 2012 MS4 Permit, have been submitted by the required deadlines and are already being implemented by the permittees.

The WMPs are the culmination of an unprecedented collaboration and commitment on the part of the permittees, as well as Regional Board staff, to address in a systematic and data-driven way the quality of water discharged from the MS4 system. Rejecting the WMPs would take the permit compliance efforts back to the unsatisfactory days of "iterative process" and would delay or potentially stop the progress already made, and to be made, to achieve water quality standards in receiving waters.

For the foregoing reasons, the County and District respectfully ask this Board to DENY the Petition.

EXHIBIT A



California Regional Water Quality Control Board Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Alan C. Lloyd, Ph.D.
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

December 6, 2005

Mr. Roy Craft
Plant Manager
El Segundo Power, LLC
301 Vista Del Mar
El Segundo, CA 90245

PHASE II 316(B) PROPOSAL FOR INFORMATION COLLECTION AND IMPINGEMENT MORTALITY AND ENTRAINMENT CHARACTERIZATION STUDY SAMPLING PLAN, EL SEGUNDO POWER, LLC; EL SEGUNDO GENERATING STATION, NPDES PERMIT NO. CA0001147, CI-4667

Dear Mr. Craft:

Reference is made to the November 17, 2005 comment letter submitted by El Segundo Power, LLC (ESP), along with a revised Phase II 316(b) Proposal for Information Collection (PIC) and Impingement Mortality and Entrainment (IM&E) Characterization Study Sampling Plan (Sampling Plan) for the El Segundo Generating Station (ESGS) dated November 17, 2005. This additional information was submitted in response to initial comments made by the Regional Board staff on October 21, 2005.

In general, the revised PIC submitted generally meets the requirements of the 316(b) Phase II regulations in 40 CFR 125.95 (a)(1) and (b)(1). The Regional Board staff have no objection to you implementing the revised PIC as proposed subject to the following conditions:

1. Hydrologic modeling to identify cooling water intake structure (CWIS) radius of influence (ROI) and cumulative impacts evaluation

The delineation of the ROI is essential for evaluation of impacts in the vicinity of ESGS. Assessment of the ROI provides a hydrodynamic characterization of the effective reach of the ESGS intake systems into Santa Monica Bay.

Such delineation of the ROI is required to quantify the region of the Santa Monica Bay (and associated volume) within which the biota are directly impacted by ESGS. This information shall be used to design a sampling plan and select sample locations that will enable quantification of such impacts. As such, the Regional Board staff recognize that historical sample locations are to be incorporated into the sampling plan to allow analysis and comparison to historical data collection.

The Regional Board staff acknowledge that the delineation of the ROI and incorporation into a sampling plan will prove useful when aggregated with similar studies from other Santa Monica

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Bay power plants (Los Angeles Department of Water and Power, Scattergood and AES Redondo Beach). Although cumulative impact studies are not required as part of the Phase II rule, the United States Environmental Protection Agency (USEPA) does not discount the possibility of cumulative impacts nor does it proscribe or discourage their inclusion as part of the evaluation process. USEPA notes that cumulative impact studies available at the time of rule development were insufficient to make any determination as to the exact nature or extent of cumulative impacts but acknowledges anecdotal evidence suggesting the need for further evaluation. USEPA presents the example of impacts identified at three Hudson River facilities in New York stating "[t]he multiple facilities on the Hudson River act cumulatively on the entire aquatic community" (69 FR 41587).

Decisions regarding the need for cumulative impact studies are reserved for the permitting authority. 40 CFR 125.90(d) preserves the right of an authorized agency to "adopt or enforce any requirement...that is not less stringent than those required by Federal law." In addition, in accordance with Section C, Page C-1, Action for Bay Restoration of the Santa Monica Bay Restoration Plan, the goals are to "Restore, rehabilitate, and protect the marine ecosystem, living resources, and biodiversity of the Santa Monica Bay and its watershed." As such, the Regional Board staff recognize that a cumulative impact study is in keeping with the stated goals of improving the overall aquatic health of Santa Monica Bay.

2. Calculation baseline and Velocity Cap Inlet

In section 2.5, ESGS states the following: "Therefore, ESGS has demonstrated through site-specific studies of its existing, in-use intake velocity caps that the facility is in full compliance with the applicable performance standard for impingement mortality. Further justification for this is provided in Section 4.1.1 of this PIC."

Based on the requirements of 40 CFR 125.95, this statement cannot be considered accurate. Use of any technology, including velocity caps, must be demonstrably shown to achieve, either in whole or in part, compliance with the appropriate performance standards *by the Discharger* [emphasis added].

40 CFR 125.95(a)(4)(i) requires the Discharger to submit, as part of the comprehensive demonstration study, the following:

- (C) Calculations of the reduction in impingement mortality and entrainment...that would be achieved by the technologies and or/operational measures [the Discharger has] selected; and
- (D) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the description [of design and construction technologies that will be used to meet the requirements to reduce impingement mortality and entrainment].

In addition, Section X.B of the preamble to the Phase II rule discusses USEPA's use of model facilities in the development of engineering cost estimates and technology performance profiles. USEPA notes on 69 FR 41649 that:

"While the Agency is confident that the suite of available technologies can achieve the performance standards..., EPA lacks sufficient data to determine the precise performance of each technology on a site-specific basis[.]"

Regional Board staff acknowledge the additional data included in PIC Section 5.1.1 and recognize the potential for the velocity cap configuration at ESGS to contribute to meeting the performance standards under the Phase II rule. However, inclusion of any statement in the PIC that, intentionally or otherwise, conveys any sense of approval by the Regional Board of a specific technology currently in use for the purposes of determining compliance with Phase II requirements, is at best premature. The Regional Board, as the delegated authority for NPDES permits in the Los Angeles Region, will make all determinations as to BTA with regard to ESGS at such time when all supporting documentation has been submitted and reviewed, thereby making a final determination feasible.

3. Impingement Mortality and Entrainment Sampling

Fish Eggs

As discussed in the October 21, 2005 letter from the Regional Board to ESP, fish eggs should be included in any analysis of entrainment at ESGS. Specifically, "The egg represents a critical life stage, the presence and abundance of which may not be accurately represented based on larval, juvenile, and adult presence." Therefore, Regional Board staff believe that the entrainment study should include not only enumeration of collected fish eggs, but also identification of collected eggs to the lowest practical taxonomic level. Enumeration and identification of fish eggs in the entrainment study should be included not only to increase the scientific validity of the study and allow for a more accurate estimate of entrainment effects, but also because the Phase II regulations mandate their inclusion. Specifically, 40 CFR 125.95(b)(3) states that the impingement mortality and/or entrainment characterization study must include "taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structures(s) and are susceptible to impingement and entrainment".

Target Taxa

Regional Board staff agree that it is not appropriate to perform assessments of population-level impacts on all taxa collected during this study. However, it should be emphasized that it is appropriate to count and identify all collected organisms. Where appropriate and as indicated in the sampling design, collected samples may be sub-sampled, but enumeration and identification of all collected taxa is critical to completion of a scientifically defensible study. Therefore, specific data analysis techniques may be used for selected taxa, but all taxa regardless of abundance or commercial/recreational importance should be counted and identified in samples.

Cancer Crabs

ESP has placed emphasis on cancer crabs to the exclusion of other crabs collected during impingement and entrainment sampling because "they are the most important commercial and recreational group of crabs found in the vicinity of the ESGS". Further, ESP states that "ESP believes that 'shellfish' refers to species of crustaceans and mollusks that are targeted by commercial and recreational fisheries". While Regional Board staff agree that inclusion of commercially and recreationally important crustaceans and mollusks are important to the evaluation of entrainment and impingement mortality at ESGS, we disagree with ESP's definition of shellfish. As noted above, 40 CFR 125.95(b)(3) states that the impingement mortality and/or entrainment characterization study must include "taxonomic identifications of all life stages of fish, shellfish, and any species protected under Federal, State or Tribal Law (including threatened or endangered species) that are in the vicinity of the cooling water intake structures(s) and are susceptible to impingement and entrainment". The regulation is not limited to recreationally or commercially important shellfish, but includes all shellfish in the vicinity of the CWIS. Regional Board staff recommend that all shellfish (typically meaning crustaceans and mollusks) collected in impingement and entrainment samples be enumerated and identified to the lowest practical taxonomic level.

Regional Board staff caution that all samples should be preserved until the issues regarding enumeration and identification of all organisms are resolved; nothing should be discarded that may potentially add to the study.

If you have any questions, please contact David Hung at 213/576-6664 or Dr. Tony Rizk at 213/576-6756.

Sincerely,

ORIGINAL SIGNED BY

Jonathan S. Bishop
Executive Officer

Cc: See mailing list

California Environmental Protection Agency



Mailing List

U. S. Environmental Protection Agency, Region 9, Permit Branch (WTR-5)
Ms. Nancy Yoshikawa, U. S. Environmental Protection Agency, Region 9
Ms. Robyn Stuber, U. S. Environmental Protection Agency, Region 9
U.S. Army Corps of Engineers
Mr. Bib Hoffman, NOAA National Marine Fisheries Service
Department of Interior, U. S. Fish and Wildlife Service
Mr. Michael Levy, State Water Resources Control Board, Office of Chief Counsel
Mr. Jim Maughan, State Water Resources Control Board, Division of Water Quality
Mr. Dominic Gregorio, State Water Resources Control Board, Division of Water Quality
Mr. James Reed, California Energy Commission
Mr. Rick York, California Energy Commission
Mr. Tom Luster, California Coastal Commission
Mr. William Paznokas, California Department of Fish & Game, Region 5
Mr. Guangyu Wang, Santa Monica Bay Restoration Commission
Department of Health Services, Sanitary Engineering Section
California State Parks and Recreation
South Coast Air Quality Management District
Water Replenishment District of Southern California
Los Angeles County, Department of Public Works, Waste Management Division
Los Angeles County, Department of Health Services
Mr. Mark Gold, Heal the Bay
Ms. Heather L. Hoecherl, Heal the Bay
Mr. Dana Palmer, Santa Monica Baykeeper
Mr. David Beckman, Natural Resources Defense Council
Mr. Daniel Cooper, Lawyers for Clean Water
Environment Now
Mr. Tim Hemig, El Segundo Power LLC
Ms. Susan Damron, Los Angeles, Department of Water and Power
Mr. Steve Maghy, AES Southland LLC
Ms. Julie Babcock, Reliant Energy
Mr. Tim Havey, TetraTech
Mr. Shane Beck, MBC Applied Environmental Sciences
Mr. Scott Seipel, Shaw Environmental & Infrastructure, Inc.
Mr. John Steinbeck, Tenera Environmental
Mr. Mary Jane Forster-Foley





California Regional Water Quality Control Board

Santa Ana Region



Matthew Rodriguez
Secretary for
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Edmund G. Brown Jr.
Governor

December 16, 2011

Mr. Granville M. Bowman
San Bernardino County Stormwater Program
825 East Third Street
San Bernardino, CA 92413-0835

CONDITIONAL APPROVAL OF INTEGRATED WATERSHED MONITORING PROGRAM AND QUALITY ASSURANCE PROGRAM PLAN; ORDER NO. R8-2010-0036, NPDES NO. CAS618036 (MS4 PERMIT)

Dear Mr. Bowman:

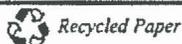
On August 1, 2011, the Permittees submitted a final draft of the Integrated Watershed Monitoring Program (IWMP) and the Quality Assurance Program Plan (QAPP). These documents were posted on our website for public review and comments. No public comment was received.

We have completed our review of the final draft of the IWMP and the QAPP and have determined that they meet the Receiving Waters and Urban Runoff Monitoring and Reporting Program (MRP) requirements provided the following comments are addressed in the next update of the documents:

1. Since the IWMP will replace the current monitoring program when it is approved, we would like this document to be a standalone document. The Permittees' response to our comment in this matter stated that a compilation of the summary of the evolution of the monitoring program will be attached in the introductory section of the 2010-2011 Annual Report. Please include that summary in the IWMP.
2. Tables 6 & 7 of the IWMP should include the following constituent:
 - Methylene Blue-Activated Substances (MBAS)
3. Please indicate the Pilot Pollutant Source Identification and Control Plan sampling locations in Figure 3: Site 5 Drainage Map on page 19 of the IWMP.
4. Please incorporate the attached errata sheet into the IWMP.

In accordance with Section IV.A of the MRP, the IWMP and the QAPP are hereby approved with the above changes and the changes as indicated in the enclosed errata

California Environmental Protection Agency



sheet. As per Section IV.A of the MRP, the approved IWMP shall be implemented within six months of approval.

If you have any questions, please contact Milasol Gaslan at mgaslan@waterboards.ca.gov or at (951) 782-4419 or Kathleen Fong at kyfong@waterboards.ca.gov or at (951) 774-0114.

Sincerely,



Kurt V. Berchtold
Executive Officer

Enclosure: Errata Sheet, dated December 15, 2011 (2 pages)

cc: Pavlova Vitale, Stormwater Program Manager, San Bernardino County Flood Control District, pavlova.vitale@dpw.sbcounty.gov





Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair

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Arnold
Schwarzenegger
Governor

FILE

26 July 2010

Mr. David Orth
Coordinator, Southern San Joaquin Valley Water Quality Coalition
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MONITORING AND REPORTING PROGRAM CONDITIONAL APPROVAL LETTER

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) received from the Southern San Joaquin Valley Water Quality Coalition (Coalition) a Monitoring and Reporting Program Plan (MRP Plan) and a Quality Assurance Project Plan (QAPP) on 25 July 2008. Subsequent discussions with staff culminated in a revised MRP Plan submitted on 8 May 2009. In addition, a letter addendum was submitted on 23 July 2010. The Coalition prepared the MRP Plan and QAPP to meet the requirements of Monitoring and Reporting Program Order No. R5-2008-0005 (MRP Order) for Coalition Groups under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Amended Order No. R5-2006-0053 (Conditional Waiver). The QAPP is being handled separately.

Central Valley Water Board staff (staff) evaluated the submittals for the required components described in the MRP Order, and identified a variety of issues with the Coalition's proposed MRP Plan. Staff and representatives of the Coalition held a number of meetings which culminated in the submittal of a revised MRP Plan on 23 November 2009.

We recognize that a significant amount of time and work has been invested by the Coalition to coordinate with the four separate sub-watershed groups and to collect and compile the information presented in the revised MRP Plan.

The Coalition's revised MRP Plan is conditionally approved, provided you implement the three changes listed below and on Table 1.

The three changes (i.e., conditions) are listed below.

1. Seven of the Coalition's MRP Plan monitoring sites require additional modification. The Tule River sites at Road 144 and Road 92, and the Deer Creek sites at Road 176 and at Road 120 may be designated as Core Monitoring sites provided that sediment (twice yearly) and three species water column toxicity testing (monthly) are added as parameters of concern to the required core sampling parameters. The Core monitoring needs to be conducted monthly for a period of one year. The requirements of core sampling are specified in Table II.B.1 and Table II.D., and the required additional toxicity testing will follow the schedule presented in Table II.A of the MRP Order.

California Environmental Protection Agency

Toxicity sampling has been added to the Core Monitoring for the Tule River and Deer Creek sites as parameters of concern (see footnote to Table II.B.1 on page 10 of the MRP Order) due to toxicity detections identified during previous monitoring. Monthly photographic documentation must also be provided with views both upstream and downstream from the approved sampling locations. During the monthly monitoring, if no water is present at the sampling location, it should be recorded as "dry" with photo documentation.

The Westside Canal at 7th Standard and Eastside Canal at 7th Standard require further evaluation of whether they meet the requirements of Assessment Monitoring locations. Central Valley Water Board staff and members of the Coalition will work together to make that determination. Central Valley Water Board staff and the Coalition will conduct further review of Tejon Creek to evaluate whether this water body is a candidate for Assessment Monitoring.

2. Additional Assessment Monitoring sites are required to sufficiently characterize water quality for all waters of the State within the Coalition group boundaries as required by the MRP Order (page 6), and to achieve MRP Plan objective No. 1 as required by MRP Order Attachment A.

Current Assessment Monitoring sites must include the waterways listed below, which were discussed during meetings between staff and Coalition representatives. The waterways and the rationale for including them are provided below:

Streams West of State Highway 99 within the Kaweah Sub-watershed:

Irrigated agriculture lands in this area have the potential to discharge to waters of the State and are not represented in the MRP Plan sample sites. The Coalition will conduct special studies by sampling discharges (pipe flow) at three or more representative sites agreed upon by staff, to determine whether discharges from crops to this area have the potential to affect beneficial uses of surface waters. Samples are to be analyzed for Assessment parameters and the crop type sourcing the discharge must be provided along with the analytical results in the semi annual and annual monitoring reports. The Kaweah Sub-watershed needs to provide locations where the samples will be collected and the procedures that will be used to coordinate the sample collection with discharges within **90 days** of the date of this letter.

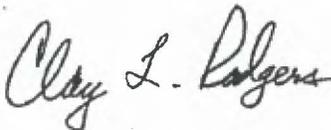
Above Lake Success: The Tule River Sub-watershed and Central Valley Water Board staff will conduct a joint monitoring effort of irrigated agriculture lands above Lake Success. Staff has identified an appropriate site for sample collection and collected and analyzed a river sample. The monitoring information will be transmitted to the coalition by staff and the coalition needs to collect and analyze a sample from the same location for Assessment parameters and sediment toxicity. Staff will advise the Tule River Sub-watershed of an appropriate time to collect the second sample. Results of the sampling events will be evaluated to determine if discharges off of irrigated agriculture lands above Lake Success warrant additional Monitoring.

Central Valley Water Board staff and the Coalition will evaluate what type of monitoring would be conducted, if needed.

Above Lake Isabella: The Kern Sub-watershed and Central Valley Water Board staff will conduct a joint monitoring effort above Lake Isabella similar to the study required above Lake Success. Staff has identified an appropriate site for sample collection and collected and analyzed a river sample. The monitoring information will be transmitted to the coalition by staff and the coalition needs to collect and analyze a sample from the same location for Assessment parameters and sediment toxicity. Staff will advise the Kern Sub-watershed of an appropriate time to collect the second sample. Results of the sampling events will be evaluated to determine if discharges off of irrigated agriculture lands above Lake Isabella warrant additional Monitoring. Central Valley Water Board staff and the Coalition will evaluate what type of monitoring would be conducted, if needed.

3. Locations of management practices need to be provided for the Kings, Kaweah, and Kern River Sub-Watersheds in order to produce information necessary to meet MRP Plan objectives No. 3 and No. 4 as required by Attachment A, and component No. 11 of the MRP Order (page 4). The documentation provided by the Tule River Sub-Watershed may be used as a template for the development of the required information. This information should be provided within **90 days** of the date of this letter.

I would like to thank you for all of your efforts in developing the MRP Plan. If you have any questions or comments about this conditional approval, please contact Clay Rodgers at crodgers@waterboards.ca.gov or (559) 445-5116.



for Pamela C. Creedon
Executive Officer

Enclosure(s) Table 1 – Monitoring Site Requirements

cc: Dennis Keller, Keller Wegley Consulting Engineers, Visalia
Dick Schafer, R.L. Schafer and Associates, Visalia
Nick Gatti, Kern County Water Agency, Bakersfield
Bill Thomas; Best, Best & Krieger LLP; Sacramento



TABLE 1
Southern San Joaquin Valley Water Quality Coalition
Monitoring Site Requirements

Site Description	Sub-watershed	MRP Plan Designation	Required Designation
Manning Avenue	Kings	Core	
Empire #2	Kings	Assessment	
Lemoore Weir	Kings	Core	
Jackson Avenue	Kings	Special	
Tivy Valley	Kings	Assessment	
Gould Canal	Kings	Assessment	
Crecent Weir	Kings	Assessment	
Stinson Weir	Kings	Assessment	
Kaweah River at Rd 158	Kaweah	Assessment	
St. Johns River at Ben Maddox	Kaweah	Assessment	
Stone Corral ID at Rd 156	Kaweah	Assessment	
Streams west of HWY 99^{1,2}	Kaweah	N/A	Assessment ³
Elk Bayou	Kaweah	Assessment	
Goshen Ditch	Kaweah	Assessment	
Porter Slough at Rd 192	Tule	Assessment	
Elk Bayou at Rd 96	Tule	Assessment	
Deer Creek at Rd 248	Tule	Assessment	
Above Lake Success¹	Tule	N/A ⁴	
Tule River at Rd 144	Tule	Core	Core + Parameters of Concern ⁵
Tule River at Rd 92	Tule	Core	Core + Parameters of Concern ⁵
Deer Creek at Rd 176	Tule	Core	Core + Parameters of Concern ⁵
Deer Creek at Rd 120	Tule	Core	Core + Parameters of Concern ⁵
Poso Creek at Zerker Rd	Kern	Assessment	
Chanac Creek at Pellicer Rd	Kern	Assessment	
White River at Rd 208	Kern	Assessment	
El Paso Creek at Sebastian Rd	Kern	Assessment	
Main Drian at Buttonwillow Rd	Kern	Special ⁶	
Main Drian at 7th Standard Rd	Kern	Special ⁶	
Main Drain at Hwy 46	Kern	Special ⁶	
Main Drian at Front St	Kern	Special ⁶	
Westside Canal at 7th Standard ²	Kern	Special ⁷	Assessment
Eastside Canal at 7th Standard ²	Kern	Special ⁷	Assessment
Tejon Creek ²	Kern	Special ⁷	
Above Lake Isabella¹	Kern	N/A ⁴	

¹Site needs to be added (BOLD).

²Central Valley Water Board Staff and the Coalition will work together to determine if additional monitoring is required.

³End of pipe samples. Assessment parameters required.

⁴Coalition/Waterboard joint monitoring effort. Samples analyzed for Assessment parameters and sediment toxicity.

⁵Water column and sediment toxicity.

⁶Special Project Monitoring designation appropriate due to Management Plan on Main Drain Canal.

⁷Special "Study" designation conflicts with language in the MRP Order. Assessment monitoring required for all new sites. Coalition may propose a schedule for future Assessment monitoring.