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18 STATE OF CALIFORNIA
19 STATE WATER RESOURCES CONTROL BOARD

20 In the Matter of the Petition of NRDC, Los) ENVIRONMENTAL GROUPS'
21 Angeles Waterkeeper, and Heal the Bay, for) MOTION TO STRIKE
22 Review of Action by the California Regional)
Water Quality Control Board, Los Angeles)
23 Region, in Adopting the Los Angeles County)
Municipal Separate Stormwater National)
24 Pollutant Discharge Elimination System)
(NPDES) Permit; Order No. R4-2012-0175;)
NPDES Permit No. CAS004001)

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1 The Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay
2 (collectively, “Environmental Groups”) hereby move to strike the following sections of
3 Dischargers’ responses in SWRCB/OCC Files No. A-2236(a) through (kk):

- 4 1. Section II.F., on pages 20-22 of the “Response to Claims Raised in Opposing
5 Petitions” filed by the City of Arcadia (SWRCB/OCC No. A-2236(j)) on October
6 15, 2013;
- 7 2. Section II.F., on pages 20-22 of the “Response to Claims Raised in Opposing
8 Petitions” filed by the City of Claremont (SWRCB/OCC No. A-2236(i)) on
9 October 15, 2013;
- 10 3. Section II.F., on pages 20-22 of the “Response to Claims Raised in Opposing
11 Petitions” filed by the City of Covina (SWRCB/OCC No. A-2236(s)) on October
12 15, 2013;
- 13 4. Section V., on pages 21-33 of “The Cities of Duarte and Huntington Park’s
14 Memorandum of Points and Authorities in Opposition to the Natural Resources
15 Defense Council, Inc., et al.’s Petition for Review of the Los Angeles Regional
16 Water Quality Control Board Action of Adopting Order No. R4-2012-0175,” filed
17 by the Cites of Duarte and Huntington Park (SWRCB/OCC No. A-2236(k)) on
18 October 15, 2013;
- 19 5. Section V., on pages 37-42 of the “Responsive Brief in Support of Petition for
20 Review of Petitioners City of San Marino, City of Rancho Palos Verdes, City of
21 South El Monte, City of Norwalk, City of Artesia, City of Torrance, City of
22 Beverly Hills, City of Hidden Hills, City of Westlake Village, City of La Mirada,
23 City of Vernon, City of Monrovia, City of Agoura Hills, City of Commerce, City
24 of Downey, City of Inglewood, City of Culver City, and City of Redondo Beach,”
25 filed by the above cities on October 15, 2013; and,
- 26 6. Section II.C., on page 7 of “Petitioner City of Sierra Madre’s Opposition to
27 NRDC’s Petition Challenging 2012 Los Angeles Municipal Separate Storm
28 Sewer System Permit (No. R4-2012-0175),” filed by the City of Sierra Madre
(SWRCB/OCC No. A-2236(cc)) on October 15, 2013.

29 On July 15, 2013, the State Water Resources Control Board (“State Board”) issued a letter
30 notice in SWRCB/OCC Files A-2236(a) through (kk) titled “In Re Petitions Challenging 2012 Los
31 Angeles Municipal Separate Storm Sewer System Permit (Order No. R4-2012-0175): Extension of
32 30-Day Response Deadline.” (“30-day Extension Letter.”) The notice extended a deadline for
33 responses to petitions filed under SWRCB/OCC Files A-2236(a) through (kk) established in a

1 prior, July 8, 2013 letter from the State Board. It also directed petitioners and interested parties to
2 submit two separate comments related to the LA MS4 Permit Petitions. One comment, in response
3 to the State Board’s specific “questions concerning receiving water limitations” posed in the notice
4 letter, was required by August 15, 2013 (hereinafter “RWL comments”). A separate comment, to
5 address “all other issues raised in the petitions,” was due by September 20, 2013 (hereinafter
6 “Non-RWL comments”). (30-Day Extension Letter, at 1.)¹ Importantly, the 30-Day Extension
7 Letter explicitly prohibited all parties from using their Non-RWL comments to respond to issues
8 raised by any party’s RWL comments: “Interested persons may not use the September 20 deadline
9 for responses on the remaining petition issues as an opportunity to respond to comments filed on
10 the receiving water limitations approach.” (*Id.*)

11 On August 15, 2013, Environmental Groups submitted their RWL comments, titled
12 “Response to State Water Resources Control Board Request for Comment on Receiving Water
13 Limitations and Opposition to Petitions for Review on Limited Receiving Water Limitation
14 Issues.” (“Environmental Groups’ RWL Comment”). Numerous Dischargers and other interested
15 parties also submitted RWL comments by that deadline.

16 Environmental Groups and some Dischargers submitted their Non-RWL comments on
17 October 15, 2013. Disregarding the State Board’s clear directive in the 30-Day Extension Letter,
18 the Cities of Arcadia, Claremont, Covina, Duarte, Huntington Park, San Marino, Rancho Palos
19 Verdes, South El Monte, Norwalk, Artesia, Torrance, Beverly Hills, Hidden Hills, Westlake
20 Village, La Mirada, Vernon, Monrovia, Agoura Hills, Commerce, Downey, Inglewood, Culver
21 City, Redondo Beach, and Sierra Madre all used their Non-RWL comments to submit responses to
22 Environmental Groups’ August 15, 2013 RWL Comment.

23 Specifically, each of the above-listed sections of Discharger’s responses are in reply to
24 arguments concerning the effects of collateral estoppel on Dischargers’ petitions, which were
25 raised for the first time in Section III.B., on pages 28-39, of Environmental Groups’ RWL
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27 ¹ By letter dated September 18, 2013, the State Board subsequently extended the deadline for
28 responses to “all other issues raised in the petitions” (Non-RWL Comments) to October 15, 2013.

1 Comment. These sections of Dischargers’ responses thus constitute impermissible replies and
2 should be stricken because they directly contradict the State Board’s 30-Day Extension Letter.

3 Moreover, the sections improperly addressing Environmental Groups’ RWL Comment
4 should be stricken in order to protect Environmental Groups’ due process rights. Administrative
5 agencies are required to provide a fair and impartial system for adjudicatory proceedings,² and the
6 “protections of procedural due process apply to administrative proceedings.” (*Nightlife Partners v.*
7 *City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90; *Richardson v. Perales* (1971) 402 U.S. 389,
8 401.) Environmental Groups will be unduly prejudiced by the State Board’s consideration of
9 Dischargers’ arguments. Specifically, Environmental Groups, who adhered to the Board’s
10 instruction precluding any response to issues raised in the Dischargers’ Receiving Water
11 Limitations Comments, will be harmed by the State Board’s disparate treatment of Dischargers
12 should they be allowed to respond to issues raised in Environmental Groups’ RWL Comment,
13 while Environmental Groups were not afforded the same opportunity in return. Accordingly, the
14 State Board should strike the identified sections from Dischargers’ responses.

15 In the event the State Board determines not to strike the offending passages from
16 Discharger’s responses, we request that the State Board grant Environmental Groups leave to file a
17 consolidated response to Dischargers’ Receiving Water Limitations Comments, as well as to file a
18 sur-reply to Dischargers’ improper responses to Environmental Groups’ RWL Comment.
19 However, Environmental Groups reiterate that the proper course here is for the State Board to
20 strike the identified sections of Dischargers’ responses.

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² See 23 Cal. Code Regs. § 648.

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Respectfully submitted,

Dated: November 11, 2013

NATURAL RESOURCES DEFENSE COUNCIL, INC.



Noah Garrison
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Dated: November 11, 2013

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