



MARK PESTRELLA, Acting Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

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IN REPLY PLEASE

REFER TO FILE:

**WM-7**

February 23, 2017

Ms. Emel Wadhvani  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Ms. Wadhvani:

**COUNTY OF LOS ANGELES MS4 PERMIT  
RESPONSE TO PETITION FOR REVIEW OF NORTH SANTA MONICA BAY  
ENHANCED WATERSHED MANAGEMENT PROGRAM APPROVAL  
FILES A-2477 AND A-2508**

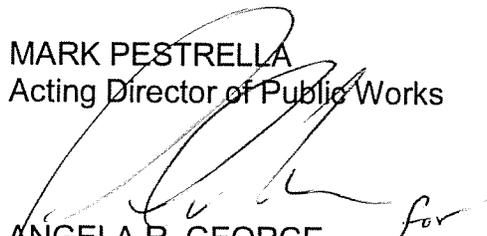
In response to the State Water Resources Control Board's Notice of Complete Petition and opportunity to provide written response to the Los Angeles Water Keeper and Natural Resources Defense Council Petition for Review of Approval, issued January 5, 2017, the County of Los Angeles and Los Angeles County Flood Control District are submitting the enclosed written response to the petition. In addition to the written response, the County and the District are submitting a request for an official notice to include the North Santa Monica Bay Coastal Watersheds 2015-16 Annual Report and 2015-16 Area of Special Biological Significance Monitoring Report. The written response request for the official notice and reports have been uploaded to the following site: <https://ftp.waterboards.ca.gov>.

Ms. Emel Wadhvani  
February 23, 2017  
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If you have any questions regarding the enclosed comments or request to amend the administrative record, please contact me at (626) 458-4300 or [ageorge@dpw.lacounty.gov](mailto:ageorge@dpw.lacounty.gov) or your staff may contact Mr. Bruce Hamamoto at (626) 458-5918 or [bhamamo@dpw.lacounty.gov](mailto:bhamamo@dpw.lacounty.gov).

Very truly yours,

MARK PESTRELLA  
Acting Director of Public Works

  
ANGELA R. GEORGE  
Assistant Deputy Director  
Watershed Management Division

*P.A.* GC:hp  
P:/wmpub/2017/NSMBEWMP Itr/C17047

Enc.

**RESPONSE OF THE COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT TO PETITION FOR REVIEW  
OF THE APPROVAL OF THE NORTH SANTA MONICA BAY ENHANCED  
WATERSHED MANAGEMENT PROGRAM**

**I. INTRODUCTION**

On April 19, 2016, the Los Angeles Regional Water Quality Control Board's Executive Officer approved the North Santa Monica Bay Enhanced Watershed Management Program (NSMB EWMP). The Executive Officer's approval came only after extensive Regional Board staff and public review, including review of comments submitted by petitioners Los Angeles Waterkeeper and Natural Resource Defense Council, Inc. (petitioners).

The NSMB EWMP was submitted in compliance with the Los Angeles County Municipal Stormwater Permit (MS4 Permit) and was based on a full consideration of available stormwater and non-stormwater monitoring data and applicable water quality standards, including the Ocean Plan and the State Water Resources Control Board's (State Board) Special Protections, State Board Order Nos. 2012-0012 and 2012-0031 (Special Protections), applicable to Area of Special Biological Significance 24 (ASBS). Contrary to petitioners' assertions, the EWMP does take into consideration both ASBS monitoring data and ASBS standards; this monitoring data and these standards are an integral part of the ASBS Compliance Plan prepared in accordance with the Special Protections, which compliance plan is attached as Exhibit E to the EWMP and incorporated therein.

The Executive Officer's approval of the EWMP and the Regional Board's vote on September 7, 2016, was therefore proper. The petitioners' arguments to the contrary lack merit and their petition should be dismissed.<sup>1</sup>

**II. THERE WAS FULL PUBLIC COMMENT BEFORE THE EXECUTIVE OFFICER APPROVED THE NSMB EWMP**

**A. The NSMB EWMP**

Part VI.C of the MS4 Permit provides that permittees can develop watershed management programs and enhanced watershed management programs to implement the Permit's terms. The purpose "is to allow Permittees the flexibility. . . . to implement the requirements of this Order on a watershed scale through customized strategies,

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<sup>1</sup> Petitioners raise three arguments in support of their petition, two procedural and one substantive. The County and Flood Control District submit that petitioners' procedural arguments lack merit, and leave it to the Regional Board to address those arguments. This response will address the third argument, the EWMP's consideration of stormwater and non-stormwater data and application of the applicable standards.

control measures and BMPs." (Regional Board Administrative Record (RB-AR) 47 (MS4 Permit, Part VI.C.1.a))

The Permit provides that the WMP or EWMP shall (i) prioritize water quality issues resulting from stormwater and non-stormwater discharges; (ii) identify and implement strategies, control measures, and BMPs to achieve applicable water quality-based effluent limitations and compliance with receiving water limitations and non-stormwater prohibitions; (iii) contain an integrated monitoring and assessment program; (iv) modify strategies, control measures, and BMPs as necessary based on analysis of monitoring data collected pursuant to the monitoring and reporting program; and (v) provide opportunity for meaningful stakeholder input. (RB-AR 47-48 (MS4 Permit, Part VI.C.1.f).) Every WMP or EWMP must be supported by a reasonable assurance analysis. (RB-AR 63-64 (MS4 Permit, Part VI.C.5.b.iv(5)).)

Pursuant to Part VI.C of the MS4 Permit, the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District prepared an EWMP for the North Santa Monica Bay coastal watersheds. The NSMB EWMP covers the coastal subwatersheds within the Santa Monica Bay Beaches Bacteria TMDL jurisdictional groups 1 and 4 and that portion of the Malibu Creek Watershed within the City of Malibu, SMBBB TMDL jurisdictional group 9. The NSMB EWMP area encompasses 55,121 acres, including 20 subwatersheds and 28 fresh water coastal streams. See RB-AR 5357 (NSMB EWMP, p. ES-3).

## **B. The NSMB EWMP was Adopted after Full Public Comment**

The NSMB EWMP was adopted after an opportunity for full public comment and after extensive consideration by the Executive Officer and his staff. As summarized in the Executive Officer's April 19, 2016, approval of the EWMP, on July 1, 2015, the Regional Board provided public notice and a 61-day period to allow for public review and written comment on various draft EWMPs, including this one. On July 9, and November 5, 2015, the Regional Board held public workshops on the draft EWMPs. On March 3, 2016, the Board held a third public workshop. See RB-AR 5975-5975.

Concurrent with that public review, Regional Board staff reviewed the draft NSMB EWMP. As part of that process, Regional Board staff corresponded with the NSMB EWMP group's permittees and their consultants and on October 21, 2015, sent a letter to the group setting forth staff's comments and requesting revisions that needed to be addressed prior to approval (RB-AR 5975). Where appropriate, the public's comments were incorporated into this letter to ensure that the public's comments were addressed in the revised EWMP. *Id.*

The NSMB EWMP group submitted a revised EWMP on January 19, 2016. After submittal of this revised NSMB EWMP, Regional Board staff had several telephone and e-mail exchanges with the group's members and their consultants to discuss staff's remaining comments and necessary modifications. *Id.*

On April 1, 2016, the NSMB EWMP group submitted a second revised EWMP. Regional Board staff requested a small number of minor changes and a final version was submitted on April 7, 2016. On April 19, 2016, the Executive Officer approved the NSMB EWMP. RB-AR 5974-5976.

The petitioners participated in this process. They submitted comments on the draft EWMP (RB-AR 3036-3058 (August 31, 2015)), were invited to the workshops (RB-AR 4660) and met with Regional Board staff about the revised EWMP (Reporter's Transcript, September 7, 2016, hearing (RT.) at 55:11-13). Petitioners also participated on the Technical Advisory Committee and its RAA subcommittee (RB-AR 957-958, 974-975, 1049 (TAC); RB-AR 1189, 1297 (RAA subcommittee) committees set up pursuant to the MS4 Permit that advised and participated in the development of the WMPs and EWMPs (RB-AR 48 (MS4 Permit, Part VI.C.1.f.v); RT at 54:24-55:2).

### **III. PETITIONERS' CHALLENGE**

Petitioners now challenge the NSMB EWMP. Petitioners do not, however, challenge the NSMB EWMP in its entirety. Instead, they only challenge that portion of the NSMB EWMP that addresses discharges into the ASBS.

Significantly, petitioners do not identify any violation of the ASBS Special Protections that will result under the NSMB EWMP. Instead, petitioners' sole contention is that the NSMB EWMP failed to consider certain ASBS stormwater and non-stormwater monitoring data and failed to utilize ASBS stormwater and non-stormwater standards (Petitioners' Memorandum of Points and Authorities in Support of Petition for Review (Petitioners' Mem.) at 1-2, 17-24).

Petitioners' contention is incorrect. Because the ASBS Compliance Plan is based on the ASBS monitoring and ASBS standards, including the monitoring data and standards that are the subject of this petition, and because the ASBS Compliance Plan is incorporated into the NSMB EWMP, the appropriate ASBS monitoring and standards are incorporated into the NSMB EWMP.

### **IV. THE NSMB EWMP IS BASED ON ALL RELEVANT ASBS STORMWATER AND NON-STORMWATER DATA**

#### **A. ASBS 24**

Discharges into ASBSs, including ASBS 24, are regulated primarily by the State Board. In 2012, the State Board adopted Order Nos. 2012-0012 and 2012-0031. These State Board Orders set forth "Exceptions" to the Ocean Plan's prohibition against discharge of waste into ASBSs, and "Special Protections" regulating those discharges, including discharges into ASBS 24.

The Exceptions and the Special Protections address point and non-point stormwater discharges into ASBSs. Stormwater discharges are authorized under the

Special Protections' conditions and shall not alter natural ocean water quality. Non-stormwater discharges, with certain exceptions, are prohibited. State Board Order No. 2012-0012, Attachment B at 1-2.

Holders of the Exceptions are required to adopt an ASBS Compliance Plan to address the requirement to maintain natural water quality and the prohibition of non-stormwater runoff from point sources. The ASBS Compliance Plan is submitted to the State Water Board and is approved by its Executive Director or the Executive Officer of the Regional Board for permits issued by it. State Board Order No. 2012-0012, Attachment B at 2-3. Holders of Exceptions have 6 years in which to implement structural controls and comply with the requirement to maintain natural ocean quality. *Id.* Attachment B at 5.

Exception holders also are required to prepare an ASBS Pollution Prevention Plan to address similar requirements that govern non-point source discharges. Exception holders are given the same period of time in order to implement these requirements. *Id.*, Attachment B at 6 and 9.

Finally, the Special Protections set forth the monitoring requirements for discharges into the ASBS. *Id.*, Attachment B at 13-18.

In adopting the Exceptions and the Special Protections, the State Board found that "granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply with the prohibitions and special conditions that comprise the Special Protections . . ." *Id.* at 1. The State Board further found that "granting the requested exceptions is in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, and maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security)," and that "granting the exceptions is consistent with federal and state antidegradation policies." *Id.* at 2.

Thus, State Board Order No. 2012-0012 and its Special Protections authorize the NSMB EWMP permittees to discharge into ASBS 24 in accordance with its Special Protections. State Board Order No. 2012-0012, Attachment A. In accordance with those Special Protections, the NSMB EWMP permittees have submitted their ASBS Compliance and Pollution Prevention Plans to the State Board and have performed the required monitoring. The Compliance and Pollution Prevention Plans have been subjected to public comment, including comments by petitioners, the State Board has provided their comments to the NSMB EWMP permittees on the Compliance Plan (the State Board made no comments on the Pollution Prevention Plan) and, in accordance with the State Board's direction, the NSMB EWMP permittees submitted to the State Board a final Compliance Plan reflecting those comments (the Pollution Prevention Plan having been previously submitted). This entire process was overseen by the State Board and its staff.

## B. The NSMB EWMP is Based on all Relevant ASBS Stormwater Data

Petitioners first contend that the NSMB EWMP is not based on all relevant ASBS stormwater data. Petitioners' specific claim is that the NSMB EWMP did not consider the 2013 and 2014 monitoring of 21 ASBS outfalls, performed in compliance with the Special Protections and development of the Compliance Plan, which showed exceedances of Ocean Plan instantaneous maximum limits at the outfall (Petitioners' Mem. at 19:10-18). (It should be noted that this monitoring was not conducted at sampling points in the ocean, and therefore did not demonstrate an alteration of natural water quality or that the discharges caused such alteration.)

Petitioners' contention that the NSMB EWMP is not based on all relevant ASBS stormwater data is incorrect. The ASBS Compliance Plan specifically references the 2013 and 2014 outfall monitoring results, as well as the monitoring results from the receiving water itself as required by the Special Protections (RB-AR 5813-5824 (receiving waters); 5825-5832 (outfall monitoring)), and the ASBS Compliance Plan is specifically incorporated by reference into the NSMB EWMP (RB-AR 5371-5373). *Petitioners themselves concede that this data was included in the ASBS Compliance Plan* (Petitioners' Mem. at 18:2-4). As Regional Board staff testified at the September 7, 2016 meeting:

Staff found that relevant available ASBS stormwater data are included and evaluated in Appendix E of the North Santa Monica EWMP. . . . Appendix E is the revised ASBS Compliance Plan that the Permittees prepared pursuant to the ASBS requirements.

I do want to note here that it's not just included by reference. It is a part of the North Santa Monica Bay EWMP.

RT at 62:6-13.

Petitioners nevertheless quote a sentence from the NSMB EWMP that relates to the EWMP's jurisdictional area in general, not the ASBS section of the EWMP. This sentence on page 43 of the EWMP (RB-AR 5409), that "stormwater and non-stormwater discharges have not yet been characterized within the NSMBCW EWMP area" and that this "characterization will occur as part of the implementation of the CIMP," is a correct statement for the EWMP as a whole, but not for the ASBS area of the NSMB EWMP. It is erroneous for petitioners to contend that this general statement about the larger NSMB EWMP jurisdictional area means that the EWMP did not consider the ASBS monitoring data when petitioners themselves recognize that the ASBS Compliance Plan, incorporated into the NSMB EWMP, did in fact consider such data (See Petitioners' Mem. at 17:26-18:6).<sup>2</sup>

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<sup>2</sup> Petitioners also contend that monitoring in 2007 and 2008 showed exceedances of chromium and copper. Petitioners concede, however, that, as part of the 2013-14 monitoring data, chromium and copper were considered in the development of the

Petitioners' argument about the failure to consider ASBS stormwater data lacks merit. Petitioners' assertions to the contrary, the ASBS stormwater monitoring data is fundamental to the development of the ASBS Compliance Plan and the ASBS Compliance Plan is incorporated as part of the NSMB EWMP.

Petitioners also contend that the EWMP's reasonable assurance analysis (RAA) did not consider this stormwater data, which is incorrect for the same reason.

The purpose of the RAA is to assure that the BMPs that are being implemented will result in achievement of applicable water quality based effluent limitations and receiving water limitations (see RB-AR 48 and 63-64 (MS4 Permit, Part C.1.g and C.5.b.iv(5))). The analysis contained in the ASBS Compliance Plan does this. It demonstrates that implementation of the plan will result in compliance with the State Board's Special Protections for the ASBS (RB-AR 5740-5744, 5831-5832 (Compliance Plan at ES-3-ES-6 and 80-81)), and the NSMB EWMP specifically states that the NSMB EWMP's controls "are inclusive of all watershed control measures enumerated in the ASBS 24 Compliance Plan." (RB-AR 5481 (NSMB EWMP at 115).)<sup>3</sup>

Put another way, the ASBS stormwater monitoring data about which petitioners complain did not show that the stormwater discharges were causing an alteration of natural water quality for pollutants other than perhaps those already being addressed by the RAA and the ASBS Compliance Plan. Therefore, there was no need to include this additional data in the RAA. See RT 65:2-66:16 (Regional Board staff testimony explaining this fact).

Moreover the stormwater outfall monitoring data that petitioners contend was excluded was not the type of data used by the RAA's model. During the EWMP development process, Regional Board staff held several Technical Advisory Committee meetings on the proper way to use models and perform the RAA (See RB-AR 960 and 964, 976-1000, 1042, 1052, 1120, 1133 and 1153) and issued guidelines for conducting the RAA (RB-AR 2086). The NSMB EWMP used the SBPAT model for the NSMB RAA, one of the models approved for this use. The RAA guidelines provided that baseline loading for the model should be estimated using metrics derived from long-term historical data (RB-AR 2090), and the estimated pollutant loading should be consistent with event mean concentrations obtained from different land use sites as referenced in dependable sources (RB-AR 2091). The EWMP's RAA did this (RB-AR 5446-5447).

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Compliance Plan (Petitioners' Mem. at 17:28-18:6, see RB-AR 5818-5821 (ASBS Compliance Plan at 67-70)). Neither chromium nor copper was found to cause an alteration of natural water quality under the Special Protections' protocols. RB-AR 5822-5823 (ASBS Compliance Plan at 71-72).

<sup>3</sup> The Regional Board staff further provided that, should there become any inconsistencies between the ASBS Compliance Plan and the NSMB EWMP, the Board will require the NSMB group to update the NSMB EWMP to ensure such consistency. (RB-AR 6015 (Regional Board Response to Written Comments (May 12, 2016), at 29).)

Petitioners do not indicate how this other, limited data set, should have been included or that it would have led to a different result.

Thus, petitioners' RAA contention also lacks merit. The Compliance plan considered all the data and found compliance with Ocean Plan Exceptions and Special Protections and, as noted, the Compliance Plan is incorporated into the NSMB EWMP.

### **C. The NSMB EWMP is Based on all Relevant ASBS Non-Stormwater Data**

Petitioners make the same argument with respect to ASBS non-stormwater data that they made with respect to the stormwater data. For the same reasons, petitioners' argument lacks merit. Like stormwater data, ASBS non-stormwater data was set forth and considered in the ASBS Compliance Plan, which is incorporated by reference into the NSMB EWMP and whose measures are reflected in the EWMP's control measures.

Thus, similar to petitioners' contention with respect to the stormwater monitoring data, petitioners contend that there were 2012 and 2013 ASBS non-stormwater data that was not considered (Petitioner's Mem. at 20:4-13). As petitioners concede (*Id.* at 20:4-10), however, the ASBS Compliance Plan includes this non-stormwater monitoring data (see RB-AR 5801-5803 (Compliance Plan at 50-52)). The Compliance Plan then contains programs to address the Special Protections' non-stormwater requirements and prohibitions (RB-AR 5789-5812 (Compliance Plan at 38-61)). Thus, like petitioners' contentions with respect to the stormwater monitoring data, because the Compliance Plan does consider the non-stormwater monitoring, and because the Compliance Plan's requirements are included in the NSMB EWMP (RB-AR 5481 (Compliance Plan at 115)), the NSMB EWMP *is* based on the ASBS non-stormwater monitoring, including programs to address non-stormwater discharges.

In this regard, like their argument with respect to stormwater monitoring, petitioners also mischaracterize the NSMB EWMP's statements about non-stormwater inspections. Petitioners refer to a sentence in the NSMB EWMP that provides that the group members will perform source investigations of non-stormwater discharges, and then contend that this sentence means that the NSMB EWMP did not consider ASBS non-stormwater monitoring (Petitioners' Mem. at 20:13-15; see RB-AR 5434 (NSMB EWMP at 68)).

This sentence, however, is directed to the NSMB EWMP's jurisdictional area as a whole, not the ASBS. Petitioners in fact concede that the non-stormwater discharge data is included in the ASBS Compliance Plan (Petitioners' Mem. at 20:4-10), which is incorporated into the NSMB EWMP.<sup>4</sup> Indeed, as Regional Board staff testified at the

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<sup>4</sup> Petitioners also mischaracterize the number and extent of the inspections for non-stormwater discharges. County staff inspected 31 outfalls over a 1 ½ year period (RB-AR 5801-5802), not 13 as petitioners assert. As petitioners themselves concede, this data was included in the Compliance Plan, which was attached and incorporated into the NSMB EWMP (Petitioners' Mem. at 20:4-10.)

September 7, 2016, hearing (RT at 69:14-22), the NSMB EWMP contains more non-stormwater outfall screening than the ASBS Compliance Plan, in that the NSMB EWMP contains additional inspection results obtained in 2014 and 2015 (RB-AR at 5970-71 (NSMB EWMP, Appendix F).

Petitioners also mischaracterize the status of the non stormwater screening and source identification program. Petitioners contend that non-stormwater screening and source identification will not be complete until December 2017. Although the EWMP provided for completion of screening and source identification by that date (RB-AR 5434), in fact this was accomplished by December 2016. As reported in the Annual Report, all major outfalls have been screened for stormwater discharges and no significant discharges were found. See Annual Report at Page 10, Table 4.a<sup>5</sup>

Petitioners' contention that the NSMB EWMP does not consider ASBS non-stormwater data is erroneous. The data is included in the Compliance Plan that is incorporated in the EWMP.

#### **V. The NSMB EWMP Utilizes Applicable ASBS Stormwater and Non-Stormwater Standards**

Petitioner's last two arguments are simply a reprise of their first two arguments. Petitioners contend that the NSMB EWMP fails to utilize applicable ASBS stormwater and non-stormwater standards.

In support of these arguments, petitioners again cite to provisions in the NSMB EWMP that relate to the Santa Monica Bay watershed in general (Petitioner's Mem. at 22:13-15) and screening of non-stormwater discharges throughout the NSMB EWMP's jurisdictional area (*Id.* at 23:24-27). Petitioners again ignore the fact that the NSMB EWMP incorporates the programs set forth in the ASBS Compliance Plan to comply with the ASBS stormwater and non-stormwater standards (RB-AR 5481 (NSMB EWMP at 115)), and thus the EWMP and its RAA did not need to consider these standards any further.

Petitioners do not deny that the ASBS Compliance Plan is sufficient to comply with the ASBS standards. Instead, petitioners only contend that the Compliance Plan is "draft," that there was additional monitoring that was to be conducted after submission of the plan, and that the MS4 Permit and the ASBS exception required incorporation of ASBS exception standards into any NPDES permit (Petitioners' Mem. at 23:1-12).

The State Board, however, in its March 17, 2015, letter providing comments on the Compliance Plan (RB-AR 6239-6242), required the NSMB EWMP permittees to submit a final compliance plan in response to the State Board's comments by September 20, 2015 (RB-AR 6241). The NSMB EWMP permittees did so. The State

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<sup>5</sup>The County and Flood Control District request official notice of this annual report. A formal request accompanies this response.

Board has not issued any additional correspondence or requested any additional information in response to the submission of this final compliance plan.

Moreover, the Executive Officer has already addressed these issues. As noted above, in response to comments, the Executive Officer specifically provided that, should there be any inconsistencies between the NSMB EWMP and the ASBS Compliance Plan after the State Board's review of that plan, he will require the NSMB EWMP permittees to update the NSMB EWMP to ensure consistency between the NSMB EWMP and the Compliance Plan (RB-AR 6015 (Regional Board Response to Written Comments (May 12, 2016) at 29)).

#### **VI. THE PERMIT AND THE EWMP PROVIDE FOR MODIFICATION OF ITS PROVISIONS SHOULD FUTURE MONITORING CALL FOR IT**

Not only is the NSMB EWMP based on all relevant ASBS stormwater and non-stormwater monitoring data and standards, but both the MS4 Permit and the EWMP itself provide for modification of the EWMP if future monitoring results call for it.

An integral part of the Permit's watershed and enhanced watershed management programs is the adaptive management process. Under the MS4 Permit, every participant in a WMP or EWMP shall, every 2 years, evaluate their progress towards achieving interim and final water quality based effluent limits and receiving water limitations and, where called for, propose modifications to the WMP or EWMP. This includes re-evaluation of water quality priorities based on more recent water quality data and new information (RB-AR 66-67 (MS4 Permit, Part VI.C.8)). The NSMB EWMP itself also sets forth this requirement (RB-AR 5531-5534).

Thus, not only has the Executive Officer provided that the EWMP will be updated should there be any change in the ASBS Compliance Plan, but the MS4 Permit and the NSMB EWMP themselves more broadly provide that the EWMP will be updated should the ASBS (or other) monitoring indicate that new or other pollutants should be addressed in order to meet the ASBS special protections or other Ocean or Basin Plan requirements. As Regional Board staff testified at the September 7, 2016, meeting:

[I]f at some point there's new data through the ASBS monitoring or through the monitoring that's being done under the Permittees' coordinated monitoring program that shows that there are additional pollutants that are causing the problem in terms of the ASBS area then there's specific provisions that speak to that and require that then the EWMP needs to be modified to address those pollutants.

RT at 99:21-100:2.

The permittees have been implementing the EWMP, including the requirements of the ASBS Compliance Plan. The most recent ASBS monitoring reflects that the BMPs set forth in the Compliance Plan remain sufficient and no additional BMPs are

required. See 2015-2016 ASBS Special Protections Monitoring Report at 26-29.<sup>7</sup> The EWMP process and the ASBS Special Protections are thus working as intended. The ASBS Compliance plan is fully addressing ASBS discharges and the EWMP incorporates that plan. Should there be a need to modify the EWMP in the future, however, to reflect new priorities for the ASBS, the MS4 Permit and EWMP have a process in place to do so.

## **VII. CONCLUSION**

Petitioners ignore the fact that the ASBS stormwater and non-stormwater monitoring data and standards are the basis for and included in the ASBS Compliance Plan, ignore the fact that the Compliance plan is incorporated into the EWMP, and ignore the fact that the NSMB EWMP contains programs that are consistent with the ASBS Compliance Plan. As the Regional Board staff testified on September 7, 2016, and as they set forth in their response to comments, the staff determined that applicable water quality standards were referenced and appropriate monitoring data were reviewed, including those data presented in the ASBS Compliance Plan. (RT at 55:14-70:14 and 72:15-73:16; RB-AR 6015-6016 (Response to Written Comments at 29-30).)

For the foregoing reasons, petitioners' petition should be dismissed.

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<sup>7</sup> The County and Flood Control District request official notice of this 2015-2106 monitoring report. A formal request accompanies this response.

**REQUEST FOR INCLUSION OF REPORTS IN ADMINISTRATIVE RECORD OR IN  
THE ALTERNATIVE REQUEST FOR OFFICIAL NOTICE IN SUPPORT COUNTY OF  
LOS ANGELES AND LOS ANGELES COUNTY FLOOD CONTROL DISTRICT'S  
RESPONSE TO PETITION FOR REVIEW OF THE APPROVAL OF THE NORTH  
SANTA MONICA BAY ENHANCED WATERSHED MANAGEMENT PROGRAM  
SWRCB/OCC Files A2477 AND A2508**

In support of their response to the petition for review of the North Santa Monica Bay Enhanced Watershed Management Program, the County of Los Angeles and the Los Angeles County Flood Control District request the State Board to include as part of the administrative record the following documents that were not available to be introduced at the time of the Regional Board meeting on September 7, 2016:

1. North Santa Monica Bay Coastal Watersheds Annual Watershed Report, reporting year 2015-16.
2. Transmittal Letter, dated October 3, 2016, transmitting Area of Special Biological Significance 24 Report on Supplemental Monitoring, and 2015-16 ASBS Special Protections Monitoring Report.

Evidence before the State Board may include any relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of the Water Code. Water Code § 13320(b). These documents are relevant to the issues presented in this petition and the policies of the Water Code.

The State Board may additionally take official notice of these documents pursuant to 23 Cal. Code Reg. § 648.2 and Evidence Code § 452(c). Evidence Code § 452(c) allows the State Board to take notice of "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." "Official acts" under Evidence Code § 452(c) include "records, reports, and orders of administrative agencies." *Rodin v. Spiegel* (2001) 87 Cal.App.4<sup>th</sup> 513, 518.

Copies of these documents are submitted herewith.