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20 STATE OF CALIFORNIA  
21 REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION  
22 AND  
23 STATE WATER RESOURCES CONTROL BOARD

24 Petition of Los Angeles Waterkeeper and NRDC )  
25 for Review by the California Regional Water )  
26 Quality Control Board, Los Angeles Region, and )  
27 the State Water Resources Control Board, of the )  
28 Regional Board Executive Officer's Action to )  
PETITION FOR REVIEW OF LOS  
ANGELES REGIONAL WATER  
QUALITY CONTROL BOARD  
EXECUTIVE OFFICER'S ACTION  
TO APPROVE THE NORTH SANTA  
MONICA BAY EWMP PURSUANT  
TO THE L.A. COUNTY MS4 PERMIT

1 Pursuant to Part VI.A.6 of the Los Angeles County Municipal Separate Storm Sewer  
2 System (MS4) Permit (Order No. R4-2012-0175) (“2012 MS4 Permit” or “Permit”), Los Angeles  
3 Waterkeeper (“LAW”) and the Natural Resources Defense Council (“NRDC”) (collectively  
4 “Petitioners”) hereby petition the Los Angeles Regional Water Quality Control Board (“Regional  
5 Board”) to review the Regional Board Executive Officer’s action in approving the North Santa  
6 Monica Bay Watershed Management Group’s (“County and Malibu”) <sup>1</sup> Enhanced Watershed  
7 Management Program (the “NSMB EWMP” or “EWMP”) pursuant to the 2012 MS4 Permit.  
8 Additionally, in accordance with Section 13320 of the California Water Code and Section 2050 of  
9 Title 23 of the California Code of Regulations, Petitioners hereby petition the State Water  
10 Resources Control Board (“State Board”) to review the Executive Officer’s action to issue this  
11 approval.

12 The 2012 MS4 Permit regulates stormwater discharges from MS4s for Los Angeles  
13 County, the Los Angeles County Flood Control District, and 84 incorporated cities within Los  
14 Angeles County. The 2012 MS4 Permit is the fourth iteration of the MS4 permit for Los Angeles  
15 County. Unlike the prior 2001 Permit, the 2012 MS4 Permit provides Permittees the option of  
16 developing a Watershed Management Program or an Enhanced Watershed Management Program  
17 as an alternative mechanism to comply with permit requirements.

18 On April 19, 2016, the Executive Officer, on behalf of the Regional Board, approved the  
19 NSMB EWMP submitted by the County and Malibu. For reasons discussed below, Petitioners  
20 request that the Regional Board invalidate the Executive Officer’s approval and remand the matter  
21 with instructions to staff to require compliance with Permit conditions. Absent such action by the  
22 Regional Board, Petitioners request that the State Board invalidate the Executive Officer’s  
23 approval and remand the matter to the Regional Board with instructions to the Regional Board and  
24 its staff to require compliance with Permit conditions. The State Board has jurisdiction over this  
25 matter because the approval constitutes an abuse of discretion and was inappropriate and improper  
26 pursuant to Cal. Water Code §§ 13220 and 13330.

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28 <sup>1</sup> The North Santa Monica Bay Watershed Management Group is a group of MS4 Permittees consisting of the City of Malibu, the County of Los Angeles, and the Los Angeles County Flood Control District.

1 1. NAMES, ADDRESSES, TELEPHONE NUMBERS, AND E-MAIL ADDRESSES OF  
2 THE PETITIONERS:

3 Los Angeles Waterkeeper

4 120 Broadway, Suite 105

5 Santa Monica, CA 90401

6 Attention: Arthur Pugsley, Esq. (arthur@lawaterkeeper.org)

7 Melissa Kelly, Esq. (melissa@lawaterkeeper.org)

8 (310) 394-6162

9 Natural Resources Defense Council, Inc.

10 1314 Second Street

11 Santa Monica, CA 90401

12 Attention: Becky Hayat, Esq. (bhayat@nrdc.org)

13 (310) 434-2300

14 2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE  
15 STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR  
16 RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE  
17 PETITION:

18 Petitioners seek review of the Regional Board Executive Officer's action to approve the  
19 NSMB EWMP pursuant to the 2012 MS4 Permit. A Copy of the Executive Officer's letter of  
20 approval is attached as Exhibit D.

21 3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT  
22 OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

23 April 19, 2016. (Ex. D.)

24 4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR  
25 FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

26 In approving the NSMB EWMP, the Executive Officer failed to act in accordance with  
27 relevant governing law, acted inappropriately and improperly, and abused his discretion.

28 Specifically, but without limitation, the Executive Officer:

A. Improperly approved the NSMB EWMP despite its failure to comply with  
the relevant terms of the MS4 Permit. (Ex. A.)

B. Improperly approved the NSMB EWMP despite its failure to comply with  
the conditions of State Board Resolution No. 2012-0012 ("ASBS  
Exception"). (Ex. F.)

1 C. Improperly approved the NSMB EWMP despite its failure to consider  
2 relevant, available ASBS stormwater and non-stormwater data and to  
3 comply with the ASBS Exception's prohibition against non-Stormwater  
4 discharges. (Ex. B.)

5 5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

6 Petitioners are non-profit, environmental organizations that have a direct interest in  
7 protecting the quality of Los Angeles County's aquatic resources, including Santa Monica Bay, the  
8 portion of the Bay designated as an Area of Special Biological Significance between Laguna Point  
9 and Latigo Point ("ASBS 24"), and other Los Angeles area waters, as well as the health of  
10 beachgoers and other users. NRDC is a non-profit organization whose purpose is to safeguard the  
11 Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC  
12 represents approximately 70,100 members in California, approximately 14,029 of whom reside in  
13 Los Angeles County. LAW is a non-profit organization dedicated to the preservation, protection,  
14 and defense of the coastal and inland surface and ground waters of Los Angeles County from all  
15 sources of pollution and degradation. LAW represents approximately 3,000 members who live  
16 and/or recreate in and around the Los Angeles area.

17 Petitioners have members who regularly use and enjoy waters in the Los Angeles region  
18 that are affected by the discharges authorized by the 2012 MS4 Permit. Those members depend on  
19 clean water for a variety of sustenance-related, recreational, aesthetic, educational, and scientific  
20 purposes, including drinking, hiking, fishing, swimming, boating, wildlife observation, scientific  
21 research, photography, nature study, and aesthetic appreciation. Petitioners' members are impacted  
22 by polluted stormwater runoff and its resulting health impacts, particularly by beach closures that  
23 restrict the ability of residents and visitors in Los Angeles County to use the beach and local  
24 waters for recreation and other purposes.

25 Petitioners' members are aggrieved by the Executive Officer's action to approve the  
26 NSMB EWMP because such action is an obstruction to achieving the Permit's ultimate goal of  
27 meeting Water Quality Standards ("WQSs"), as required by the Clean Water Act and Porter-  
28 Cologne Water Quality Act. Specifically, the Executive Officer's failure to deny the NSMB

1 EWMP as required by the 2012 MS4 Permit has enormous consequences for Los Angeles County  
2 residents and Petitioners' members. The NSMB EWMP is unique in that its geographical scope  
3 includes ASBS 24, which requires special protection of species and/or biological communities.  
4 The California Water Quality Control Plan, Ocean Waters of California ("Ocean Plan") prohibits  
5 all discharge of waste to any ASBS, subject to narrow exceptions articulated in State Board  
6 Resolution No. 2012-0012. The County and Malibu applied for and were granted an ASBS  
7 exception in 2012, which requires them to abide by the ASBS Exception's conditions.

8           Unfortunately, the NSMB EWMP fails to protect ASBS 24 and to comply with the 2012  
9 MS4 Permit and ASBS Exception. Monitoring data collected by the County and Malibu show  
10 exceedances of Ocean Plan Instantaneous Maximum Limits for ammonia, cadmium, chromium,  
11 copper, lead, nickel, zinc, and high concentrations of PAH, pyrethroids, and TSS at outfalls to the  
12 ASBS. Thus, approval of the NSMB EWMP will only lead to the continued degradation of water  
13 quality in ASBS 24. Both the Regional and State Board have defined the EWMP as the means by  
14 which compliance with WQSs is determined. By approving a clearly deficient EWMP, however,  
15 the Executive Officer is allowing Permittees to defer compliance with applicable WQSs, resulting  
16 in zero improvement in water quality for North Santa Monica Bay.

17           All of these documented facts demonstrate the considerable negative impact on Petitioners'  
18 members and the environment that continues today as a result of the Executive Officer's failure to  
19 comply with the terms of the 2012 MS4 Permit by approving the NSMB EWMP.

20 6.     **THE SPECIFIC ACTION BY THE REGIONAL OR STATE BOARD WHICH**  
21         **PETITIONERS REQUEST:**

22           Petitioners seek an Order by the Regional Board or State Board that:

23                     Invalidates the Executive Officer's approval of the NSMB EWMP and remands the  
24                     matter to the Regional Board and its staff with instructions to revise the EWMP to  
25                     bring it into compliance with the Los Angeles County Municipal Separate  
                          Storm Sewer Permit, Order No. R4-2012-0175, NPDES Permit No. CAS004001,  
                          and the requirements of State Board Resolution 2012-0012.

26 7.     **A STATEMENT IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:**

27           See, Section 4, above. Petitioners have also enclosed a separate Memorandum of Points  
28 and Authorities in support of legal issues raised in this Petition.

1 8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE  
2 REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER:

3 A true and correct copy of this petition was delivered by electronic mail to the State Board,  
4 Regional Board and the NSMB EWMP Permittees on May 19, 2016. A true and correct copy of  
5 this petition was also mailed via First Class mail to the State Board, Regional Board, and the  
6 NSMB EWMP Permittees on May 19, 2016.

7 9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN  
8 THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN  
9 EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS  
UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE  
THE REGIONAL BOARD.

10 All of the substantive issues and objections raised herein were presented to the Regional  
11 Board during the period for public comment on the draft EWMPs. Petitioners submitted written  
12 comments regarding the NSMB EWMP on August 31, 2015. (Ex. C.) Petitioners presented  
13 testimony before the Regional Board on the draft NSMB EWMP on November 5, 2015 and on the  
14 revised EWMP on March 3, 2016.

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18 Respectfully submitted via electronic mail and U.S. Mail,

19 Dated: May 19, 2016

LOS ANGELES WATERKEEPER

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25 Arthur Pugsley  
26 Attorney for LOS ANGELES WATERKEEPER  
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1 Dated: May 19, 2016

NATURAL RESOURCES DEFENSE COUNCIL, INC.

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6 Becky Hayat  
7 Attorney for NATURAL RESOURCES  
8 DEFENSE COUNCIL, INC.  
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
3 and not a party to the within action. My business address is: 1004 O'Reilly Ave, San Francisco,  
4 California 94129.

5 On May 19, 2016, I served the within documents described as PETITION FOR REVIEW  
6 OF LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD EXECUTIVE  
7 OFFICER'S ACTION TO APPROVE THE NORTH SANTA MONICA BAY ENHANCED  
8 WATERSHED MANAGEMENT PROGRAM PURSUANT TO THE L.A. COUNTY MS4  
9 PERMIT and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
10 PETITION FOR REVIEW OF LOS ANGELES REGIONAL WATER QUALITY CONTROL  
BOARD EXECUTIVE OFFICER'S ACTION TO APPROVE THE NORTH SANTA MONICA  
BAY ENHANCED WATERSHED MANAGEMENT PROGRAM PURSUANT TO THE L.A.  
COUNTY MS4 PERMIT on the following interested parties in said action by submitting a true  
copy thereof via electronic mail to the email addresses below:

11 California Regional Water Quality  
12 Control Board, Los Angeles Region  
13 c/o Sam Unger  
14 Executive Officer  
[samuel.unger@waterboards.ca.gov](mailto:samuel.unger@waterboards.ca.gov)

State Water Resources Control Board,  
Office of the Chief Counsel  
c/o Adrianna Crowl  
Staff Services Analyst  
[waterqualitypetitions@waterboards.ca.gov](mailto:waterqualitypetitions@waterboards.ca.gov)

15 Howard Gest  
16 Burhenn & Gest LLP  
17 624 Grand Ave Suite 2200  
18 Los Angeles, CA 90017  
[hgest@burhenngest.com](mailto:hgest@burhenngest.com)

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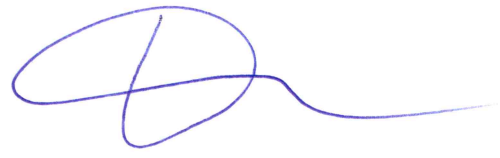
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19, 2016, at San Francisco, California.



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**Daniel Cooper**