

City of Duarte's Reservation of Rights and Concerns with the Revised EWMP

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Duarte's Reservation of Rights

- Duarte and other cities filed lawsuits in July of 2015 against the Regional and State Boards, challenging, among other issues, the numeric effluent limitations (NELs) in the Permit, including the Watershed and Enhanced Watershed Management Programs (WMPs/EWMPs) to the extent they are to be designed to meet the NELs.
- The Duarte lawsuit alleges the NELs were invalidly adopted and are not reasonably and economically achievable, and that the WMPs/EWMPs should not, therefore, be required to achieve compliance with NELs. Instead, Duarte has urged that these WMPs/EWMPs programs be designed to implement a series of minimum stormwater control measures/BMPs to improve water quality to the maximum extent practicable, given the geographical and physical constraints in issue and the costs of compliance, and the financial, technical and practicable capabilities of the participating entities.

Duarte Reservation of Rights (Cont'd)

- There is no evidence that Duarte is aware of, that it can, either with the Rio Hondo/San Gabriel River Group or otherwise, reasonably and economically comply with the 2012 Permit's NELs, and thus comply with any corresponding EWMP aimed at achieving compliance with those NELs.
- The trial on the Duarte Case and the related *City of Gardena v. State Board* case was finished last month, with a decision expected this Summer (2018).
- Duarte wishes to cooperate with adjoining cities to attempt to remain in compliance with the 2012 Permit but without jeopardizing its legal claims, nor its sincere concerns that the NELs are simply not reasonably or economically achievable. ***As such, Duarte must continue to reserve all of its rights and claims, as stated in its lawsuit.*** It is participating in the EWMP process in an attempt to comply with the 2012 Permit, but maintains that the NELs and the other challenged requirements of the Permit are legally invalid and are not reasonably or economically achievable. Should Duarte prevail in its litigation, Duarte reserves the right to withdraw from the EWMP.
- Duarte also reserves all of its rights and claims regarding whether the 2012 Permit's terms, including the NEL terms, are unfunded state mandates subject to reimbursement by the State under the California Constitution.

Duarte's Reservations with the Revised EWMP

- Duarte's City Council has not approved the revised EWMP, which is still a work in progress. Questions remain on whether the revised EWMP is technically, practically and economically viable, as well as the amount of the overall costs (including Duarte's share) to implement and maintain the proposed projects under the revised EWMP. Questions also remain over whether the EWMP's programs would result in Duarte achieving compliance with the applicable NELs.
- Duarte is considering participating in the revised EWMP to contribute to regionally responsible stormwater treatment programs, and to continue to be in compliance with the Permit terms, but without conceding the NELs in the 2012 Permit are legally valid and binding, and with the understanding that the NELs may be invalidated by the Courts.
- Questions regarding formation of a joint powers authority (JPA) for the purpose of funding some or all of the projects proposed by the revised EWMP are premature, and Duarte understands no EWMP participant is committing to do so at this time.

Duarte's Reservations with the Revised EWMP (Cont'd)

- Before Duarte can commit to fully participating in the revised EWMP, Duarte is seeking resolution of the following matters:
 - A final resolution of its pending lawsuit.
 - The identification of all of the various projects necessary under the revised EWMP to meet the NELs; a description of their scope; and an analysis of whether the projects are technically, practically and reasonably achievable, and will timely meet the applicable NELs,
 - An analysis of the full estimated cost of implementing and maintaining all of the various projects proposed under the revised EWMP, and Duarte's individual estimated implementation and maintenance costs to comply, so that all of the parties, including the Board, can determine whether the revised EWMP terms are appropriate in light of the cost of compliance.
 - The viability of the EWMP for those members who remain in the Group, given the loss of the City of Azusa from the group, and other possible shifts in membership.
- In addition to this presentation, the Duarte Mayor, Mayor Pro Tem and entire City Council has signed a letter setting forth the Council's additional comments to the Board on these matters. On behalf of the Council, I am hereby submitting this letter to the Board and placing it into the record.