



San Gabriel Valley Council of Governments
AGENDA AND NOTICE OF THE JOINT MEETING OF THE WATER
POLICY COMMITTEE & WATER TECHNICAL ADVISORY
COMMITTEE (TAC)

Tuesday, February 11, 2020, 10:00 AM
Upper San Gabriel Valley Municipal Water District Office
602 E. Huntington Drive, Suite B; Monrovia, CA 91016

Water Policy
Chair

Diana Mahmud
City of South Pasadena

Vice-Chair

Judy Nelson
City of Glendora

MEMBERS

Claremont
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena
LA County District 1

Water TAC
Chair

Tom Love
Upper San Gabriel Valley
Municipal Water District

Vice Chair

Alex Tachiki
City of Monrovia

MEMBERS

Alhambra
Arcadia
Bradbury
Covina
Duarte
Monrovia
Pomona
Sierra Madre
LA County DPW
Upper San Gabriel Valley
MWD

EX-OFFICIO

LA County Sanitation
Districts
SG Basin Watermaster

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Water Committee are held on the second Tuesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices (602 E. Huntington Drive, Suite B Monrovia, CA 91016).* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvkog.org. Copies are available via email upon request (sgv@sgvcog.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

PUBLIC PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the Committee/TAC can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*).
4. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting.

CONSENT CALENDAR (*It is anticipated that the Water Committee/TAC may act on the following matters*)

5. Water Committee/TAC Meeting Minutes (Page 1)
Recommended Action: Approve January 14, 2020 Water Committee/TAC meeting minutes.

PRESENTATIONS

DISCUSSION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

6. Working Proposal of the Regional Phase 1 Municipal Separate Storm Sewer System (MS4) NPDES Permit (Page 5)
Recommended Action: Provide direction on comments for submittal to the Los Angeles Regional Water Quality Control Board on the Working Proposal of the MS4 Permit.
7. State Water Resources Control Board Draft Order (Page 19)
Recommended Action: Provide direction on comments for submittal to the State Water Resources Control Board on the Draft State Water Board Order.

UPDATE ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

8. Legislative Updates
Recommended Action: For information only.
9. Litigation Update
Recommended Action: For information only
10. Safe Clean Water Updates (Page 59)
 - a. Overall Updates
 - b. Rio Hondo WASC
 - c. Upper Los Angeles River WASC
 - d. Upper San Gabriel River WASC*Recommended Action: For information only.*
11. E/WMP Updates
Recommended Action: For information only.
12. Water TAC Chair Report
Recommended Action: For information only.
13. Water Supply Update
Recommended Action: For information only.
14. Water Boards Update
Recommended Action: For information only.
15. WELL Conference Update (Page 61)
Recommended Action: For information only.

CHAIR'S REPORT

ANNOUNCEMENTS

ADJOURN



**SGVCOG Joint Water Policy Committee/TAC Meeting
Unapproved Minutes**

Date: January 14, 2020
Time: 10:00 AM
Location: Upper San Gabriel Valley Municipal Water District Office
602 E. Huntington Drive; Monrovia, CA 91016

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:05 A.M.
2. Roll Call

Water Policy Committee Members Present

J. Stark; Claremont
G. Boyer, J. Nelson; Glendora
G. Crudgington; Monrovia
M. Clark; Rosemead
D. Mahmud; South Pasadena

Water Policy Committee Members Absent

Sierra Madre
LA County District #1

Water TAC Members Present

D. Dolphin; Alhambra
A. Hamilton, Y. Paez; Duarte
R. Wang; LA County Public Works
A. Tachiki, J. Louie; Monrovia
J. Carlson, Sierra Madre
T. Love, P. Cortez; USGVMWD

Water TAC Members Absent

Arcadia
Bradbury
Covina
Pomona

Ex Officio Members Present

K. Gardner, L. Augino; SG Basin Watermaster

Ex Officio Members Absent

LACSD

Guests

C. Hemle, B. Wardynski; Craftwater Engineering
A. Sweet; City of Glendora
R. Ramos; City of Irwindale
D. Petschauer; City of Los Angeles/ULAR EWMP Lead
B. Channell; Office of Sen. Diane Feinstein
B. Pence; Office of Congresswoman Grace Napolitano
D. Correy; Office of Sen. Anthony Portantino
B. Datti; TetraTech

SGVCOG Staff

C. Sims
S. Matthews

3. Public Comment.
There was no public comment.

4. Changes to Agenda Order.
Item 7 was moved to follow the Consent Calendar.

CONSENT CALENDAR

5. Water Committee/TAC Meeting Minutes
There was a motion to approve the consent calendar.
(M/S: J. Carlson/J. Nelson)

[MOTION PASSED]

AYES:	Claremont; Glendora; Monrovia; Rosemead; South Pasadena; Alhambra; Duarte; Monrovia; Sierra Madre; LA County Public Works; USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Sierra Madre; LA County District 1; Arcadia; Bradbury; Covina; Pomona

PRESENTATIONS

7. Upper Los Angeles River (ULAR) Watershed Management Group: Pre-Stormwater Investment Plan and Load Reduction Strategy
C. Helmle, President and CEO of Craftwater Engineering, presented on a preSIP scientific study that will support the WASC and the SGVCOG by developing a platform to consolidate intertwined goals and disparate project proposals into a balanced, collaborative, and cost-effective plan. He explained how the study will enable the WASCs to identify, understand, and organize the comprehensive suite of candidate project opportunities and evaluate their benefits in a watershed context to design an efficient, adaptable SIP. There were discussions on the project, and discussions on a project submitted by the City of Los Angeles.

B. Datti, Water Resources Engineer at Tetra Tech, presented on a study to develop an LRS adaptation plan. She explained that the goal of the study is to adapt the LRS to better align implementation actions in order to successfully reduce potential health risks to recreators.

ACTION ITEMS

6. Regional Scientific Study to Support Protection of Human Health through Targeted Reduction of Bacteriological Pollution
There was discussion on a proposed study to more thoroughly study fecal indicator bacteria (FIB) in order to determine the specific sources of human health risk and to identify actions to more effectively address these sources. The study was submitted to the Safe Clean Water Call for Projects for funding. There was discussion on how the proposed project would intersect with the ULAR Load Reduction Strategy (LRS) study that was also submitted to the Safe Clean Water Call for Projects. There was also a discussion about the possibility of funding from the County’s Safe Clean Water funding allocation. There was also a recommendation that the study be completed in close coordination with the Regional Board. Finally, there was concern expressed about using funding for additional studies, rather than on project implementation.

There was a motion to recommend the Governing Board support the “Regional Scientific Study to Support Protection of Human Health through Targeted Reduction

of Bacteriological Pollution,” with a reconsideration of the cost allocations as necessary pending support from the various Safe Clean Water Watershed Area Steering Committees (WASCs) and delay of the timeline of the Upper Los Angeles River (ULAR) analysis pending completion of the ULAR Load Reduction Strategy Adaptation to address the LA River Bacteria TMDL, and support the Gateway Management Authority to serve as the contract administrator (M/S: A. Tachiki/T. Love).

[MOTION PASSED]

AYES:	Claremont; Glendora; Monrovia; South Pasadena; Alhambra; Duarte; Monrovia; USGVMWD
NOES:	Rosemead
ABSTAIN:	Sierra Madre; LA County Public Works
ABSENT:	Sierra Madre; LA County District 1; Arcadia; Bradbury; Covina; Pomona

DISCUSSION ITEMS

- 8. Working Proposal of the Regional Phase 1 Municipal Separate Storm Sewer System (MS4) NPDES Permit
 - A. Tachiki reported on the Permit Workshop that had been held on January 6, 2020. G. Crudgington reported that the Regional Board did not appear to be as concerned about moving quickly. D. Mahmud reported that the non-governmental organizations (NGOs) appeared to be most concerned about metrics and reporting, to be sure that cities were making progress on the Permit. He reported that the Water TAC would be meeting over the next several weeks in order to develop comments on the working proposal. Those comments would be considered by the Water Policy Committee at its next meeting.
- 9. State Water Resources Control Board Draft Order
 - D. Mahmud provided a brief overview of the State Water Resources Control Board’s Draft Order. There was a brief discussion on the implications of the potential Draft Order. The Water TAC would also be discussing comments on the Draft Order for consideration by the Water Committee at its February meeting.

UPDATE ITEMS

- 10. Legislative Updates
 - Staff provided a brief update on AB 755 (Holden) – the California Tire Fee. The Bill is a two-year bill that must pass out of the Assembly by January 31, 2020, in order to remain active. This bill is not expected to move forward because of the upcoming elections. Committee members reported on an effort being advanced by the California Stormwater Quality Association (CASQA) for the California Department of Toxic Substances to look at the impact of zinc in tires on stormwater quality.
- 11. Litigation Update
 - There was no litigation update.
- 12. Safe Clean Water Updates
 - a. Overall Updates
 - b. Rio Hondo WASC
 - c. Upper Los Angeles River WASC
 - d. Upper San Gabriel River WASC

- There was no Safe Clean Water update.
13. E/WMP Updates
There were no E/WMP updates.
 14. Water TAC Chair Report
Water TAC Vice Chair A. Tachiki reported on the status of the next MS4 Permit. He announced that a meeting of the Water TAC will be held to discuss the working proposal of the Permit.
 15. Water Supply Update
K. Gardner provided an update on the Key Well. T. Love provided an update on the Metropolitan Water District's (MWD's) water supply. He reported that the demand for imported groundwater was the lowest that it had been in 40 years. He also reported that there would be a presentation on PFAS at the April 22, 2020 USGVMWD Board Meeting.
 16. Water Boards Update
There was no Water Boards Update.

CHAIR'S REPORT

D. Mahmud reported that the State had released the Water Resilience Portfolio, which looks at how the State can be more prepared for droughts and other extreme weather events, aging infrastructure, and other challenges. There was a brief discussion on the status of the State Water Project and the delta conveyance project. There was also a brief discussion on the Carson Regional Water Project, which would make the San Gabriel Basin independent from imported water.

ANNOUNCEMENTS

There were no announcements.

The meeting was adjourned at 12:15 PM.

REPORT

DATE: February 11, 2020

TO: Water Committee/Water TAC

FROM: Marisa Creter, Executive Director

RE: **WORKING PROPOSAL OF THE REGIONAL PHASE 1 MUNICIPAL SEPARATE STORM SEWER (MS4) NPDES PERMIT**

RECOMMENDED ACTION

Provide direction on comments for submittal to the Los Angeles Regional Water Quality Control Board on the Working Proposal of the MS4 Permit.

BACKGROUND

In December 2019, the Los Angeles Regional Water Quality Control Board (Regional Board) released the “Working Proposal” of the Regional Phase 1 Municipal Separate Storm Sewer Permit (MS4 Permit) to stakeholders. The Regional Board subsequently held a workshop on January 6, 2020, to allow stakeholders, including representatives from the San Gabriel Valley Council of Governments (SGVCOG), to provide initial comments on the Working Proposal. The Regional Board also asked for additional comments on the Working Proposal from stakeholders, including the SGVCOG, in advance of the release of the Draft MS4 Permit.

In January 2020, the Water Technical Advisory Committee (TAC) met twice to discuss the SGVCOG’s comments on the MS4 Permit Working Proposal. The Water TAC members also undertook a close review of the MS4 Permit, reviewing variations from the existing 2012 MS4 Permit and identifying potential concerns. Based on the feedback, the Water TAC developed the proposed MS4 Permit comments (Attachment A). In addition, the Water TAC’s review of differences between the 2012 MS4 Permit and Working Proposal of the MS4 Permit is included as Attachment B.

NEXT STEPS

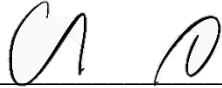
The Regional Board has requested comments on the Working Proposal as soon as possible. SGVCOG staff is seeking direction from the Water Policy Committee/TAC on the proposed comments. Pending direction from the Water Policy Committee/TAC, SGVCOG staff will submit the proposed comments to the Regional Board staff. These comments will be taken under advisement as the Regional Board prepares the Draft MS4 Permit, which will be released for a formal public comment period.


REPORT

ATTACHMENTS

Attachment A – Draft Comments

Attachment B – 2012 vs. 2020 Working Proposal MS4 Permit Analysis

Prepared by: 
Caitlin Sims
Principal Management Analyst

Approved by: 
Marisa Creter
Executive Director

SGVCOG Comments on MS4 Permit

This submittal is being made on behalf of the San Gabriel Valley Council of Governments (“SGVCOG” or “COG”) and its member cities. The SGVCOG is submitting these comments in response to Regional Board staff’s request for written comments on the “Staff Working Proposal” version of the Regional Phase 1 Municipal Separate Storm Sewer System (MS4) Permit (“Draft Permit”), which was circulated to the community via FTP link on December 10, 2019.

As fellow public agencies, the COG’s member agencies appreciate the opportunity to comment on the Draft Permit and hope to continue to work with the Regional Board and its staff to create a final permit that includes terms that are technically and financially feasible, while also achieving concrete environmental benefits to our communities.

TECHNICAL ISSUES

The SGVCOG has specific comments and notes that are included as Attachment A. However, we would also like to highlight the following areas of concern:

- **Trash TMDL:** The SGVCOG has significant concerns with the Trash TMDL of 0 included in the Draft Permit (p. 20; p. 56). Despite alternative compliance options, this TMDL is not a reasonable goal.
- **Annual Report Forms:** The Draft Permit’s annual report forms does not provide adequate guidance on what the Regional Board is looking for with regard to financial reporting. Moreover, including the reporting forms in the Permit does not allow for the flexibility to address any issues or needs that may arise. To allow for the opportunity to adjust reporting to better meet the needs of all stakeholders, the SGVCOG recommends that the forms be removed from the Permit. Instead, the Draft Permit should allow for the Regional Board to adopt the annual report forms on a regular (i.e. annual) basis.
- **Compliance Schedule:** The Draft Permit specifies that Permittees must comply immediately with water-quality based effluent limitations immediately (p. 45). Previously, Permittees had had 90 days to meet compliance deadlines. A program that is determined to be “inadequate” by the Regional Board should be allowed a grace period to correct inadequacies. This would still allow for the Board to address gross non-compliance while providing a path for Programs with very minor and easily correctable flaws to continue addressing water quality goals.
- **Industrial General Permit (IGP) Training:** The Draft Permit requires Permittees’ staff to complete IGP training, placing an additional burden on Permittee staff related to the IGP, which was previously not a responsibility.
- **Fiscal Resources:** The Draft Permit requires that each Permittee enumerate the sources of funds used in the past year and proposed in the future year in order to comply with the Permit (p. 56). The Permit should provide greater clarity on this requirement, as there will likely be circumstances where the cost estimates to implement the Permit are greater than the funding available.
- **Toxicity:** The Draft Permit includes a new discharge requirement around aquatic toxicity. This is a new Permit requirement and, thus, will require additional time to fully review the technical elements of this new requirement.
- **Safe Clean Water Measure Integration:** The SGVCOG commends the Regional Board on its acknowledgement of the funding impact of LA County’s Safe Clean Water Measure. The SGVCOG recommends that the Safe Clean Water be more integrated into the Permit, including but not limited to mimicking the Safe Clean Water reports with the Permit’s reporting requirements.

LEGAL ISSUES

In addition to these technical comments regarding the Draft Permit, the SGVCOG would also like to reiterate some of the legal concerns. Namely, the SGVCOG reiterates and joins in the comments and concerns raised in the City of Duarte's January 6, 2020 letter, which provides a more detailed discussion of the Draft Permit's legal flaws, as well as data regarding the potential costs of complying with numeric effluent limits, and the inherent problems associated with those costs. Duarte's letter is attached hereto as Attachment B to this comment letter.

That said, from a more general perspective, the COG would also like to address and/or emphasize a few other legal and procedural issues that the Regional Board must take into account.

First, the SGVCOG is concerned that the Draft Permit has omitted any discussion of the trial court's recent ruling invalidating the numeric effluent limitations ("NELs") and the NEL-related terms of the 2012 LA MS4 Permit, in *City of Duarte v. State Water Resources Control Board, et al.* (Case No. 30-2016-00833722) (the "Duarte Decision"). At the core the Duarte Decision is the simple determination that the California Legislature required the Regional Board to consider the factors laid out in California Water Code ("CWC") section 13241 prior to imposing the NEL terms on the permittees, including, but not limited to, considering the dischargers' cost of compliance and whether those terms are actually reasonably achievable.

After extensive briefing, nine days of trial, and the Court's own extensive review of the 2012 Permit's findings and fact sheet, the Court determined that the Regional Board previously failed to comply with this requirement, and therefore, has ordered that the Regional Board set aside the challenged NEL terms, and to take any other necessary action consistent with the Court's ruling. In light of the Court's ruling, the SGVCOG believes it would be both unproductive and an abuse of the Regional Board's discretion to make the same mistake by simply readopting the same NEL terms again without conducting the requisite analysis required by California law. Indeed, at the moment, the proposed Draft Permit's findings regarding CWC section 13241 appear to be identical to the very same findings that the Court ruled were wrong as a matter of law, and also failed to meet the requirements of California Code of Civil Procedure section 1094.5. To simply adopt the same findings again, without any acknowledgement of the Court's opinion is wholly inappropriate even with the Regional Board's and State Water Resources Control Board's appeal pending.

The SGVCOG hopes to work with the Regional Board as the Regional Board develops an independent assessment of the costs of complying with the Draft Permit's NEL terms, and/or other discretionary requirements. Once that assessment has been accomplished, the SGVCOG and its member agencies would then be able to work with the Regional Board to determine if those terms are appropriate, and reasonably and technically achievable for the permittee cities.

Second, from a procedural perspective, the COG is concerned that Regional Board staff is attempting to "fast-track" this Draft Permit to completion regardless of the concerns raised by the permittee in an attempt to mitigate the fall-out from the trial court's invalidation of the NEL-terms of the 2012 Permit. Unfortunately, this legal tactic is not productive, or conducive to a collaborative effort.

Instead of speeding up, the adoption of a new "Regional Permit" should be pursued carefully, and with the goal of getting support from all of the regulated community, so that the permit includes terms that comply with State law, while also being technically and financially feasible. Indeed, it

is a waste of both the Regional Board's and permittees' time to work through these issues now, when the Court of Appeal may very well force rescission of portions of a new permit that were not adopted in conformance with the legal requirements discussed in the Duarte Decision.

Lastly, the COG hopes that the Regional Board is willing to work with it and its member agencies to formulate and adopt a permit that does not suffer from the same infirmities as the 2012 MS4 Permit. In order to accomplish this goal, however, the Regional Board must consider the dischargers' costs of complying with the proposed terms, and whether or not those terms are reasonably achievable. (CWC § 13241(c) & (d); CCP § 1094.5(b).) Ultimately, if the Regional Board determines that some permit terms are achievable, while others are not, it should impose those terms that are in fact achievable.

Accordingly, prior to imposing a new permit, the COG asks that the Regional Board develop and reasonably consider the information mandated by CWC § 13241, and make the appropriate findings showing how such information justifies the imposition of the new permit's proposed NEL-related terms.

Comparison of 2012 and 2020 MS4 NPDES Permit

#	Section	Page	Comment		
1	I. Facility Information	10	the intro paragraph is new, however Tables 1 and 2 on pages 1-6, no longer contain contact information, just mailing address for agency and their permit number. Table 3 contains Administrative Information which will be filled in. Table 3 in 2012 permit has been removed from Facility Information section.		
2	II (Findings), A. Nature of MS4 Discharges	10	This section mentions LA Region, but does not include Ventura Co.		
3	II (Findings), C. Regulatory History	11	History of all three permits included in new permit	LA County also had separate Phase I MS4 Permit - 3 separate permits in total.	
4	II (Findings), H.	15	"Given LACFCD's and VCWPD's limited land use authorities, they are not subject to I/C Facilities Program and the Planning & Land Development Program. However as owners and operators of a MS4, LACFCD and VCWPD remain subject to PIPP, IC/ID, Public Agency Program & Construction Program..." So, are Cities/County no longer subject to Ind/Com Facilities Program and Planning & Land Development Program? Would ask for clarification.	We are no longer subject to Ind/Com Facilities Program and Planning & Land Development Program? NO Flood control does not comply to that program	
5	II (Findings), I. Geographic Coverage	16	Added Santa Ana River Watershed - 30.5 sq miles; removed 86 sq mi of RW flow from OC into Coyote Ck and SGR	Santa Ana was in last permit, had its own attachment	
6	II (Findings), O. TMDL's	20	Paragraph 2 - History of use of Numeric effluent limits - options to comply using any lawful means. must achieve NL derived from TMDL WLA's. Later in doc NEL are still included in body of permit regardless of findings of Duarte/Gardena lawsuit.	Numeric effluent limits - methods must achieve NL derived from TMDL WLA's	
7	II (Findings), O. TMDL's	20	Give examples of how Bacteria and Trash WLA's are met. Then gives example of LAR Trash TMDL (does not mention of Statewide Trash TMDL until pg 22)	Are these LAR Trash WLA's - progressively decrease allowable amounts until target of zero discharge is achieved - how? Enforceable? 100% of drainage area covered? I thought only priority land uses?	I think this is for who has a trash TMDL, not the statewide amendment
8	II (Findings), O. TMDL's	21	Cause to contribute, not jointly responsible for exceedances if compliance can be demonstrated. (from 2012 permit)		
9	II (Findings), Q. ISWEBE	22	ISWEBE added; Bacteria Dredged/Fill Material - OAL approved 8/28/19; effective 5/28/20		
10	II (Findings), R. Trash Provision	22	Statewide Trash Provisions added to Permit - Trash Forms in Appendix I are for LAR Trash TMDL.		
11	II (Findings), S. Sediment Quality	23	Amended 2018, effective 3/11/19 supersedes all sediment quality objectives in bays/estuaries		
12	II (Findings), T National Toxics Rule	23	40 criteria applied in CA - Amended 11/18 withdraw freshwater criteria for lead		
13	II (Findings), U Antidegradation Policy	23	See Fact Sheet (Attachment F)		
14	II (Findings), V Anti-Backsliding Req.	23	See Fact Sheet (Attachment F)		
15	II (Findings), W ESA	24	Last sentence revised " The requirements of this Order are designed to maintain water quality and prevent a condition of pollution, contamination or nuisance in waters of the US....Permittees remain independently responsible for meeting all applicable requirements under CESA and ESA".	same language as 2012 Permit but instead of protect beneficial use, says prevent a condition of pollution, contamination or nuisance in waters of US.	
16	II (Findings), X Adv Mitigation to CC	24	New Section added. EO Adopted on 4/29/19 directs CNRA, CDFA and CalEPA to prepare Water Resilience Portfolio expand priorities CWAP. EWMP projects to aide in sustainability efforts. Permittees "should consider" climate change offsets. "Adaptive Strategy" to consider climate change in modeling or BMP vulnerability to climate change and mitigate impacts as part of design plans - Would need to add this to 100% Design Plans.	NEW 4/29/19 directs EPA, CNRA and CDFA to Prepare Water Resilience Portfolio expand priorities. Cities should consider different approaches to achieve compliance and should consider climate change offsets.	

17	II (Findings), Y eRULE	25	4/30/19 change to rule, consistency with existing MS4 regulations	4/30/19 change to rule, to file electronically vs paper based filing SMARTS (Appendix A)
18	II (Findings), Z Monitoring & Reporting	25	Monitoring requiremenst are prescriptive & require agency to include requirements...	
19	II (Findings), AA Std & Spec Provisions	25	First and second sentence are repetitive.	
20	II (Findings), BB State Mandates	26	"No provision of this Order consititues an unfunded state mandate..." "provide subvention of funds" Requirements of this Order do not constitute state mandates.	Fact Sheet (Attachment F)
21	II (Findings), Consideration SWC 13241	26-27	Economic Analysis 2nd para. LARB considered "all the evidence" re.CWC 13241. finds Order are necessary to implement WQP protect beneficial uses, may not fail to protect beneficial uses. Failure to protect is inconsisent w/ Fed law. Order incl provisions to consider providing additional time to Permittees to implement control measures to achieve final WQBE limitations and/or WQ Stds where appropriate" - What is considered "appropriate"? Will Duarte/Gardena Attorney's be weighing in on this?	
22	II (Findings), Benefit Assessment Prg	27	VCFMD benefit assessment w/o Moorpark? Additional time may be considered?	Ventura County requirement
23	II (Findings), Safe, Clean Water Program	27 -28	Board may consider providing additional time to implement projects to achieve WQBE and RW limitation, based on SIPs. We may get TSO or future amendments to Basin Plan.	
24	II (Findings), GG Human Right to Water	28	New - based on WCS 106.3; includes actions to improve conditions for econ distressed communities and persons experiencing homelessness.	
25	II (Findings), Other Plans, Policies/Regs	28	Catch all language to implement all other applicable fed regs and state plans, policies and regs	
26	II (Findings) Therefore, it is Orderd	29	This action in no way prevents RB from taking enforcement action for violations of the Previous Orders	
27	III (Discharge) Toxic Substances	30	removed from previous permit language that staes "to which it is an owner or operator"	
28	III (Discharge) Non-Stormwater	30	Footnote 19 - DWS discharges for dedicated DW purposes	
29	III (Discharge) 4.c Monitoring	33	Evaluate monitoring data collected (MRP) Attachment E. Permittee shall use applicable interim or final WQBE limits. If exceedences then take action to determine source and if causing/contributing to exceedances of RW Limitations.	
30	III (Discharge) 4.b. Old permit		Took away coordination with local water purveyors and coordinated outreach	
31	Table 4	35-39	Added several new Conditional Exemptions (filming, reservoir cover cleaning & fire fighting)	
32	III (Discharge) C Trash	40	Areas addressed by Trash TMDL - Compliance with WQBEL, not - follow Track 1 or 2; Priority Land uses found in Attachment A	
33	III (Discharge) C Trash, b -d	41	taken from Statewide Trash Permit	
34	III (Discharge) C Trash d	41	Implementation within 5 years of effective date of order 50% of PLUs and equivalentls must have FC or FCSE?	
35	III (Discharge) D - Insecticide,et al	42	Not applicable to products used for lawn and ag purposes - why not???	
36	IV(Effluent Limits) Section B 1-4 New	43-52	Moved from VI. E into EL B 1-4	
37	IV(Effluent Limits) B.1	43	Same as pg 144 in 2012 permit	
38	IV (Effluent Limits) US EPA TMDL	43	a-c paraphrased differently than 2012 permit, remainder of section is the same	
39	IV (Effluent Limits) State TMDL	45	4.b. previously provided 45 days after adoption or 90 days prior to final compliance order to request TSO. Taken out of permit	
40	IV (Effluent Limits) Full Capture Tech	47	Compliant if 98% of all catch basins are fitted with full capture systems and 97% win subwatershed	
41	V (RWL)	53-54	Same as 2012 Permit	

42	VI (Provisions) 3 Fiscal Resources	56	"Each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order. Added " The analysis shall include the following: cost incurred to comply with this Order an an estimate of the costs for the upcoming permit year" See Attachment E for Reporting requirements		
43	VI (Provisions) 4 ii and iii	56	"Consider" participating in intra-agency coordination and inter agency coordination		
44	VI (Provisions) 5.c.	57	Added "Approval of any documents submitted by LARB or the EO per their delegated authority may include conditions.		
45	VI (Provisions) 7.v.	57	Removed "or in consideration of any SWB action re. the precedential language of the SWB Order WQ 99-05"		
46	VI (Provisions) 7.v.iii.	57	Added "To include new Reporting Levels (RLs) in accordance with provisions set forth in 40 CFR Parts 122 and 124; and/or		
47	V (Provisions 10-12	58-59	2012 Permit p. 44 had provisions for discharges of Fed Insecticide, oily materials and storage of haz or toxic materials or HC's - removed from new permit		
48	V (Provisions) 13 Enforcement a	58	Revised language "caveat that only one kind of penalty may be applied for one type of violation..."		
49	V (Provisions) trash TMDL h.i.	59	Consistent with 2009 amendments removed. - "zero level of trash" 40% or more would be a "serious violation"		
50	V (Provisions) trash TMDL h.ii	60	In addition to the mandatory minimum penalties... Permittee has violated annual effluent level subsequent discharge - extra day of violation.		
51	B. Montioring & Reporting Program	60	Refers to Attachment E - no longer mention customized monitoring program, Section 2 (Compliance Determination for commingled discharges) removed.		
52	C. Watershed Mgmt Prog (General).b.	60	new - Does not apply to non participant in Watershed Mgmt Program		
53	C. Watershed Mgmt Prog (General).c.	60	new - elect to develop a WMP		
54	C. Watershed Mgmt Prog (General).	60	removed c and d from 2012 permit (pg 48)		
55	C. Watershed Mgmt Prog (General).	61	removes technical advisory committee from Section v - 2012 permit (pg 49)		
56	C. Watershed Mgmt Prog (General).	61	Sections vi to xi have been revised - added O&M costs and financial strategy to fund costs in section ix - if funding not available, must discuss how permittee plans to obtain funding and what the anticipated funding sources are.		
57	C. Watershed Mgmt Prog (General).	61	Compliance with RW Limits (p. 50 of 2012 permit removed) from this section. Skips to pg 59 of old permit.		
58	2. Program Development - WQ Character	62	new = must include water quality data from last five years and approved TMDL monitoring programs		
59	2. Program Development - WQ Character	62	removed Cat 1-3 priority levels, now in Water Body-Pollutant Combinations (WBPC) section C below.		
60	d. Sequencing of WQ Priorities	62	seqencing is TMDL, added Section © - progress towards controlling pollutants for which there are WQBELs and/or RW limitations w interim and final deadlines beyond the term of this Order.		
61	ii. Other RW Considerations	63	both subsections a and b are both new; impairment pursuant to State's Listing Policy and where data indicates exceedances on RWL's withing last 5 years.		
62	ii Watershed Control Measures	63	now spell out structural, nature based solutions and non-structural controls which include "human source management" - ie plastic bag, straw and styrofoam container banns.		
63	ii Watershed Control Measures	63	removed stream/habitat rehab or restoration projects (pg 62 2012 permit)		

64	(3) TMDL Control Measures		pg 64 of old permit removed from new permit.		
65	g. Each program shall include i.	64	new - ID of watershed control measures to achieve WQBEL and RW limitations - was ID specific structural controls and non-structural BMPs.		
66	vi - Reasonable Assurance Analysis	65	section restructured from 2012 permit.		
67	Compliance Schedules i.	65	removed RAA every 2 years; now throughout the term of the Order		
68	iii Schedules (b)	66	compliance deadlines "beyond the permit term" identify interim milestones and dates for achievement		
69	3. WMP Implementation (b)	66	WMP modifications proposed at any time. Written request explaining nature of modification		
70	3. WMP Implementation ©	66	Extensions - no longer 90 days prior to final compliance deadline.		
71	4 Integrated Watershed Monitoring	66	Removed 18 month submittal from 2012 permit. Shortened this section		
72	5. Adaptive Mgmt Process	67	Removed every 2 year requirement; added water retention interim/final milestones; multi-year efforts;		
73	d. Reporting on adaptive mgmt	67	now 180 days before order expiration date		
74	d. Reporting on adaptive mgmt vii	68	change from 2 years to 5 years (status of funding)		
75	d. Reporting on adaptive mgmt viii	68	new - ID most effective and least effective control measures - how optimized/modified in next 5 years.		
76	e. Subsequent to first adapt mgmt sub	68	new - LARB EO may require additional implementation of an adaptive mgmt process at any time, but no earlier than 2 years after ROWD		
77	6. LA County Permittees	68	need to submit NOI for each Watershed group opting to continue program - RAA/WMP by June 30, 2021		
78	Table 6 - WMPs	70	Section v. states that until WMP are approved by LARB, shall continue to implement current EWMP.		
79	D. Minimum Control Measures	73	Timelines in section b are effective as of date of order if you chose not go with WMP	Timeline for implementation are effective as of date of order if you chose not to develop or continue a WMP (old permit implement within 6 months of effective date and if elected a WMP continue existing programs until WMP or EWMP are approved by EO)	NOTE: Removed entire LACFC section and just stated at the beginning of VI.
80	C. Employee and Contractor Training	73	New hires - have 180 days from start date to train. List of positions and contractors for MS4 Permit training	Old Permit Pg 136	
81	4. PIPP	76	no longer segregated by County/City;	Old Permit Pg 94	
82	d. documentation & tracking (PIPP)	78	Now have to document date, and metrics for measuring effectiveness of PIPP	NEW Develop metrics for measuring the effectiveness of outreach. Lists items to track	
83	5. Industrial/Com Program	78	outreach 1x during 5 years; Bus Assist program back; inspect every 2 years		
84	a.i. inventory and track Critical Industry	78	now include inventory in this permit, was previously "track". Also now educate, assist and inspect Critical Ind/Com sources. Added "municipal policies and procedures" formerly just "municipal ordinances"		
85	(d) all other facilities	79	changed from "all other com/ind facilities" to "all other facilities" is this more expansive than just com/ind facilities?		
86	(d) the latitude/longitude coordinates	79-80	This was added to new permit; however RB removed (7) status of exposure of materials to stormwater and (8) name of receiving water, (9) ID ...facility is tributary to a CWA and (11) facility has filed a No Exposure Certificate with SWB from 2012 permit. Added (g) narrative description of activities (i) NONA (j) outreach (k) dates of inspection	Added latitude/longitude coordinates; and identify facilities with WDID, NONA, date of outreach and inspection dates	
87	iii. Each Permittee shall update...	80	Critical Commercial sources to be inventoried at least once every 2 years (2012 permit was annually).		
88	(a) Frequency of Inspection	80	change from twice during 5-yr term of Order to "every two years"	Change from annually to at least once every 2 years update of inventory	Broke out commercial from industrial requirements. Outreach, business assistance program the same; inspections every 2 years (old permit 2xs in 5 year term)

89	(b) Scope of inspectons	81	added "; removed (7) status of exposure of materials to stormwater from 2012 permit." to end of paragraph		
90	ii inspection	81	Critical Industrial sources to be inspected every two years	States the Industrial General Permit is the primary regulating permit for these facilities; Business Assistance Program help with IGP; inspections every 2 years; scope of inspections more detailed including providing a summary of inspection with photos; if inspected by Board within 2 years and city is implementing inspections in accordance to approved WMP	
91	© Exclusions of Ind Facility Inspections	82	Added exemptions (if facility inspected by LARB w/in past 2 years and permittee implementing industrial inspections in accordance with an approved WMP.		
92	a. Priority Development Projects	83	added priority development projects are land developments that fall under Permittee's planning and building authority for which Permittee mus impose specific requirements, including structural BMPs in order to meet performance requirements described in Part VI.D.6.d and VI.D.6.e of this order.	Removed the Purpose section that was in 2012 Permit.	
93	i. Definition of Priority Development Projects	84	Combined "new and re-development" into same section.	Defines Priority Development Projects. 2012 Permit structured differently by breaking out New Development and Redevelopment. Removed the requirement on Single Family Hillside Homes	
94	i. Definition of Priority Development Projects	84	removed development projects = to 1 acre or greater, industrial parks an dcommercial malls greater than 10,000 sq ft. Also, removed SFH on hillsides?	same just moved some items from Old Permit under the Priority Development Projects	
95	(b) Regional Storm Water Mitigation Programs	85	Section moved (pg 106);		
96	iv. Priority Development Structural BMP Peformance Requirements	86	new section	Changed from the Integrated Water Quality/Flow Reducton/Resources Mgmt Critiera in old permit	
97	b. hydromodification mgmt req.	86	new section - priority development projects within natural drainage systems in LA County, and priority development w land distrubring area of 50 acres or larger in VTA Co.	Restructured, but no change (only thing I see from old Permit Pg 106 is the exemptions for hydromod controls is missing???)	In this section 1 and 2 are the same, but 3 "EP" explains in more detail in permit versus old Permit was Attachment J.
98	c. implementation requirements	89-90	same as 2012 permit		
99	d. Priority Development for VTA	91	added this section	VENTURA Requirements only	
100	iii. Alternative Compliance Measures	96	moved up in new permit		
101	(1) biofiltration systems shal lmeet	96	Must meet LA County LID Manual - no longer "design specifications provided in Attachment H" unless otherwise approved by RB EO.		
102	(b) On-site Flow-based BMPs	96	This section was added		
103	© offsite infiltration	97	equation changed $M_v=SWQDV-R_v$; previously $M_v=1.0 * (SWQDV-R_v)$	Formula is different. Old Permit is $M_v=1.0 * [swqd_v-r_v]$ draft shows $m_v=swqvd-r_v$	
104	iv. Water Quality Miigation (a)(1)	98	"Meet the pollutant specific benchmarks in Table 11 (Removed in 2020 permit) at the treatment system outlet or prior to discharge to the MS4" is old language that was replaced by "ensure high or medium pollutant removal efficiency for Priority Development Project's.....International Stormwater BMP Database 2016 Summary Statistics report for sig pol of concern"		
105	a. Construction Program Applicability	99	new intro paragraph - requirements apply to all activities involving land disturbance with exception of ag.	most of the points are same, added latitude and longitude coordinates, worded site risk leve differently, and added NOI, and brief descriptipon of post construction BMPs and compare pre-storm water runoff volume vs post construction runoff volume (where applicable)	

106	v. Ensures that pertinent provisions...	99	added v. to permit "Ensures that the pertinent provisions contained in Part IV.D.6 (Planning & Land Use Dev Program) are incorporated in applicable construction projects. Need to check if agencies need to update their LID Ordinance.	
107	d. Construction site inventory	99	where is this is 2012 permit? Same as iv. Tracking, inspection and enforcement of post construction BMPs (112), if so section completely rewritten. How are we to know Site Risk Level (or type for Linear Underground/Overhead projects). Need to look up if they obtained WDID number and CGP?	
108	Table 9 - Minimum BMPs Construction Sites	100	Added appropriate housekeeping (header - then Bold), linear sediment controls to table.	Table 9 was updated to add Site Management, and expanded on the BMPs, and Table 10 added for roadway paving or repair operations BMPs
109	ii. Construction Site Inspections	101	inspect as needed (not just during rainy season?)	Restructured format, eliminated all of old permit (pg 116-120) section details
	ii.b. Construction Program Scope of Inspections	102		Tables listed need to be verified/updated
	VI.D.8.a.i. Public Agency Activities Program	103		Re-worded list of provisions
	VI.D.8.b. Public Agency Activities Program Inventory	103		Added to list (Table 11) stormwater capture, control and treatment devices, streets and road and catch basins
	VI.D.8.b.i. Public Agency Activities Program Inventory	104		Added to information to record, trash treatment control devices. Shorted the section from Old Permit
	VI.D.8.c.i. Public Agency Facility and Activity Management	105-106		No real changes
	VI.D.8.d. Public Agency Facility and Activity Management	107		No changes.
	VI.D.8.e. Public Agency Facility and Activity Management	107		No Changes
	VI.D.8.f. Public Agency Facility and Activity Management	108-109		removed the Catch Basin Cleaning section (Pg 131 old permit) where it prioritizes the basins
	VI.D.9. IDDE Program	111		Renamed Program
	VI.D.9.a.b.c. IDDE Program - General	111		Restructured this section
	VI.D.9.d. IDDE Program - Sanitary Sewer	112		Moved from different section to under the IDDE
	VI.D.9.f. IDDE Program - Public Reporting	112		restructured section
	Attachment A - Definitions			
	Attachment B - Watershed Maps			
	Attachment C - LA Storm Drain Maps			
	Attachment D - Standard Provisions			
	Attachment E - Monitoring/Reporting Program			
	Attachment F - Fact Sheets		TBD	
	Attachment G - Aquatic Toxicity			
	Attachment H - Annual Report Forms		Add to Julie Carver's comments:	
	Watershed Report	1	Added Watershed Mgmt Program Name and Initial Approval Date of WMP	

					Added more columns to break down he different categories but does not apply to each section. The headers are more focused on the projects. Still does not tell the cities what they want to see as far as cost for the Public Agency activities. This is where everyone reports differently and no real format
	Watershed Report	2	Skips to Section 8.1 WMP Progress Summary. Assumption that Sections 1-7 will remain the same?	Summarize progress implementing WMP	
	Individual Report -	4	Table 2.2 is new format - added (4) TMDL Implementation Plan/WMP Development (WMP/RAA, TMDL Implementation), Removed Restoration Projects	Watershed Control Measures Planned and in Progress	
	Individual Report -	6	Added Other Structural BMPs - not defined as to what they might include (bioswales, drains, catch basins?)		
	Individual Report -	6	Add "Costs To Date column"?		
	Individual Report -	6	Monitoring broken down into Outfall and RW, BMP Effectiveness - what about pre-construction or does that count toward BMP effectiveness?		
	Individual Report -	7	Regional and Special Studies - our portion from Measure W or separate studies? What about Harbor Toxics monitoring? Should we place that in RW?		
	Individual Report -	8	What is number and classification of personnel in each category? City Staff or Consultant? Do they want fully burden rates? What about equipment, etc.?	Provide # and classification of personnel for each category listed. I feel this is unnecessary staff changes	
	Individual Report -	9	Title is different in Section 3. 2012 permit AR has Discharge Prohibition and RW Limitations.		
	Individual Report -	9	Section 3.2 - new question - used to be did you develop and implement procedures that minimize discharges of landscape irrigation water into MS4? Location of procedures		
	Individual Report -	9	Section 3.3 - new question - used to be "where RWL's exceeded, describe efforts to determine whether discharge from MS4 caused or contributed to exceedences and all efforts that were taken to control discharge of pollutants from MS4 to RW in response to exceedences (Attachment E, XVII.A.5.e)		
	Individual Report -	10	3.4 new table - same as previous 2012 permit but now check list?		
	Individual Report -	10	3.5 - same as 2012 permit question (see above)		
	Individual Report -	10	3.6 - same as 2012 permit question (see above)		
	Individual Report -	11	Table 4.1 - Instead of outfalls screened since beginning of 2012 permit - now only reporting year		
	Individual Report -	11	Table 4.1 - Removed number of screening events since beginning of 2012 permit column as well		
	Individual Report -	11	Table - Added method of abatement including LFD, retention, other and Discharge no longer observed. What is NPDES Permitted?		
	Individual Report -	11	4.2 - changed question used to be "How many of the conditionally exempt non-stormwater discharges did you determine to be sources of pollutants that caused or contributed to an exceedance of RWL or WQBEL's? if you made that determination, which types of non-stormwater discharges were sources of pollutants?"		
	Individual Report -	13	Section 5 used to be PIPP, now Minimum Control Measures as header, 5.1 is General provisions about training all employees/contractors		
	Individual Report -	13	Section 5.2 - PIPP questions to summarize opportunities for public engagement - narrative instead of a checklist;		
	Individual Report -	13	Section 5.2b and 5.2c - combine narrative instead of checklist.		
	Individual Report -	14	Section 5.2d - now is a checklist instead of a narrative		

Individual Report -	14	Section 5.2e. Did you document and track information implemented in PIPP?	
Individual Report -	14	Section 5.2f - what metrics did you use to measure effectiveness? Sounds like 2002 Permit question.	
Individual Report -	14	Section 5.3 Industrial and Commercial Facility Program (was section 5.2) - same checklists, but narrative if you answered "yes" or "no"	
Individual Report -	15	Section 5.3d - Added Questions - how many commercial facilities did you reach out to (rather than how many critical commercial sources are within your jurisdiction) and In Implementing the Business Assistance Program, how many commercial facilities did you inspect during this reporting year? Also asking for number of violations and 2nd round of inspections (go-back if violation or second round? - need to clarify)	
Individual Report -	16	Industrial facility inspections - those with SIC codes in IGP, how many non-filers did you report, how many did you assist? Then # of inspections.	
Individual Report -	16	Section 5.4 - Priority Development Project - (defined?) new and redevelopment, completed this year and in progress?	
Individual Report -	17	Table - identify number by the use of alternative compliance measures - still going to be zero	
Individual Report -	17	Section 5.4c - Exemptions - going to need more information on what they are actually looking for	
Individual Report -	17	Section 5.4e - Hydro Modification Management - name and location of projects requiring hydromodification controls? - Another spreadsheet to include	
Individual Report -	18	Tracking Inspection and Enforcement - check boxes and not narrative on enforcement actions?	
Individual Report -	18	Section 5.5 Construction Program - different questions for each of the tables - need to report non-filers in Section 5.5C???	
Individual Report -	19	Public Agency Activities - combine table questions with number of storm drain inlets do you own? And are labeled (all) and are inspected each year (of course).	
Individual Report -	20	Table - now have to report on parking lot ownership, how many inspected and how many cleaned? What's next trash enclosures?	
Individual Report -	20	Table for IDDE Investigations - last column -if not eliminated or permitted exempt explain - we can provide summary chart, most remediated - why a column to explain and not a narrative or attachment?	
Individual Report -	21	Table added to Section 5.7c - includes email addresses, web-form and other? Is this requirement or just hotline?	
Individual Report -	21	Section 5.7d - New - Did you document all public reports of ID and track investigations? - if no explain (narrative). No response if we check yes? No need to describe our administrative process?	
Individual Report -	22	Section 6 - Trash Reporting - moved from Section 8 on 2012 AR's , add compliance approach implemented, and number of CB's within jurisdiction - without any type of priority landuse.	6.1a fill out Trash reporting form if subject to Trash TMDLs. I think this Section is only for the Trash TMDL ???
Individual Report -	23	Section 6.1e & f. - New - Addition of a Plastic Pellet Monitoring and Reporting Plan Is this part of Ocean Plan requirements????	6.2 Trash Discharge Prohibitions) areas not addressed by Trash TMDL (TRASH AMENDMENT)
Individual Report -	24	New - different sections if you are TRACK 1 or 2? Must report on effectiveness (how) report on if amount of trash in MS4 RW has decreased from previous year? Are we collecting and weighing the trash collected by inserts?	
Individual Report -	25	Additional Info section - So previous sections 6-10 have been deleted from new AR?	

			Are forms identical to those being used for LAR TMDL? (confirm with Vanessa/James/Alex). Are these being provided in permit for LAR watershed or all watersheds to complete or just those that are required to comply? Are they including Statewide Trash Amendment requirements as well?	Confusing to me on summary report and Mass Balance (no clue) I just don't understand it fully, but a lot of data is going to be needed on street sweeping too.	
	Attachment I - Trash Reporting Forms				
	Attachment J - Permittes & TMDL Matrix				
	Attachment K-P and S- TMDL Provisions for other watersheds				
	Attachment P - Greater Harbors Watershed				
	Attachment Q - LAR Watershed				
	Attachment R - SGR Watershed				

DATE: February 11, 2020

TO: Water Committee/Water TAC

FROM: Marisa Creter, Executive Director

RE: **STATE WATER RESOURCES CONTROL BOARD DRAFT ORDER**

RECOMMENDED ACTION

Provide direction on comments for submittal to the State Water Resources Control Board on the Draft State Water Board Order.

BACKGROUND

On December 6, 2019, the State Water Resources Control Board (State Board) released a Draft Order in the Matter of Review of “Approval of Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175” for comment. A subsequent Draft Order was released on December 10, 2019. Comments were initially due on January 20, 2020. The comment period was subsequently extended to February 20, 2020.

The Draft Order addresses the petitions that the State Board received challenging the Executive Officer of the Los Angeles Regional Water Quality Control Board’s approval of nine watershed management plans (WMPs) and one enhanced watershed management plan (EWMP). The Draft Order provides the State Board’s response to these petitions, in which it finds that there are deficiencies in the WMPs and the EWMP and outlines the requirements for these WMPs and EWMP to undertake in order to comply the existing 2012 Municipal Separate Storm Sewer (MS4) Permit.

The Water Policy Committee and TAC had expressed concerns regarding the State Board’s Draft Order and its potential implications for Permittees. As such, the Water TAC met on January 28, 2020, to discuss and develop draft comments on the Draft Order for consideration by the Water Policy Committee at its February meeting. The draft letter is included as Attachment A.

NEXT STEPS

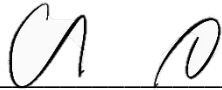
Comments on the Draft Order are due to the State Board on February 20, 2020. SGVCOG staff is seeking direction from the Water Policy Committee/TAC on the proposed comments. Pending direction from the Water Policy Committee/TAC, SGVCOG staff will submit the proposed comment letter to the State Board staff in compliance with the requirements for comment submittal.

REPORT

The State Board has indicated that it will also hold meetings to receive oral comments on the proposed Draft Order.

ATTACHMENTS

Attachment A – Draft Letter

Prepared by:  _____

Caitlin Sims
Principal Management Analyst

Approved by:  _____

Marisa Creter
Executive Director



February 11, 2020

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100

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SGV Water Districts

RE: COMMENTS ON A-2386, A-2477, A-2508 PROPOSED ORDER

Dear Ms. Townsend:

This submittal is being made on behalf of the San Gabriel Valley Council of Governments (SGVCOG) and its member agencies. SGVCOG is submitting these "Comments on A-2386, A-2477, A-2508 Proposed Order," which was released on December 6, 2019, and subsequently revised and released on December 10, 2019. The SGVCOG appreciates this opportunity to provide comments on the Proposed Order.

Specifically, the SGVCOG would like to highlight the following concerns:

- **Bacteria TMDL:** In the Draft Order, the State Board expresses concern with the level of analysis that is shown by Permittees with regards to compliance with the Bacteria TMDL. The SGVCOG recognizes the need for more data with regard to the Bacteria TMDL, so the SGVCOG is supporting two technical studies with regard to the Bacteria TMDL: the Upper Los Angeles River (ULAR) Load Reduction Strategy (LRS) adaptation plan – which is being completed to address the significant challenges that the ULAR Group has faced in complying with its Bacteria TMDL – and the region-wide study to support protection of human health through targeted reduction of bacteriological pollution – which is looking to identify opportunities for more targeted and cost-effective mechanisms of compliance with the Bacteria TMDL. As such, the work that the State Board has proposed in the Draft Order is already underway under the existing terms of the existing MS4 Permit.
- **Existing Mechanisms for Adaptive Management in the Permit:** The 2012 MS4 Permit has existing mechanisms for Permittees to utilize an adaptive management process to revise their WMPs. Many WMP groups in the San Gabriel Valley have done that and, as referenced in the Draft Order, four of the contested WMPs utilized the adaptive management process in 2017. Given that WMP groups already can and do use an adaptive management process with the Regional Board to ensure compliance with the MS4 Permit, there is no need for the State Board's Draft Order to duplicate and/or override this process.
- **Timelines:** The SGVCOG has significant concerns with timelines included within the Draft Order. Permittees are already required to re-run their reasonable assurance analysis (RAA) in 2021. To run the RAA in 2020 and again in 2021 would be a costly proposition and an ineffective use of Permittees' financial resources. Permittees want to direct as much of their funding as possible towards the

implementation of the projects and programs that are contained within their WMPs for which an RAA has already been completed.

- ***Inconsistency with the trial court's decision in City of Duarte v. State Water Resources Control Board (Case No. 30-26016-00833614) (the "Duarte Case"):*** The City of Duarte – a member agency of the San Gabriel Valley Council of Governments – had challenged the numeric effluent limitations (NELs) included in the 2012 MS4 Permit on the basis that the NELs were not required by federal law and, as such, the Regional Board was required to consider, among other factors, the cost of compliance and whether those terms were reasonably achievable, which the Regional Board failed to do. The trial court agreed with Duarte's argument and ordered the NEL-related provisions to be set aside by the Regional Board. However, the State Board's Draft Order does not acknowledge this holding. Additionally, the State Board's Draft Order's discussion of California Water Code section 13241 wholly ignores the trial court's ruling as well. (*See* Amended Proposed Order pp. 19-23.) For example, the State Board claims that it and the Regional Board considered the costs of complying with the requirements of the 2012 MS4 Permit, even though the trial court expressly found to the contrary by noting that the Regional Board only considered the costs of complying with the *prior* MS4 permit. (*See* Attachment A hereto.) Furthermore, the State Board's citation to authorities in footnotes 79-81 to support the argument that the Boards adequately considered costs is legally incorrect. Specifically, the cases cited therein (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392; *California Association of Sanitation Agencies v. State Water Resources Control Board* (2008) Cal.App.4th 1438, *San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Board* (2010) 183 Cal.App.4th 1110), all address challenges to legislative acts by the State and Regional Boards, not a quasi-adjudicative act like the adoption of the 2012 MS4 Permit, which is subject to a much less deferential standard of review under Code of Civil Procedure § 1094.5. To simply ignore this holding in a strategic attempt to undermine the *Duarte Case*, and to hold the Permittees to those NEL-related terms is both inappropriate and an abuse of discretion.
- ***The State Board's Draft Order runs afoul of the Court of Appeal's order granting the Water Boards' writ of supersedeas.*** The State Board's Draft Order does not adequately describe the actions of the Fourth District Court of Appeal in the appeal of the *Duarte Case*. (*See* Draft Order, n. 2, pp. 1-2.) While the Court of Appeal granted the Water Boards' petition for writ of supersedeas, it also specifically stated that the Water Boards should *not* enforce the NEL-terms during the pendency of that appeal, and if the Water Boards were to take such action, authorized the affected permittees to seek relief directly from the Court of Appeal. (*See* Attachment B, hereto.) The requirements of the State Board's Draft Order are clearly an attempt to force compliance with the NELs and NEL-related terms. As such, adopting the Draft Order would be inappropriate and invite judicial intervention from the Court of Appeal.
- ***Lack of Due Process.*** The Draft Order purports to require the Regional Board to reconsider previously approved, unchallenged WMPs and EWMPs for groups that were not subject to a petition. By issuing a draft order that purports to impact

Permittees that were not give any prior notice of a challenge to their programs, the State Board has denied the Permittees due process as a matter of law.

- ***Draft Order Timing:*** Over the last seven years, Permittees in the San Gabriel Valley – as well as across the region – have worked diligently to attempt to comply with the 2012 MS4 Permit. Watershed area groups have submitted and received conditional approval for these WMPs, have used the Permit’s adaptative management process to revise their WMPs as necessary, and have begun implementing projects. In December 2019, the Los Angeles Regional Water Quality Control Board (Regional Board) released the “Staff Working Proposal of the Regional Phase 1 Municipal Separate Storm Sewer System (MS4) Permit for initial stakeholder review and comment. The Regional Board anticipates releasing a draft proposal, for public comment, in the spring of 2020, with the final approval of a Permit later this year. To release an Order related to the 2012 MS4 Permit – when the development of the new MS4 Permit and the Water Boards’ appeal of the *Duarte Case* (and the related Gardena Case) are underway – is short-sighted and invites procedural and legal roadblocks that can be easily avoided if the State Board were to wait to issue the order. Indeed, the timing of the order undermines the ability and good faith of Permittees to effectively complete the technical work and projects necessary to meet the shared goal of preserving water quality. Similarly, should the decision in the *Duarte Case* stand on appeal, the entire order may become moot. Lastly, the timing of the order serves to confuse and complicate the process of approving a new MS4 Permit and, moreover, potentially subverts the public review and approval process delegated to the Regional Board that is already underway.

In light of the foregoing, the SGVCOG respectfully requests that the State Board not issue the Draft Order at all in light of the substantive and procedural deficiencies outlined above. If the State Board were to decide to issue the Draft Order, the SGVCOG respectfully requests that the State Board wait until after the appeal of the *Duarte Case* has been decided, and to amend the Draft Order to narrow the parties that are impacted by the order, and to accurately account for what occurred and likely will occur in the *Duarte Case* (and the related Gardena Case). We appreciate the opportunity to provide comments on this Draft Order. Should you have any questions, do not hesitate to contact my staff at (626) 457-1800.

Marisa Creter
Executive Director

ATTACHMENT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 04/19/2019

TIME: 03:29:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Glenda Sanders

CLERK: Antero Pagunsan

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Carolyn J Reza

CASE NO: **30-2016-00833614-CU-WM-CJC** CASE INIT.DATE: 07/02/2015

CASE TITLE: **The Cities of Duarte vs State Water Resources Control Board**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73030019

EVENT TYPE: Nunc Pro Tunc Minutes

APPEARANCES

There are no appearances by any party.

It appearing to the Court that through error or inadvertence, the Ruling on Petitions for Writ of Mandate dated 04/18/2019, does not properly reflect the order of the Court. Said Ruling is ordered corrected Nunc Pro Tunc as of 04/18/2019, as indicated below:

The incorrect citation to CWC section "13421" appearing in the first paragraph of the Court's Ruling, and thereafter twice more at the bottom of page 4 of the Court's Ruling is amended to reflect the corrected CWC section "13241".

The Court's Amended Ruling on Petition's for Writ of Mandate is attached to this minute order.

Clerk is directed to give notice to Petitioner/Plaintiffs and Petitioner/Plaintiffs is ordered to give notice to all other parties.

APR 19 2019

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

**THE CITIES OF DUARTE AND
HUNTINGTON PARK, et al.**

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants,

CITY OF GARDENA, et al.

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants.

Case No. 30-2016-00833614-CU-WM-CJC

[Related Case No. 30-2016-00833722,
*City of Gardena v. Regional Water Quality
Control Board-Los Angeles Region, et al.*]

**AMENDED RULING ON PETITIONS FOR
WRIT OF MANDATE**

1 **RULING**

2
3 No party has requested a Statement of Decision. The Court accordingly hereby orders that a
4 Statement of Decision has been waived pursuant to CRC, rule 3.1590 (i). The Court now adopts its
5 Tentative Decision with the following modifications: (i) the removal of the final two paragraphs
6 (entitled "Prayer for Relief"); and (2) the correction of the numeric displacement in references to CWC
7 § 13241.

8 The Petitions for Writ of Mandate are **granted**.

9
10 **DISCUSSION AND ANALYSIS**

11
12 **A. Overview of Applicable Statutory Schemes**

13
14 In 1949, California established nine California Regional Water Quality Control Boards. In
15 1967, California established the State Water Resources Control Board. Two years later, in 1969,
16 California enacted the Porter-Cologne Act, also known as the California Water Code (the "CWC").
17 Together, the state and nine regional boards are responsible for implementing and enforcing the CWC.
18 Among other things, the CWC governs water quality in California including the discharge of "waste."
19 *CWC, § 13000 et seq.* The "waste discharge requirements" under the CWC are the equivalent of the
20 "permits" issued under the federal Clean Water Act (*infra*). *CWC, § 13374.*

21
22 In 1972, three years after California enacted its clean water act, the Federal Water Pollution
23 Control Act (33 U.S.C. § 1251, *et seq.*) enacted in 1948 was significantly reorganized and expanded.
24 The revised act, now commonly known as the Clean Water Act (the "CWA"), established a basic
25 structure for regulating pollutant discharges into United States waters. Pollutants may not be
26 discharged except in compliance with: (i) established effluent limitations or standards (33 U.S.C. §§
27 1312, 1317); (ii) established national standards (33 U.S.C. § 1316); or (iii) a National Pollution
28

1 Discharge Elimination System (“NPDES”) permit (33 U.S.C. §§ 1328, 1342, 1344). NPDES permits
2 impose limits on what can be discharged and set monitoring and reporting requirements. Under the
3 CWA, a state may adopt and enforce its own standards, so long as they are not “less stringent” than
4 national standards. 33 U.S.C. § 1370.

5
6 The year after the CWA was enacted, California became the first state approved to issue NPDES
7 permits. The state board and the nine regional boards implement the CWA (as well as the CWC). To
8 obtain a NPDES permit in California, a discharger applies to the relevant regional or state board,
9 depending on the type of discharge. NPDES applications are processed according to federal NPDES
10 rules. (CCR, tit. 23 §§ 2235.1-2235.2.)

11
12 **B. The Challenged Permit**

13
14 An MS4 is a system owned by a public entity (or entities) which collects and/or conveys
15 stormwater. 40 C.F.R. § 122.26(b)(8). The Regional Board issued the first Los Angeles County MS4
16 permit in 1990. It governed the County of Los Angeles and the incorporated areas therein. *Permit at*
17 *page 13*. The permit was renewed in 1996, 2001 and 2012. The 2012 permit is entitled the National
18 Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System within
19 the Coastal Watersheds of Los Angeles County, except for discharges originating from the City of
20 Long Beach MS4, Order No. R4-2012-0175, NPDES No. CAS004001. It was amended on June 16,
21 2015, by State Board Order WQ 2015-0075. (The permit and its amendments are collectively referred
22 to as the “2012 Permit.”)

23
24 The 2012 Permit was issued pursuant to both the CWA and the CWC. *Permit at p. 20*. The
25 2012 Permit regulates the Los Angeles County Flood Control District, the County of Los Angeles, and
26 84 incorporated cities within the coastal watersheds of Los Angeles County (the “Permittees”). It is the
27 permit challenged by Petitioners in these related cases.

1
2 Unlike the earlier permits, the 2012 Permit requires the Permittees to “comply with applicable
3 WQBELs [Water Quality-Based Effluent Limitations].” *2012 Permit*, § IV.A.2.a. and § VI.E. (“Water
4 Quality-based Effluent Limitations” are defined in Attachment A to the 2012 Permit as “Any restriction
5 imposed on quantities, discharge rates, and concentrations of pollutants, which are discharged from
6 point sources to waters of the U.S. necessary to achieve a water quality standard.”) “The inclusion of
7 water quality-based effluent limitations and receiving water limitations to implement applicable WLAs
8 [Waste Load Allocations] provides a clear means of identifying required water quality outcomes within
9 the permit and ensures accountability by Permittees to implement actions necessary to achieve the
10 limitations.” *2012 Permit at p. 23.*

11
12 **C. Petitioners’ Claims**

13
14 On July 2, 2015, Duarte and Huntington Park filed a Petition for Writ of Mandate challenging
15 the 2012 Permit in Los Angeles County Superior Court. On July 24, 2015, the city of Gardena filed
16 *City of Gardena v. Regional Water Quality Control Board, et al.* in Los Angeles County Superior
17 Court, also challenging the 2012 Permit. Although the organization and allegations of the Petitions
18 differ, the *Duarte* and *Gardena* writs both involve the 2012 Permit and raise overlapping issues. On
19 October 15, 2015, the cases were related and on May 9, 2016, they were transferred to the Orange
20 County Superior Court.

21
22 Among other things, Petitioners assert that numeric WQBEL compliance is more than what is
23 mandated by the CWA. They argue that to impose any requirement beyond that mandated by the
24 CWA, Respondents had to consider the factors listed in CWC §13241. *Writ*, ¶ 32. Section 13241
25 reads, in its entirety:

1 Each regional board shall establish such water quality objectives in water quality control plans
2 as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of
3 nuisance; however, it is recognized that it may be possible for the quality of water to be changed
4 to some degree without unreasonably affecting beneficial uses. Factors to be considered by a
5 regional board in establishing water quality objectives shall include, but not necessarily be
6 limited to, all of the following:

7
8 (a) Past, present, and probable future beneficial uses of water.

9
10 (b) Environmental characteristics of the hydrographic unit under consideration, including the
11 quality of water available thereto.

12
13 (c) Water quality conditions that could reasonably be achieved through the coordinated control
14 of all factors which affect water quality in the area.

15
16 (d) Economic considerations.

17
18 (e) The need for developing housing within the region.

19
20 (f) The need to develop and use recycled water.

21
22 **D. Findings**

- 23
24 1. **Numeric WQBEL compliance is “more stringent” than the applicable CWA**
25 **requirements.**
26
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1 Petitioners argue that Respondents had to consider the factors set forth in CWC § 13241 because
2 numeric WQBEL compliance is not mandated by federal law but was an exercise of discretion.
3 *Proposed Statement of Decision of Real Parties in Interest West Covina, Santa Fe Springs and*
4 *Lakewood at 14:3-10; Petitioner/Plaintiff The City of Duarte’s Opening Brief in Support of Petition*
5 *for Writ of Mandate at 20:23-22:3; Proposed Outline of Statement of Decision of Petition, The City of*
6 *Gardena at 20:1-28:16.* While the issue of what is “mandated” may be relevant to reimbursement
7 (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 767-769), it is not the
8 governing standard for these matters. Here, the question that must be answered is whether numeric
9 WQBEL compliance is “more stringent” than the applicable federal requirement. *See City of Burbank*
10 *v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618; and *City of Rancho Cucamonga*
11 *v. Regional Water Quality Control Board-Santa Ana Region* (2006) 135 Cal.App.4th 1377. If so, then
12 Respondents were required to consider the § 13241 factors before issuing the 2012 Permit.
13 Although permits were not initially required for stormwater discharge, in 1987 Congress defined
14 industrial stormwater discharges and municipal separate storm sewer systems (commonly referred to
15 as “MS4”) as “point sources” and required them to obtain NPDES permits. 33 U.S.C. §1342
16 (p)(3)(B)(iii); 40 C.F.R. § 122.26(b)(8). Section 1342(p)(3) reads:

17
18 **(3) Permit requirements**

19
20 **(A) Industrial discharges.** Permits for discharges associated with industrial activity
21 shall meet all applicable provisions of this section and section 1311 of this title.

22 **(B) Municipal discharge** Permits for discharges from municipal storm sewers—

23 (i) may be issued on a system- or jurisdiction-wide basis;

24 (ii) shall include a requirement to effectively prohibit non-stormwater discharges
25 into the storm sewers; and

26 (iii) shall require controls to reduce the discharge of pollutants to the maximum
27 extent practicable, including management practices, control techniques and
28

1 system, design and engineering methods, and such other provisions as the
2 Administrator or the State determines appropriate for the control of such
3 pollutants.
4

5 The statute sets forth two, separate standards. Permits for industrial discharges “shall meet all
6 applicable provisions of . . . section 1311 of this title.” 33 U.S.C. § 1311, entitled “Effluent
7 Limitations,” incorporates technology-based effluent limits and water quality standards. Permits for
8 *municipal* discharge, on the other hand, are *not* required to comply with the effluent limits of § 1311.
9 Instead, they “shall require controls to reduce the discharge of pollutants to the *maximum extent*
10 *practicable*, including *management practices, control techniques and system, design and engineering*
11 *methods*, and such other provisions as the Administrator or the State determines appropriate for the
12 control of such pollutants.”
13

14 Thus, while industrial discharges are required to meet numeric effluent limitations, municipal
15 discharges are not. 33 U.S.C. § 1342(p)(3).
16

17 The distinction between the two standards was addressed by the Ninth Circuit in *Defenders of*
18 *Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1165-1166:
19

20 “Applying that familiar and logical principle, we conclude that Congress’ choice to require
21 industrial storm-water discharges to comply with 33 U.S.C. § 1311, but not to include the same
22 requirement for municipal discharges, must be given effect. When we read the two related
23 sections together, we conclude that 33 U.S.C. § 1342(p)(3)(B)(iii) does not require municipal
24 storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).
25

26 Application of that principle is significantly strengthened here, because 33 U.S.C. §
27 1342(p)(3)(B) *is not merely silent* regarding whether municipal discharges must comply with
28

1 33 U.S.C. § 1311. Instead, § 1342(p)(3)(B)(iii) *replaces* the requirements of § 1311 with the
2 requirement that municipal storm-sewer dischargers "reduce the discharge of pollutants to the
3 maximum extent practicable, including management practices, control techniques and system,
4 design and engineering methods, and such other provisions as the Administrator . . . determines
5 appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). In the
6 circumstances, the statute unambiguously demonstrates that Congress did not require municipal
7 storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

8
9 Indeed, the EPA's and Petitioners' interpretation of 33 U.S.C. § 1342(p)(3)(B)(iii) would render
10 that provision superfluous, a result that we prefer to avoid so as to give effect to all provisions
11 that Congress has enacted. [Citation] As all parties concede, § 1342(p)(3)(B)(iii) creates a lesser
12 standard than § 1311. Thus, if § 1311 continues to apply to municipal storm-sewer discharges,
13 the *more stringent* requirements of that section always would control. (Emphasis in the
14 original.)

15
16 As the Ninth Circuit recognized in the last sentence of that quote, the numeric WQBEL
17 requirements applied to industrial discharges are "more stringent" than the requirements applied, by
18 statute, to municipal discharges.

19
20 Respondents attempt to erase the distinction between the two standards by arguing that 33
21 U.S.C. § 1342 confers a discretion upon them to impose more stringent standards which means they
22 may impose numeric WQBELS, and may do so without complying with California law. *Respondents'*
23 *Proposed Statement of Decision, Proposed Finding 6 at pp.4-6.* Respondents rely on *Building Industry*
24 *Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866
25 ("*BIA*") to support this argument. *Respondents' Proposed Statement of Decision at 4:5-15.* While *BIA*
26 recognizes that a state agency may impose "a more stringent water quality standard," it did not
27
28

1 determine that such a standard could be imposed without compliance with § 13241. In arriving at the
2 decision, the *BIA* court looked to the *Defenders of Wildlife* decision and stated:

3
4 The only other court that has interpreted the "such other provisions" language of section
5 1342(p)(3)(B)(iii) has reached a similar conclusion. In *Defenders of Wildlife*, environmental
6 organizations brought an action against the EPA, challenging provisions in an NPDES permit
7 requiring several Arizona localities to adhere to various best management practice controls
8 without requiring numeric effluent limitations. (*Id.* at p. 1161.) The environmental
9 organizations argued that section 1342(p) did not allow the EPA to issue NPDES permits
10 without requiring strict compliance with effluent limitations. Rejecting this argument, the Ninth
11 Circuit found section 1342(p)(3)(B)(iii)'s statutory language "unambiguously demonstrates that
12 Congress did not require municipal storm-sewer discharges to comply strictly" with effluent
13 limitations.

14
15 But in a separate part of the opinion, the *Defenders of Wildlife* court additionally rejected the
16 reverse argument made by the affected municipalities (who were the interveners in the action)
17 that "the EPA may not, under the [Clean Water Act], require strict compliance with *state* water-
18 quality standards, through numerical limits or otherwise."

19 (Emphasis added; internal citations omitted)

20
21 The "maximum extent practicable" standard set forth in § 1342 is "a highly flexible concept
22 that depends on balancing numerous factors, including the particular control's technical feasibility, *cost*,
23 public acceptance, regulatory compliance, and effectiveness." *BIA*, 124 Cal.App.4th at 889. Although
24 it is a flexible standard, it is less stringent than the numeric WQBEL compliance applied to industrial
25 discharges and Respondents were required to consider the § 13241 factors. Respondents argue that
26 whether numeric WQBEL compliance is "more stringent" than the requirements of the CWA, is a
27 question of fact. In support of that proposition, they cite *City of Burbank*, 35 Cal.4th at 628, While
28

1 *City of Burbank* remanded the issue for determination by the trial court, it is apparent from the decision
2 that the distinctly different standards for industrial and municipal discharges set forth in 33 U.S.C. §
3 1342 had not been briefed. Eleven years later, the California Supreme Court recognized that the
4 requirements of the CWA are “largely a question of law.” *DOF*,¹ Cal.5th at 767 (“*DOF*”).
5 Accordingly, the Court is not required to defer to Respondents’ findings on whether numeric WQBEL
6 compliance is “more stringent” than the “maximum extent practicable” standard applied to municipal
7 discharges. (*See Permit at Finding II.S. and Attachment F, Section IV.B.*),

8
9 **2. Respondents failed to comply with the CWC in adopting the NEL requirements.**

10
11 The 2012 Permit includes a “finding” that Respondents were not required to comply with CWC §
12 13241 in issuing the numeric WQBELs. Hedging their bets, Respondents alternatively “find” that they
13 looked at “economic considerations” as required by CWC § 13241. *2012 Permit, Attachment F at F-*
14 *147 to F-155*. But the “economic considerations” section does not, at any point, include any reference
15 to or estimate of the possible cost or range of costs of compliance with numeric WQBELs. Respondents
16 do, however, acknowledge, that the cost of compliance will be “above and beyond” the cost of
17 complying with prior permits. The first sentence of the economic consideration section reads: “The
18 Regional Water Board recognizes that Permittees will incur costs in implementing this Order *above*
19 *and beyond* the costs from the Permittee’s prior permit.” *See SB-AR-013719 at § D.*

20
21 According to the Fact Sheet which is Attachment F to the 2012 Permit, the economic consideration
22 given to Permittees consisted of a review of the cost of compliance with the 2001 Permit and 2004
23 study. *See SB-AR-013721-722*. This Court finds that a consideration of economics of the 2001 permit
24 does not amount to economic consideration of the 2012 Permit, particularly as Respondents
25 acknowledge that compliance with the 2012 Permit will entail costs “above and beyond” those resulting
26 from the prior permit.

1 During this proceeding, Respondents did not identify any additional economic consideration in
2 connection with the 2012 Permit. Their opening brief referenced funding sources submitted under the
3 2001 permit and a 2004 study on the cost to the public of MS4 pollution. *Respondents' Opposition to*
4 *Petitioners' Opening Briefs at 33:19-34:15.* Further, Respondents admitted that they did not consider
5 the cost of compliance: "The Regional Board recognized that significant costs would be associated
6 with the Permit. However, when issuing the Permit, the Regional Board had to rely on currently
7 available cost data, including information reported by the permittees themselves during the *prior* permit
8 term and provided to the Board *prior* to issuance of the Permit. (SB-AR-013721-723.) Given the
9 significant flexibility afforded to permittees on how to comply with the standards in the Permit and the
10 variability of permittees' chosen individual or joint compliance paths, it was impossible for the Board
11 to predict 86 permittees' exact methods of compliance and fully consider those future associated long-
12 term costs. Petitioners' efforts to point to extra-record evidence not in existence at the time of Permit
13 issuance as evidence [that] costs were not considered is thus misleading." *Respondents' Opposition to*
14 *Petitioners' Opening Briefs at 34:16-35:2.* (Emphasis added).

15
16 Respondents also argued that they addressed "economic considerations" by *phasing in the*
17 *requirements and allowing the Permittees to join with other Permittees in the development and*
18 *implementation of watershed management programs* and enhanced watershed management programs
19 to "*share the cost of controls.*" (Emphasis added) *Respondents' Opposition to Petitioners' Opening*
20 *Briefs at 17:3-18:10.* While those mechanisms *may* relieve the burden of the additional costs of
21 implementation, they do not address those costs at all, and so do not deal with "economic
22 considerations". Economic considerations must begin with *some kind of estimate of cost.*

23
24 Respondents' Proposed Statement of Decision continues the theme, identifying numerous pages
25 of the record which they assert establish compliance with § 13241. Those pages do not include any
26 kind of estimate or projection of possible costs associated with the 2012 Permit. *See Findings 10-16*
27 *at 9:14—13:9.*

1
2 The pages of the record cited in support of these assertions are identified and summarized, below.
3

4 SB-AR-011550	First page of a slide show consisting of a photograph and the words "Environmental Groups' Proposal."
5 6 7 SB-AR-01372-73	Slide show referring to <i>2015</i> written comments. As the comments were made in 2015, they could not have been considered in connection with issuance of the 2012 Permit.
8 9 10 11 SB-AR-13209-13211 & 13230-13232	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
12 13 14 SB-AR-013313-14; 19; 43-47; 54; 59-60	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
15 16 17 SB-AR-013439-13443	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
18 19 20 SB-AR-013612-613	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
21 22 23 SB-AR-013678-80	The cited pages are from the 2012 Permit and do not address cost or other economic considerations.
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SB-AR-013712-013730	SB-AR-013719-730 include the Permit's recitation of "Economic considerations" which are addressed, above.
SB-AR-015813-15820	The cited pages are a portion of an undated transcript which includes, among other things, the following comment: "[MR. WYELS]: From my perspective, it's sort of the flip side of what the environmental petitioners want us to do is to look at the actual implementation of the permit now. We don't have these numbers, we don't know what the projects are the numbers are estimated for. I expect that those -- you know, these are SB-AR-015813 Government Contracts Page: 78 EWMPs so they're not yet even due to the Regional Board yet, but as the next phase, as the next step of implementing the project goes forward then I very much expect we'll be hearing about specific projects and actual cost estimates, as well as what those -- how those cost estimates are really raising hurdles for the cities. Again, we don't have any of this information ourselves, it's not currently in front of the board."
RB-AR-18119	A page of an undated slideshow entitled: "Tentative Order and Adoption Process

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Issues” presented by the cities of Baldwin Park, Compton, Duarte, Claremont, Duarte, Gardena, Irwindale, San Fernando, South El Monte, and West Covina. Page 18119 sets forth some provisional costs which would be incurred if the tentative [undefined] order were adopted as of the date of the slideshow. The remainder of the slideshow references that the water boards have not identified or considered costs. For example, RB-AR-18113 reads, in part: “Revised order permit should not be issued until: Staff provides a compliance cost-estimate – especially regarding TMDLs . . .” RB-AR-18116 asks: “How do we know what the costs will be in the final analysis without seeing the final order?” RB-AR-18117 reads, in its entirety: “Let’s Talk Cost Issues • In response to Board Member Camacho’s question about compliance costs staff (at the USC workshop) was unable to provide a dollar amount • Staff response (per Rene Purdy) is that permittees have no difficulty paying for permit costs based on annual reports • Rene did not answer the question which was pegged to the proposed new permit – not the existing one • The budgets do not contain TMDL compliance costs except for those cities subject

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p>	<p>to the trash TMDL because it is in the current permit • They are not representative costs”</p> <p>RB-AR-18125 includes the following:</p> <p>“Recommendation - hold off on adopting a final order until: 1. Staff provides an estimate of how much permit/TMDL compliance will cost and how permittees will pay for it”</p>
<p>9 RB-AR-18164-18202</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>A 2007 slideshow entitled: “The Strategic BMP Prioritization Analysis Tool: Implementation of the Los Angeles County-Wide Structural BMP Prioritization Methodology.” The slideshow does not address cost or other economic considerations except to identify “cost” as a “basis for evaluation & prioritization” at SB-AR-18180-18181 and to identify a “Cost Estimation module-BMP cost estimation component” as a “Major Component” at SB-AR-18201.</p>
<p>20 RB-AR-21006-21011</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>A November 8, 2012 slideshow entitled re: “Los Angeles County MS4 Permit Cost Considerations” reflecting 2005 numbers for “cost per household annually” for cities outside of Los Angeles County. There is no information regarding the type of permit issued to those cities or whether they are required to comply with numeric WQBELs.</p>

<p>1 RB-AR-29487-502</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>A December 6, 2007 slideshow entitled “Concept Development: Design Storm for Water Quality in the Los Angeles Region.” It does not include or reference any review of economic considerations in connection with the 2012 Permit.</p>
<p>7 RB-AR-30065-30095</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>An undated slideshow entitled “Exceedance Frequency and Load Reduction Simulation; Evaluation of Three BMP Types as a Function of BMP Size and Cost.” The “cost estimates” included on RB-AR30088 demonstrates that the costs (based on 2003, 2004 and 2007 information) do not relate to the 2012 Permit as they arise out of three Best Management Practices scenarios “for designs achieving 5%, 10% and 20% exceedance of the dissolved copper CTR benchmark of 13.2 ug/L”</p>
<p>18 RB-AR-30659-30694</p> <p>19</p>	<p>A duplicate of RB-AR-18164-18202 without the last three pages.</p>
<p>20 RB-AR-32975</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>A single page document dated 9/18/2013 (after the 2012 Permit was issued) entitled “International Stormwater BMP Database 2007 Release Cost Data Available for Media Filters & Green Roofs.”</p>
<p>25 RB-AR-36754-757</p> <p>26</p> <p>27</p> <p>28</p>	<p>Part of a larger report which references the costs of the “Ballona Creek Trash TMDL.” It does not address the cost of compliance or</p>

	other economic considerations related to the 2012 Permit.
RB-AR-37202-212	Part of a larger report on the Los Angeles Watershed Trash TMDL regarding catchments for trash. The document does not address the cost of compliance or other economic considerations related to the 2012
RB-AR-42636-639	A table from a June 16, 2005 report regarding "Proposed Implementation Plan." The costs are for "potential BMP projects at public sites by subwatershed" and addresses projects such as the addition of cisterns and rain barrels at various public sites identified as being located in the Los Angeles, Santa Monica, El Segundo and the County of Los Angeles.

Respondents argue that their review of economic considerations was sufficient because § 13241 does not specify how the factors must be considered nor require specific findings. In support of this proposition, they rely on *California Assoc. of Sanitation Agencies v. State Water Res. Control Bd.* (2008) 208 Cal.App.4th 1438, 1464-1465 ("*Sanitation Agencies*"). The court in that case found that the record included "multiple instances in which economic considerations [we]re discussed" including an analysis of comparative costs. *California Association*, 208 Cal.App.4th at 1465. Respondents have not identified any such instance in their administrative record. Further, in *Sanitation Agencies*, the court specified that there was no threshold showing that adverse economic consequences would result from the board's action. Here, Respondents specifically acknowledged in the 2012 Permit that the cost of compliance would be "above and beyond" what had been required previously. They admit the adverse economic consequences.

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2 “[A]t a minimum, the reviewing court must determine both whether substantial evidence
3 supports the administrative agency's findings and whether the findings support the agency's decision.
4 .. ”. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 512, 514-
5 515. An agency’s decision should be upheld only if “the agency in truth found those facts which as a
6 matter of law are essential to sustain its . . .[decision.] On the other hand, mere conclusory findings
7 without reference to the record are inadequate.” *Environmental Protection Information Center v. Cal.*
8 *Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 516-517 (internal quotation marks and
9 citations omitted).

10
11 Respondents’ conclusory findings do not reveal the route from evidence to action and are
12 inadequate to support compliance with § 13241. Put differently, in the words of the California Supreme
13 Court, Respondents’ decision in approving the 2012 Permit is not supported by facts essential to sustain
14 its decision. *Environmental Protection Information Center, supra at 516-517.*

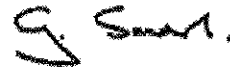
15
16 The Court does not make any finding as to the admissibility of the supplemental record as
17 consideration of the record was not necessary for this ruling. Further, the Court does not address the
18 additional arguments raised by the Petitioners as Respondents’ failure to comply with § 13241 is
19 dispositive.

20
21 **CONCLUSION**

22 The Petitions for Writs of Mandate are granted. Respondents, the California Regional Water
23 Quality Control Board, and the Los Angeles and State Water Resources Control Board, are ordered to
24 set aside the National Pollutant Discharge Elimination System Permit for Municipal Separate Storm
25 Sewer System within the Coastal Watersheds of Los Angeles County, except for discharges originating
26 from the City of Long Beach MS4, Order No. R4-2012-0175, NPDES No. CAS004001, as amended
27 on June 16, 2015 by State Board Order WQ 2015-0075.

1 Petitioners, the City of Duarte and the City of Gardena are ordered to prepare, serve and
2 submit Proposed Judgments pertaining to their respective Petitions, to the court within 10 days of the
3 date upon which this order is served pursuant to CRC, rule 3.1590 (i).

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5 **Date Judge Signed: April 19, 2019**



7 **The Hon. Glenda Sanders**
8 **Superior Court of California,**
9 **Orange County**

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: The Cities of Duarte vs State Water Resources Control Board

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2016-00833614-CU-WM-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 04/19/19, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on April 19, 2019, at 4:14:00 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: Agunsa-H, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

SEP 24 2019

DAVID H. YAMASAKI, Clerk of the Court

BY: _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

**THE CITIES OF DUARTE AND
HUNTINGTON PARK, et al.**

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants,

Case No. 30-2016-00833614-CU-WM-CJC

[Related Case No. 30-2016-00833722,
*City of Gardena v. Regional Water Quality
Control Board-Los Angeles Region, et al.*]

JUDGMENT

This matter came on regularly for hearing before the Court on November 13-15, 2017 and March 26-29, 2018 in Department CX101, the Honorable Glenda Sanders presiding. Thereafter, briefing, oral argument, supplemental briefing and further oral argument ensued on several days including, August 16, 2019

1 The Court has considered the administrative and the supplemental records, the papers of the
2 parties and the arguments of counsel, and it has admitted the administrative record into evidence but
3 declined to receive the supplemental record in evidence as it was unnecessary to its determination. On
4 April 19, 2019, the Court issued its Amended Ruling on Petitions for Writ of Mandate in which, among
5 other things, Petitioner Duarte was ordered to prepare, serve and submit a Proposed Judgment. No
6 timely request was made for a statement of decision so the Amended Ruling, a November 10, 2016
7 Order entering judgment in favor of Respondents on Petitioner Duarte's 5th cause of action for
8 declaratory relief, and a September 24, 2019 Order clarifying the scope of relief and striking those
9 portions of Duarte's 1st, 2nd and 3rd causes of action pertaining to declaratory and/or injunctive relief,
10 constitute the Court's determination of this matter and the form of relief ordered.

11
12 Duarte submitted its proposed judgment on April 25, 2019. Respondents filed objections to the
13 proposed judgment on May 7, 2019. On June 20, 2019, the Court ordered further briefing related to
14 the proposed judgment. On July 24, 2019, as part of that briefing, Duarte submitted a revised proposed
15 judgment. On August 8, 2019, Respondents filed a response to the revised proposed judgment.

16
17 The term "Permit" as used in this judgment shall mean: The National Pollutant Discharge
18 Elimination System Permit for Municipal Separate Storm Sewer System within the Coastal Watersheds
19 of Los Angeles County, except for discharges originating from the City of Long Beach MS4, Order
20 No. R4-2012-0175, NPDES No. CAS004001, as amended on June 16, 2015 by State Board Order WQ
21 2015-0075.

22
23 Having considered the foregoing:

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25 IT IS ORDERED that:

- 26 1. A peremptory writ of administrative mandamus shall issue under the seal of this Court,
27 remanding the matter to Respondents and directing Respondents to:

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- a. Set aside each and every one of the provisions in the Permit pertaining in any way to any and all Numeric Effluent Limits, and to reconsider the Permit in light of the Court’s April 19, 2019 Amended Ruling, and its September 24, 2019 Order re scope of relief;
- b. File with this Court a return demonstrating compliance with ¶ 1(a) of this Judgment. The return shall be served and filed within 90 days from the date of this Judgment.

2. The peremptory writ resolves all issues raised in the Petition. The Court has entered judgment on the 5th cause of action and has stricken those portions of Duarte’s 1st, 2nd and 3rd causes of action pertaining to declaratory and/or injunctive relief. Any other issues raised in the Petition are immaterial because the findings made in the Amended Ruling, the November 10, 2016 Order, and the September 24, 2019 Order determine the Petition.

3. Nothing in this judgment or the writ shall limit or control in any way the discretion legally vested in Respondents.

4. Petitioner, as the prevailing party, shall recover its costs in this proceeding in the amount of \$_____.

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5. The Court shall reserve jurisdiction to consider any motion for attorneys' fees by Petitioner. Any motion for attorneys' fees in this matter shall be deemed timely if filed and served within 60 days of the date of this judgment.

Date Judge Signed: September 24, 2019



The Honorable Glenda Sanders
Judge of the Superior Court of California

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

SEP 24 2019

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

**THE CITIES OF DUARTE AND
HUNTINGTON PARK, et al.**

Petitioners/Plaintiffs,

vs.

**STATE WATER RESOURCES
CONTROL BOARD; THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES
REGION, et al.**

Respondents/Defendants,

Case No. 30-2016-00833614-CU-WM-CJC

[Related Case No. 30-2016-00833722,
*City of Gardena v. Regional Water Quality
Control Board-Los Angeles Region, et al.*]

WRIT OF MANDATE

TO RESPONDENTS STATE WATER RESOURCES CONTROL BOARD AND
REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION:

A. WHEREAS on September 24, 2019, judgment was entered in this action ordering that a
peremptory writ of administrative mandamus issue from this Court;

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B. Whereas the word “Permit” as used in this Writ shall mean: The National Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System within the Coastal Watersheds of Los Angeles County, except for discharges originating from the City of Long Beach MS4, Order No. R4-2012-0175, NPDES No. CAS004001, as amended on June 16, 2015 by State Board Order WQ 2015-0075.

YOU ARE HEREBY COMMANDED, upon receipt of this Writ, to:

1. Set aside each and every one of those provisions in the Permit pertaining in any way to any and all Numeric Effluent Limits, and to reconsider the Permit in light of the Court’s April 19, 2019 Amended Ruling and its September 24, 2019 Order;
2. File with this Court a return demonstrating compliance with ¶ 1(a) of the Judgment and ¶ 1 of this Writ. The return shall be served and filed within 90 days of the date of this Writ.
3. Nothing herein shall limit or control in any way the discretion legally vested in Respondents.

Date Judge Signed: 09/24/2019



The Honorable Glenda Sanders
Judge of the Superior Court of California

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 09/24/2019

TIME: 02:45:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Glenda Sanders

CLERK: Antero Pagunsan

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Carolyn J Reza

CASE NO: **30-2016-00833614-CU-WM-CJC** CASE INIT.DATE: 07/02/2015

CASE TITLE: **The Cities of Duarte vs State Water Resources Control Board**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73133225

EVENT TYPE: Chambers Work - Submitted Matter

APPEARANCES

There are no appearances by any party.

On 6/20/19, the Court asked the parties for further briefing re: "what are the court's powers under Code of Civil Procedure section 1094.5(g) and CCP 916, the nature of the relief this Court can and should grant in light of its ruling of 4/1[9]/2019, and any other topics raised and discussed on the record." Having considered the supplemental briefs filed by the parties and having heard oral argument on the matter on 8/16/19 the Court makes the following ruling.

Petitioners The Cities of Duarte and Huntington Park (collectively "Duarte") petitioned this Court for a writ of mandate pursuant to CCP § 1094.5 and California Water Code § 13330, seeking to set aside certain portions of the National Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System Discharges Within the Coastal Watersheds of Los Angeles County, with the exception of discharges originating from the City of Long Beach, Order No. R4-2012-0175, NPDES No. CAS004001", as reviewed and modified by the State Board in Order No. WQ-2015-0075 issued on or about June 16, 2015, with the Regional Board thereafter issuing an amended permit on or about July 1, 2015 (the "Permit"). *Duarte Petition*, ¶¶ 6-8.

In addition to seeking a writ, Duarte also sought declaratory and injunctive relief. Under California law, an action for declaratory relief is not appropriate to review an administrative decision. *State of California vs. Superior Ct.* (1974) 12 Cal. 3rd 237, 249; *accord, City of Pasadena vs. Cohen* (2014) 228 Cal. App. 4th 1461, 1466-1467 and cases cited therein. *See also County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 1002. Further, declaratory relief cannot be joined with a writ of mandate reviewing an administrative decision. *Guilbert vs. Regions of University of*

California (1979) 93 Cal. App. 3rd 233, 244. Similarly, an injunction may not be used to review the appropriateness of an agency's adjudicatory action. *Viso vs. State* (1979) 92 Cal.App.3d 15, 21.

Accordingly, on **November 10, 2016**, the Court (Judge Andler) granted judgment on Duarte's **5th cause of action for declaratory relief**. For the reasons stated in that 2016 ruling as well as those set forth above in this Order, the Court now also strikes those portions of Duarte's **1st, 2nd and 3rd** causes of action pertaining to declaratory and/or injunctive relief and any references in its Prayer for such relief. The Court construes the remainder of Duarte's petition as requests for administrative mandamus, as sought under its 1st, 2nd, 3rd and 4th causes of action. See *Hill vs. City of Manhattan Beach* (1971) 6 Cal. 3rd 279 at 287.

California Code of Civil Procedure § 1094.5(f), gives courts the power to "enter judgment either commanding respondent to set aside the order or decision, or denying the writ." Duarte in its supplemental briefing and in oral argument argued, and the Court agrees, that the Court is not restricted to either setting aside the permit in its entirety or denying the writ but that it also has the power to set aside the specific permit terms challenged, leaving the rest of the permit intact unless respondents opt to do otherwise. See *Bank of America vs. State Water Board* (1974) 42 Cal. App. 3rd 198, 214-215; also see *City of Burbank vs. State Board* (2005) 35 Cal. 4th 613 (endorsing by implication the trial court's order setting aside the "Time Schedule Orders ... the Contested Effluent Limits ... and provisions specifying manner of compliance...").

Accordingly, pursuant to § 1094.5, the Court orders Respondents to vacate each and every one of the provisions in the Permit pertaining in any way to any and all Numeric Effluent Limits, and to reconsider the Permit in light of: (1) the Court's April 19, 2019 Amended Ruling on Petitions for Writ of Mandate, and (2) this September 24, 2019 Order clarifying the scope of relief available.

Contrary to Petitioner's contentions, in granting this peremptory writ, the Court is not required to consider the various alternative theories raised in each cause of action seeking the same form of relief, namely administrative mandamus, but need only grant the central or primary relief sought, that is, a peremptory writ. "[T]he law is well settled that *if findings are made on issues that determine the case, other issues become immaterial* and a failure to make additional findings does not constitute prejudicial error [Citations]." *Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 278 (emphasis added). While that case dealt with whether a statement of decision should have included findings on certain issues, the above proposition applies equally if not more so to a decision, such as this, which is not subject to the rigors of CCP § 632.

Clerk to give notice to parties.

DATED: September 24, 2019

Hon. Glenda Sanders
Judge of the Superior Court

ATTACHMENT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

CITY OF DUARTE,

Plaintiff and Respondent,

v.

STATE WATER RESOURCES
CONTROL BOARD et al.,

Defendants and Appellants.

G058539

(Super. Ct. No. 30-2016-00833614)

O R D E R

THE COURT:*

This is an appeal from a judgment granting respondent’s petition for writ of administrative mandate.

The challenged agency decision is the 2012 National Pollutant Discharge Elimination System Permit for Municipal Separate Storm Sewer System within the Coastal Watersheds of Los Angeles County. Issuance of this permit is necessary to facilitate compliance with the federal Clean Water Act and applicable state law.

The challenged permit totals 569 pages, a substantial portion of which (but by no means all) pertains to “Numeric Effluent Limits” for storm water discharge. The petition for administrative mandate was filed in 2015. The trial court’s tentative decision was made in December 2018. The judgment, entered in September 2019, requires appellants to set aside “each and every one of the provisions in the Permit pertaining in

any way to any and all Numeric Effluent Limits, and to reconsider the Permit in light of the Court's" ruling.

Appellants filed a petition for writ of supersedeas and request for immediate relief from the automatic stay of challenged government agency decisions during this appeal. (Code Civ. Proc., § 1094.5, subd. (g) ["If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order".].)

Based on the contents of the petition, this court granted a temporary suspension of the effect of section 1094.5, subdivision (g).

The additional briefing provided by the parties and real parties in interest demonstrates the complexities of this dispute.

On the one hand, respondent was victorious at the trial court and does not want to be harassed with enforcement actions pertaining to numeric effluent limits set by the 2012 permit while this appeal pends. Respondent has not made the investments necessary to comply with these requirements and does not intend to do so, having won at the trial court and expecting to prevail on appeal.

On the other hand, all parties agree that the 2012 permit must remain in place to some extent while this appeal pends. A permit must be in place in order for respondent and real parties in interest to discharge water from storm sewers. Respondent and real parties in interest have invested money and effort in complying with various components of the 2012 permit. A stay of the entire 2012 permit would cause harm to all parties.

The parties dispute, as a matter of law, whether the section 1094.5, subdivision (g), stay can be deemed to apply only to the portions of the 2012 permit concerning numeric effluent limits. The parties also dispute, as a matter of fact, which

portions of the 2012 permit pertain in any way to numeric effluent limits. Finally, the parties devote numerous pages of their briefs to the merits questions presented on appeal.

In our view, maintaining the status quo and protecting the public interest pending resolution of this appeal are the guiding principles to follow in this difficult situation. Despite pending legal challenges, the status quo since December 2012 has been for the entire 2012 permit to be in effect. The public interest is best served by making clear that the 2012 permit remains in effect in its entirety until it is replaced, rather than creating legal uncertainty and potential incentives to delay environmental improvement projects already underway. It is impractical for this court to proactively define the scope of a partial stay of the 2012 permit, as applied to all affected parties and possible scenarios.

The petition for writ of supersedeas is therefore GRANTED. The stay imposed by Code of Civil Procedure section 1094.5, subdivision (g), is SUSPENDED pending resolution of this appeal. The temporary suspension of the effect of section 1094.5, subdivision (g), is DISSOLVED, as it is no longer necessary. The 2012 permit is not stayed as a result of this appeal.

With that said, this court has the power to “make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.” (Code Civ. Proc., § 923.) Part of the status quo prior to this appeal was a lack of aggressive enforcement of the numeric effluent limits by appellants in light of pending litigation. This grant of supersedeas is without prejudice to respondent or real parties in interest filing (by motion or by supersedeas petition) a request to this court for narrowly tailored relief should appellants take specific action to enforce the numeric effluent limits from the 2012 permit prior to the resolution of this appeal, such that respondent or real party is irreparably harmed. The parties are urged to cooperate in avoiding any such disputes and to focus on resolving this appeal on the merits as promptly as possible.

On the court's own motion, calendar preference is GRANTED to this matter. The public interest will be served by resolving this appeal as promptly as possible. Extensions of time for briefing will not be granted absent an extraordinary showing of good cause. The parties have already provided extensive briefing on the merits in connection with this supersedeas petition, demonstrating their capacity to complete a briefing of the merits expeditiously. Upon completion of briefing, the clerk of this court is DIRECTED to transmit an argument request letter to the parties. If argument is requested or otherwise ordered by this court, the clerk of this court is DIRECTED to place the matter on the first available calendar.

Also on the court's own motion, the court is considering the consolidation of case numbers G058539 and G058540. The parties are invited to file an informal letter brief within 10 days of this order, addressed to the question of whether these two matters should be consolidated or whether it is preferable to consider the matters alongside one another without formally consolidating them.

Respondent's requests for judicial notice, filed on November 26 and December 9, 2019, are GRANTED.

BEDSWORTH, ACTING P. J.

* Before Bedsworth, Acting P. J., Ikola, J., and Goethals, J.

DATE: February 11, 2020

TO: Water Committee/Water TAC

FROM: Marisa Creter, Executive Director

RE: **SAFE CLEAN WATER UPDATES**

RECOMMENDED ACTION

For information only.

BACKGROUND

The Upper San Gabriel River (USGR), Rio Hondo (RH), and Upper Los Angeles River (ULAR) Watershed Area Steering Committees (WASCs) are reviewing the respective submitted Safe, Clean Water Program projects at their January and February meetings in order to develop their FY 2020-21 Stormwater Investment Plans (SIPs). Each WASC is hearing presentations on each of the projects submitted for each funding program – Infrastructure, Technical Resources, and Scientific Studies. This includes two scientific study projects that the SGVCOG had submitted under the program. These two studies aim to, respectively, develop a load reduction strategy (LRS) for the Upper Los Angeles River and to support the development of the WASC’s stormwater investment plan.

After review of the projects, each WASC will recommend projects for inclusion in their FY 2020-21 SIPs. After being reviewed by the WASCs, the recommended projects will be reviewed by a Scoring Committee and the Regional Oversight Committee (ROC), for eventual recommendation to the Board of Supervisors.

In addition, the deadline for projects for consideration for the FY 2021-2022 Stormwater Investment Plans is **July 31, 2020**.


Upcoming Meetings

Below is the meeting schedule for upcoming Safe Clean Water Program Committees:

REPORT

Committee	Date	Location
Upper San Gabriel River WASC	Monday, February 24 1:30 p.m. – 3:30 p.m.	Sanitation Districts of Los Angeles County
Rio Hondo WASC	Wednesday, February 12 9:00 a.m. – 11:00 a.m.	Monrovia Public Library
Scoring Committee	Tuesday, February 18 8:00 a.m. – 12:00 noon	LA County Public Works Building
Upper Los Angeles WASC	Monday, February 24 3:00 p.m. – 5:00 p.m.	LA County Public Works Building
Regional Oversight Committee	Tuesday, March 3 2:00 p.m. – 4:00 p.m.	LA County Public Works Building

More information can be found at <https://safecleanwaterla.org/>.

Prepared by: 
Samantha Matthews
Management Analyst

Approved by: 
Marisa Creter
Executive Director

EIGHTH ANNUAL

WELL CONFERENCE

***Climate Change and Political Climate
Impacting California Water***

March 20-21, 2020

San Jose Marriott

301 S Market St

San Jose, CA 95113



Water Education for Latino Leaders

Register Here:

<http://bit.ly/WELLConference>