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9 STATE WATER CONTROL RESOURCES BOARD

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12 NATURAL RESOURCES DEFENSE
COUNCIL, LOS ANGELES
13 WATERKEEPER, and HEAL THE
BAY,

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Petitioners,

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v.

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CITIES OF ARTESIA, NORWALK,
LA MIRADA,

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Respondents.

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SWRCB/OCC File A-2386

**RESPONDENTS' MEMORANDUM
IN OPPOSITION TO PETITION
AND ADDENDUM TO PETITION
FILED BY NATURAL RESOURCES
DEFENSE COUNCIL, INC., LOS
ANGELES WATERKEEPER, AND
HEAL THE BAY TO LA REGIONAL
BOARD'S DECISION ON LOWER
SAN GABRIEL RIVER
WATERSHED MANAGEMENT
PROGRAM**

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1 I. THE LOS ANGELES BOARD'S APPROVAL OF THREE
2 WATERSHED MANAGEMENT PROGRAMS, INCLUDING THE
3 LOWER SAN GABRIEL RIVER PROGRAM SHOULD BE
4 AFFIRMED.

5 Three cities involved in the Lower San Gabriel River ("Lower SG
6 River") watershed management group, specifically Artesia, La Mirada, and
7 Norwalk (collectively, "Respondents"), jointly file this memorandum in
8 support of the Los Angeles Regional Water Quality Control Board's ("LA
9 Board") decision to approve the final revised watershed management
10 programs ("Programs") submitted by Respondents and other watershed
11 management groups. As Respondents discuss below, the LA Board gave full
12 and complete consideration to a variety of arguments about the sufficiency of
13 the Programs and, after deliberation, it voted 6-0-1 to approve them. That
14 approval was based on substantial evidence, including evidence supplied by
15 the LA Board's staff, and must be respected by the State Board.

16 The "proof is in the pudding", and this pudding is still in the process of
17 cooking. Respondents believe that the time to review and examine the
18 adequacy of the Programs and the specific actions taken to implement them
19 is *after* monitoring data is collected and reported pursuant to the
20 Coordinated Integrated Management Programs (CIMPs). The LA Board
21 approved the CIMP for the Lower SG River group (and many others) in June
22 2015, with an effective date of September 2015. The first annual data report
23 for the Lower SG River CIMP is due in December 2016. Therefore, even if the
24 State Board were inclined to "take a second look" at the Lower SG River
25 Program (or others), this review should take place only after the initial data
26 sets are prepared and reviewed in light of milestones, and then there can be a
27 concrete discussion on what has (or has not) worked in light of actual data.
28 Accordingly, Respondents believe that the Petition and separate Addendum
Petition (collectively, "Petitions") of the Natural Resources Defense Council,

1 Los Angeles Waterkeeper, and Heal the Bay (“Petitioners”) should be
2 rejected on this substantive ground.

3 Respondents also reference their filing (together with four other cities)
4 of a separate motion to dismiss the Petitions as untimely and moot, and
5 respectfully request that the State Board address that motion as a preliminary
6 matter.¹

7 **II. THE PETITIONERS FILED TWO SEPARATE PETITIONS TO THIS**
8 **BOARD**

9 **A. The first petition was focused only on the action of the LA**
10 **executive officer in approving the Programs.**

11 The Petitioners timely filed an initial Petition (“Original Petition”) on
12 May 28, 2015. That Original Petition was focused solely on the action of the
13 LA Board’s Executive Officer, Mr. Unger, who conditionally approval nine
14 separate Programs. The Programs were approved (with conditions) by Mr.
15 Unger on April 28, 2015, which was some 90 days after submittal of revised
16 Programs in January 2015. This approval complied with the timetable set
17 forth in Part VI.C.4.c. of the LA MS4 Permit (“Permit”) (RB-AR18314-315
18 [slides showing Permit timeframe and actions taken by Executive Officer]).

19 The May 28, 2015 Original Petition sought to have the State Board
20 “review the Executive Officer’s action to issue those conditional approvals.”
21 (RB-AR17810 [first paragraph of Petition]). The Petitioners argued that the
22 Executive Officer’s decision was (1) an abuse of discretion because he was

23 _____
24 ¹ All of the LA MS4 participants in the Lower SG River watershed group have separately
25 submitted a letter dated January 13, 2016 and signed by the lead member, City of
26 Norwalk, which addresses certain technical issues raised by the Addendum Petition. That
27 letter, which was submitted on the stationery of the watershed group, should be read in
28 conjunction with this memorandum filed by three of the cities in the watershed group,
Norwalk, Artesia, and La Mirada. In addition, the Los Angeles County Flood Control
District is a member of the watershed group, and will be submitting separate comments in
opposition to the Petitions.

1 not authorized to “conditionally approve”, but only to approve or deny
2 outright; (2) constituted an “improper [*de facto*] modification of the Permit by
3 allowing a conditional approval; and (3) imposed conditions that were
4 inconsistent with the Permit requirements and the Clean Water Act. (RB-
5 AR17811-12). The Original Petition closed by asking that either the State
6 Board or the Regional Board issue an order that “invalidates the Executive
7 Officer’s conditional approvals and denies all Nine WMPs. . .” (RB-AR17814,
8 ¶6 [request for specific action by regional or State Board]).

9 In June 2015 the Lower SG River watershed group (along with others)
10 submitted a final Program that responded to the conditions in the Executive
11 Officer’s April 28, 2015 letter. (RB-AR15527). As to the Lower SG River
12 watershed, the Executive Officer determined in July 2015 that the final
13 Program satisfied the conditions, and issued a final approval letter (without
14 further conditions). (RB-AR18315).

15 **B. The addendum petition focuses solely on separate action taken**
16 **by the LA Board approving three Programs in September 2015**

17 The Petitioners then sought to challenge the separate action taken by
18 the LA Board on September 10, 2015, to approve all nine Programs after a full
19 hearing. Petitioners waited until October 30, 2015 to file what they termed
20 “Addendum to Petition for Review of Los Angeles Regional Water Quality
21 Control Board Executive Officer’s Action to Conditionally Approve Nine
22 WMPs Pursuant to the L.A. County MS4 Permit” (“Addendum Petition”).
23 Respondents (together with four other cities from the Lower Los Angeles
24 River watershed and the Upper Reach 2 Los Angeles River watershed) have
25 separately objected to this Addendum Petition as untimely under Water
26 Code Section 13320 and Cal. Code of Regulations, title 23, Section 2050. (*See*
27 *Motion And Supporting Memorandum To Reject As Untimely and Moot*
28 *Challenge Filed By Natural Resource Defense Council, Inc., Los Angeles*

1 Waterkeeper, and Heal the Bay to LA Regional Board Decision on WMPs).

2 Nonetheless, the Addendum Petition raises new arguments about the
3 actions not of the Executive Officer, but action taken by the LA Board itself
4 on September 10, 2015. The Addendum Petition terms these actions
5 “inappropriate and improper” and further argues that the separate action
6 constitutes an “abuse of discretion.” (Addendum Petition at p.2, lns.6-8).
7 Petitioners candidly omit any reference to what they term the “flawed
8 process” of conditional approval by the Executive Officer—the process that
9 was front and center in their Original Petition. (Addendum Petition at p.1,
10 fn.1).

11 **III. STANDARD OF REVIEW**

12 The Addendum Petition states that the standard of review is whether
13 the action of the LA Board is “appropriate and proper.” (Addendum Petition
14 at pp. 3-4). But, based upon the issues raised, there are two entirely different
15 standards of review.

16 **A. The timeliness of the Addendum Petition must be determined** 17 **as a matter of law based upon the unambiguous words in Water** 18 **Code Sec. 13320**

19 Respondents and other parties (including CASQA in its separate
20 comments) have noted that the Addendum Petition is untimely. This raises a
21 basic jurisdictional issue that must be determined as a matter of law. As
22 noted in Respondents’ separate motion to dismiss, Water Code Section 13320
23 is explicit—a petition for review must be raised by an aggrieved party within
24 30 days of any “action” by the Regional Board. (Water Code §12320(a)). This
25 Board’s own website states: “An action occurs when a Regional Water Board
26 votes for the action. . .” (State Board website page on water quality petitions,
27 available at:

28 http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqp

1 petition_instr.shtml). In this case, Petitioners admit that the vote by the LA
2 Board took place on September 10, 2015. (Addendum Petition at p.1, lns. 2-
3 3). The Addendum Petition was not dated until October 30, 2015 (50 days
4 later) and is therefore untimely.

5 Thus, review of the Addendum Petition and its untimely filing must be
6 reviewed as a matter of law in conformity with the plain meaning of the
7 unambiguous statutory language. (*Poole v. Orange County Fire Authority*,
8 (2015) 61 Cal.4th 1378, 1385 ["The plain meaning controls if there is no
9 ambiguity in the statutory language." (citation omitted)]).

10 **B. The merits of the Addendum Petition and the Petition must be**
11 **reviewed based on the record before the LA Board.**

12 Respondents recognize that if this Board reaches the merits of the
13 Addendum Petition or the Original Petition, then its review is based upon
14 the "appropriate and proper" standard specified in Water Code Sec. 13320(c).
15 But, Respondents also note that absent some additional material deemed
16 relevant by the State Board, that its review should be confined to the "record
17 before the regional board" and a determination of whether that record
18 supports the Regional Board's determination with substantial evidence.
19 (Water Code §13320(b); *In re: Petition of Stinnes-Western*, (1986) Order No. WQ
20 86-16, 1986 WL 25523 ["We concluded [in prior order] that while we can
21 independently review the Regional Board record, in order to uphold a
22 Regional Board action, we must be able to find that the action was based on
23 substantial evidence."]).

24 Petitioners have filed various exhibits to the Addendum Petition, but
25 have not identified any documents that are outside the administrative record
26 compiled by the LA Board. Respondents do not identify any other
27 documents outside the administrative record with the exception of a
28 reference to the Proposition 84 application submitted to this Board for

1 funding of a multi-regional bioswale and infiltration project, and request that
2 the State Board's review be confined to those materials.

3 **IV. THE LOWER SG RIVER PROGRAM CONFORMS WITH THE**
4 **REQUIREMENTS OF THE LA MS4 PERMIT AND WAS PROPERLY**
5 **APPROVED TWICE**

6 **A. The final Lower SG River Program evolved after multiple**
7 **drafts and public comment in two meetings.**

8 The Lower SG River watershed group submitted its detailed and
9 specific initial Program in June 2014, a second revised Program in January
10 2015, and its final Program in June 2015. The Program is found in Section 25
11 of the administrative record, and the final approved version is 195 pages in
12 length, in addition to appendices. (RB-AR15527-15722). In Section 3, the
13 Program discusses various watershed control measures (RB-AR15607-15675),
14 in Section 4, contains a summary of the Reasonable Assurance Analysis
15 ("RAA") (RB-AR156760-15681), and in Section 5, outlines the compliance
16 schedule on a city-by-city basis (RB-AR15682-15710).

17 Appendix 4-1 of the Program contains a much more elaborate
18 explication of the RAA. The RAA, which was prepared by the Paradigm
19 Environmental and Tetra Tech consulting firms, itself consumes hundreds of
20 pages, starting at RB-AR 15973. The RAA was submitted on behalf of the
21 Lower SG River, Lower LA River and Los Cerritos Channel watershed
22 groups. (RB-AR15979)).

23 The LA Board and its staff reviewed the Program, along with other
24 submitted programs in a multi-step public process. On October 9, 2014, the
25 LA Board held a public workshop which allowed for public comments. (RB-
26 AR17806). On October 30, 2014, the LA Board staff provided specific
27 comments on the initial draft of the RAA provided by the Lower SG River
28 group. (RB-AR17905-17907). Thereafter, a revised Program (dated January
2015 and beginning at RB-AR14487) was submitted and was the subject of a

1 further public comments meeting on April 13, 2015. Representatives on
2 behalf of the Lower SG River (and also the Lower LA River watershed) made
3 a presentation reviewing some of the changes from prior draft Programs,
4 specifically focusing on changes made in response to staff comments. (RB-
5 AR2584 [Agenda for 4/13/15 meeting]; RB-AR2632-26 [presentation on behalf
6 of both watershed groups]). NRDC representatives and other environmental
7 groups also spoke at the April 13, 2015 public meeting. (RB-AR17808, 17814
8 [petition for review, stating in part, "Petitioners presented testimony before
9 the Regional Board on April 13, 2015."]).

10 After considering all comments, the LA Board's Executive Officer
11 issued an approval with condition letter on April 28, 2015. (RB-AR17806-
12 807). As noted earlier, after receipt of the Executive Officer's letter, the
13 Lower SG River group further revised its Program (RB-AR15527, *et. seq.*) and,
14 in July 2015, the Executive Officer approved without conditions the
15 resubmitted final Program. (RB-AR18315; Addendum to Petition, Ex. A at
16 second letter [specific EO approval for Lower SG River group]).

17 Renee Purdy, the LA Board's Regional Program Section Chief,
18 summarized the extensive staff review and ultimate conclusions in her
19 presentation before the LA Board:

20 "Staff's evaluation relied on a consideration of the [MS4] permit
21 requirements, as well as our profession judgment as to the merits
22 of the Watershed Management Program's response to the
23 technical and policy issues that we raised in our comments and in
24 the conditions. Staff found that the issues were reasonable[sic-
25 reasonably] responded to with the revisions or with detailed
26 explanations and additional supporting information, as well as
27 commitments to future actions."

28 (RB-AR18686, Ins. 14-22 [comments of Ms. Purdy]).

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1 **B. The Lower SG River Program sets a compliance schedule to**
2 **significantly reduce stormwater pollutants and describes**
3 **specific projects to do so.**

4 **1. The Program in Section 5 provides a detailed compliance**
5 **schedule and specific projects have already started.**

6 Section 5 of the Program sets forth a compliance schedule broken out
7 into nonstructural and structural Best Management Practices (BMPs). As to
8 nonstructural BMPs, Table 5-1 of the Program sets out the schedule for 22
9 specific Targeted Control Measures to be initiated either on a watershed or a
10 jurisdictional basis.

11 As to structural BMPs, Section 5.3 of the Program discusses specific
12 concepts that could be implemented to improve stormwater quality. Some
13 concepts referenced in Section 5.3 have advanced from the time of the
14 January 2015 version of the Program. For example, Section 5.3 references a
15 “draft” of a Strategic Transportation Plan being prepared by the Gateway
16 Cities. That plan was revised in May 2015, and contains express discussions
17 of funding for future projects. It can be located at
18 [http://www.gatewaycog.org/gateway/initiatives-and-projects/strategic-](http://www.gatewaycog.org/gateway/initiatives-and-projects/strategic-transportation-plan)
19 [transportation-plan.](http://www.gatewaycog.org/gateway/initiatives-and-projects/strategic-transportation-plan)

20 Section 5.4 of the Program establishes specific milestone goals for
21 specific cities. To take but one example, Section 5.4.1 explains that while the
22 City of Artesia is already meeting the 10% interim milestone, the City will
23 need to capture 1/10 of an acre foot of water to meet the 35% interim
24 retention goal by 2020. This could be accomplished by, for example,
25 transforming an existing City park, Padelford Park, into an infiltration
26 project, which would capture up to 1.6 acre feet, more than ten times the
27 estimated retention amount required. The Program contains similar
28 discussions of potential structural retention projects for the other members of

1 the watershed group.

2 In its September 10, 2015 public meeting, the LA Board further was
3 provided with substantial evidence of existing on-going projects by the Cities
4 of Artesia, Downey, Diamond Bar and Pico Rivera. (RB-AR18406-18410
5 [presentation by John Hunter on behalf of Lower SG River and Lower LA
6 River watershed groups]). This evidence included examples of actual
7 construction projects for infiltration and biotreatment projects. (*Id.*)² The LA
8 Board staff presented additional evidence to the Board demonstrating that
9 the Lower SG River Program contained greater specificity in terms of actual
10 projects as one moved from the initial draft to the revised draft and then to
11 the final Program. (RB-AR18313 [cover page]; AR18345-18346 [specific
12 discussion of increased detail and specificity in Sec. 5.2 of Program for Lower
13 SG River group]).

14 **2. Petitioners rely upon outdated staff comments of an**
15 **earlier draft and ignore the substantial evidence**
16 **presented on September 10, 2015 to the LA Board**

17 Petitioners' contrary argument that the Lower SG River group failed to
18 provide an adequate compliance schedule (Addendum Petition at pp. 13-15)
19 simply ignores the substantial evidence of specific projects provided to the
20 LA Board at its September 10, 2105 meeting, both by LA Board staff and by
21 by Mr. Hunter. This evidence is not discussed, let alone challenged by
22 Petitioners. Petitioners also challenge the "specificity" with regard to the
23 structural and non-structural BMPs in Section 5 of the Program, and again
24 fail to even address specific examples of structure BMPs presented at the
25 September 10, 2015 meeting by Mr. Hunter.

26

27 ² At the same meeting, Mr. Hunter presented similar evidence of projects underway in
28 cities in the Lower Los Angeles River area. (RB-AR18411-18413).

1 Rather, Petitioners rely upon LA Board staff comments made on the
2 first draft of the Program in October 2014. (Addendum Petition at p.13,
3 fn.31; *id.* at p. 16 and fn.36). Of course, the first draft of the Program left
4 further work to be done. As the Regional Board staff demonstrated in slides
5 presented to the LA Board in September 2015, the Lower SG River Program
6 went through significant changes in the specificity with which it described
7 various projects contained in Section 5. (RB-AR18313 [cover page]; AR18345-
8 18346 [detailed discussion]). Ms. Purdy presented both slides and oral
9 testimony to describe the evolution of specificity in various programs
10 (including the Lower SG River Program) at the September 10, 2015 hearing.
11 (RB-AR18702, ln.2-18703, ln.9). It is entirely unsurprising that staff
12 comments made some eleven months earlier about an initial draft Program
13 would contain some criticisms; the only question, however, before this Board
14 is whether those criticisms were still relevant in September 2015, when the
15 LA Board met to hear and consider the adequacy of the final Program. They
16 were not, as borne out in the evidence and testimony presented by Ms.
17 Purdy, the Regional Program Section Chief.

18 Even Petitioners agree that the Lower SG River group made further
19 changes in the specificity of the Program’s wording as requested by the
20 Executive Officer in his April 28, 2015 conditional approval letter.
21 (Addendum Petition at p. 14, lines 19-20). But, they claim, that none of the
22 “substantive comments” about achieving projects as “soon as possible” were
23 actually addressed in the final Program. (*Id.* at lines 20-22).

24 What Petitioners fail to address, however, are the specific commitments
25 and plans made for structural BMPs in Section 5.4 of the Program.
26 Petitioners ignore that evidence, and it is that evidence, together with the
27 ultimate conclusions of Board staff, that doom their challenge to the
28 Program’s compliance schedule.

1 **3. Petitioner’s comments on the “as soon as possible”**
2 **requirement ignores both the text of the Permit language**
3 **and real practical constraints that are subject to judicial**
4 **notice by this Board**

5 Petitioners repeatedly argue that the Permit requires that stormwater
6 improvements be implemented “as soon as possible” (Addendum Petition at
7 pp. 13-16). As a matter of law, Petitioners misconstrue the actual Permit
8 language. As a practical matter, Petitioners ignore practical limitations
9 imposed on a municipality attempting to initiate a new public project.

10 Petitioners recognize that the term “as soon as possible” identified in
11 Part VI.C.5.b.iv.(5)(c) at p. 65 of the Permit (as amended by Order WQ 2015-
12 0075) is clarified by language in Part VI.C.2.a.ii.(4) and Part VI.C.2.a.iii.(2)(c).
13 (Addendum to Petition at p. 13, Ins. 8-10). But, when read in context, the
14 clarifying language in those two subparts of the Permit supports the Lower
15 SG River Program:

16 The Permit reads in pertinent part:

17 Permittees shall identify enforceable requirements and
18 milestones and dates for their achievement to control MS4
19 discharges such that they do not cause or contribute to
20 exceedances of receiving water limitations within a timeframe(s)
21 that is as short as possible, *taking into account the technological,
operation, and economic factors that affect the design, development, and
implementation of the control measures that are necessary. . . .* (Permit,
Part VI.C.2.a.ii.(4) at p. 51[emphasis added]).³

22 The Program in fact discusses the “technological, operational, and
23 economic factors” that are involved in complying and setting a compliance
24 schedule (RB-AR14641), and this discussion is fully consistent with the
25 Permit’s requirements.

26 _____
27 ³ The Permit at Part VI.C.2.a.iii.(2)(c) on p. 52 (also cited by Petitioners as “clarifying” the
28 “as soon as possible” term) contains virtually identical language.

1 Practically, this Board should take notice that some of the funding for
2 potential projects, such as a specific project mentioned in Section 5.2 of the
3 Program that proposes a multi-watershed use of Proposition 84 funds,
4 requires the approval of the funding agency. In this case, the Gateway Water
5 Management Authority sought approval for funds to support the specific
6 project described in Section 5.2 of the Program, which includes a bioswale,
7 tree box filters and bioretention tree filters. On December 4, 2014, the State
8 Board approved awarded a \$1.07 million grant (in addition to a \$270,220
9 local match) to the Gateway Water Management Authority.⁴
10 Notwithstanding the State Board's award of this grant over a year ago, the
11 Authority only recently received a confirmation of the Authority's eligibility
12 to proceed. The Permittees are working with the Gateway Water
13 Management Authority and this Board to obtain necessary funding from
14 existing funding sources, but, as this one example points out, there are
15 "operational and economic factors" even in applying for and receiving grant
16 funding that simply take time.

17 ///
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21 ⁴ A copy of the January 14, 2016, agenda item 12 of the Gateway Water Management
22 Authority and the first three pages of the staff report discussing agenda item 12 is
23 attached as **Exhibit A** to this memorandum. Gateway's agenda item 12 indicates a staff
24 request to release the notice inviting bids to fulfill the Prop 84 grant and notes that the
25 cities have already submitted the required matching funds. (**Exhibit A** at p. 5). Since this
26 agenda item was not available until very recently, the undersigned Respondents request
27 that the State Board take judicial notice of the undisputed fact that funding through
28 Proposition 84 for this project has been received and bid invitations for construction of
certain projects will be issued shortly. Gateway Water Authority Management ("Los
Angeles Gateway Region Integrated Regional Water Management Joint Powers
Authority") is a joint powers authority agency originally created by the Gateway cities. A
list of current members, which includes some 24 Los Angeles area cities, can be found at
<http://www.gatewayirwmp.org/>.

1 **C. The Program’s focus on zinc reduction measures will drive**
2 **other pollutant reductions, including non-TMDL pollutants.**

3 In Section 4, the Program specifies that a particular computer modeling
4 system, the Watershed Management Modeling System, was utilized to model
5 the potential impacts of pollutant reductions in order to obtain a reasonable
6 assurance that the group members were “on the right track” in order to
7 achieve milestones set out in the Permit. This is one of the specific computer
8 models set forth in the Permit, at Part VI. C.5.b.iv.(5), pp.63-64.⁵ As described
9 in the Program’s summary of the RAA, it was determined that the metal zinc
10 was the primary pollutant and that by focusing on its reduction, one would
11 achieve a concomitant reduction in other pollutants. (RB-AR15676 [Program
12 Executive Summary for RAA]). This explanation is spelled out in more detail
13 in the RAA, and specifically section 5.3.1, which discusses the modeling
14 effort to evaluate the necessary reduction of pollutants in wet-weather
15 situations, particularly a 90 percentile storm year (2002-03), and concludes:

16 . . . [T]otal zinc becomes the limiting pollutant in each of the
17 WMP areas during the 90th percentile year. In other words,
18 reductions of zinc during WMP implementation *will drive*
19 *reduction of other pollutants, particularly because the pollutant*
reduction plan emphasizes sediment control (other pollutants are
typically transported with sediment) and retention/infiltration
rather than pollutant treatment.

20 (RB-AR16012 [Appendix 4-1, Sec. 5.3.1. at p.2]).

21 Thus, the “limiting pollutant” approach of the RAA predicts that the
22 aggressive schedule in place to meet volumetric reduction targets for zinc
23 will result in accelerated achievement (i.e., shorter timeframe) for other
24 pollutant receiving water limitations. This approach is also discussed in the
25 _____

26 ⁵ Mr. Steven Carter of Paradigm Environmental provided detailed testimony to the LA
27 Board at its September 10, 2015 meeting about the basis and use of computer modeling
28 consistent with the March 25, 2014 guidance from the LA Board on RAA Guidelines. (RB-
AR18711-18719).

1 final Program’s Executive Summary. (RB-AR15537 at AR15538).

2 Petitioners’ contrary argument (Addendum Petition at pp. 15-16)
3 simply ignores these facts, developed in the modeling necessary to achieve a
4 reasonable assurance of meeting pollutant reduction goals. Petitioners argue
5 that the “limiting pollutant” approach as to zinc does not address achieving a
6 timetable for other “pollutants not addressed by TMDLs” (*Id.* at p. 16), but
7 they are simply wrong for reasons spelled out in the Program and in its
8 Appendix 4-1, the RAA.

9 **D. The Program provides sufficient specificity for structural and**
10 **non-structural BMPs.**

11 Although Permittees suggest otherwise (Addendum Petition at pp. 16-
12 17), the final Program for the Lower SG River group contains ample
13 specificity in identifying both non-structural and structural BMPs. vProgram
14 Section 5.1 and Table 5-1 detail non-structural BMPs and specific milestone
15 dates. (RB-AR15682-15684). Program Section 5.2 discusses a specific multi-
16 watershed project with deadlines for the preliminary programs and
17 specifications, the final specifications, and anticipated contract award dates.
18 (RB-AR15685-15686). Program Section 5.3 discusses structural controls in
19 general, and Section 5.4 contains specific city-by-city discussion of pollutant
20 load reductions to attain interim and final milestones.⁶ There is no factual
21 basis for Petitioners’ arguments on this point.

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26 ⁶ As previously noted, the entire watershed group for the Lower SG River submitted a
27 letter dated January 13, 2016 containing technical comments on the Addendum Petition,
28 including a comment on page 2 of the letter that specifically addresses this challenge by
Petitioners. We respectfully refer to that comment letter for a more detailed explication of
this point.

1 **E. Petitioners’ other criticisms of the final Program are unfounded**
2 **and conflate the lack of specific funding with a “failure” to**
3 **establish “volumetric reduction targets.”**

4 Petitioners’ other criticisms of the Lower SG River Program, at pages
5 18-20 of the Addendum, are also without merit. Respondents note that the
6 RAA contains detailed volumetric calculations of reductions in overall
7 stormwater volume, particularly in wet weather situations, that will be
8 required to assure stormwater compliance. LA Board staff is quite capable of
9 reviewing zinc reduction levels, as measured by compliance monitoring
10 points, and assessing whether those levels have or have not been achieved.
11 Indeed, Ms. Purdy directly addressed the criticism that the Lower SG River
12 lacked “measurable milestones” in slides and oral testimony at the
13 September 10, 2015 meeting. (RB-AR18313 [introduction to slides]; 18336-
14 18337 [slides responding to “lack of measurable milestone” contention by
15 Petitioners]; RB-AR18693-18695 [oral testimony of Ms. Purdy]). As Ms.
16 Purdy testified to the LA Board: “Since these milestones are quantitative,
17 this is a sufficient metric for us to use as Board staff to evaluate progress, and
18 also to assess compliance by these permittees in this [Lower SG River]
19 Watershed Management Program (RB-AR18694, Ins. 14-17). This is
20 substantial evidence, and Petitioners simply have no counter other than
21 vociferous and unsupported allegations to the contrary.

22 Petitioners also assert that the volumetric reductions are based upon a
23 “wavering and uncertain commitment” about funding and therefore are not
24 sufficiently concrete to merit approval. Petitioners chastise the LA Board
25 staff for failing to insist upon something more in terms of a commitment, but
26 do not identify what “more” is. (Addendum Petition at p.20). In essence,
27 Petitioners are calling into question the vigor and good-faith enforcement
28 intentions of the LA Board and its staff and invoke speculation to “establish”

1 a future “fact.” The answer to Petitioner’s question must ultimately rest in
2 future actual events, as opposed to mere advocacy-infused prognostication
3 by Petitioners. While Petitioners speculate about a future “failure” that has
4 not occurred, speculation is *not* a substitute for substantial evidence. Thus, it
5 cannot be the basis for overturning the LA Board’s determination that its
6 staff had sufficient quantitative milestones to measure and assure progress in
7 cleaning up stormwater pollutants.

8 **F. The Board should not consider the Petitioners’ chart contained**
9 **as Exhibit B to the Addendum Petition**

10 Petitioners attached as Exhibit B to their Addendum Petition a lengthy
11 chart that purports to document various deficiencies in the submitted
12 watershed management programs, including the Lower SG River Program.
13 Petitioners incorporate this chart only in a footnote reference in their
14 Addendum Petition (Addendum Petition at p. 20, fn.45). Petitioners’ Exhibit
15 B appears to be related to a very similar chart contained in the administrative
16 record, specifically as to the Lower SG River, RB-AR 18377-18380.⁷ The chart
17 purports to describe various deficiencies by “color coding”, with darker red
18 coloration being “more serious” deficiencies. The chart was not part of the
19 formal Powerpoint presentation by the Petitioners at the September 10, 2015
20 meeting (RB-AR 18640-641 [colloquy between Ms. Hayat of NRDC and Ms.
21 Fordyce, legal counsel]). There was no description by NRDC (or any other
22 environmental group) of the source of the chart, who prepared it, or what
23 criteria was utilized to determine the color-coding (darker red) comments
24

25 ⁷ Petitioners’ Exhibit B to their Addendum curiously bears a header entitled “October 2014
26 comments” at the top of each page, but purports to discuss events that occurred well after
27 that date, including the Executive Officer’s conditional approval letter only issued in April
28 2015 to the Lower SG River group. Exhibit B is not signed and its author is not identified
in the existing record. We therefore refer only to the undated (and unsigned) colored
chart contained in the administrative record at RB-AR18377-18380.

1 made as to various portions of the Program. Later, at the rebuttal period
2 utilized by environmental petitioners, Dr. Booth, currently an adjunct
3 professor at UC Santa Barbara, appeared to indicate that he created the color-
4 coded chart over the Labor Day weekend. (RB-AR18757-18758). But, Dr.
5 Booth did not indicate the basis he utilized for placing certain items in a
6 “dark red” code or other items in other colors. Dr. Booth did not provide an
7 objective standard or peer-reviewed document which he utilized to make
8 these designations, other than he personally (and subjectively) chose the
9 various colors.

10 California law requires that expert testimony or charts utilized by
11 experts must be based upon reliable sources. *In re: Lockheed Litigation Cases*,
12 (2004) 115 Cal.App.4th 558, 563 [“The value of opinion evidence rests not in
13 the conclusion reached but in the factors considered and the reasoning
14 employed. [citations.] Where an expert bases his conclusion upon
15 assumptions which are not supported by the record, upon matters which are
16 not reasonably relied upon by other experts, or upon factors which are
17 speculative, remote, or conjectural, then his conclusion has no evidentiary
18 value.” [citation)]. In this proceeding, other than Mr. Booth’s own personal
19 views, there is no reliable evidence to support his “color-coded” chart and its
20 implicit determination that parts of the Lower SG River Program are
21 “seriously deficient.”

22 Although Respondents believe that the entire Addendum Petition
23 should not be considered, to the extent that this Board takes a second look, it
24 should disregard Dr. Booth’s color-coded “let me tell you what’s deficient”
25 chart and exercise its own judgment. That is what the LA Board did, and it
26 ultimately rejected Dr. Booth’s chart and related conclusions.

27 ///

28 ///

1 **V. CONCLUSION**

2 The LA Board and its staff have already thoroughly reviewed most of
3 the claims Petitioners bring in their Addendum Petition. The LA Board, after
4 hearing from its staff, the testimony and evidence from other LA MS4
5 permittees demonstrating that specific actions to implement the programs
6 were underway, testimony from experts on the computer modeling work
7 done to create and validate the RAA for this and other watershed groups,
8 (RB-AR18711-18719 [testimony of Steve Carter of Paradigm Environmental]),
9 and considering the exact language of the Permit, concluded that there was
10 substantial evidence to support the Executive Officer's decision to approve
11 the Lower SG River Program and the two other programs. There is similarly
12 substantial evidence in the administrative record and items subject to judicial
13 notice before this Board to affirm the 6-0-1 vote of the LA Board.

14 The Addendum Petition is untimely and should be rejected on that
15 ground alone. But, to the extent that this Board were to consider it,
16 Petitioners' arguments fail for both legal and factual reasons and should be
17 rejected.

18 As noted in the January 13, 2015 letter by the entire watershed group,
19 close to \$1 million has already been expended in efforts to plan and
20 implement stormwater volume reductions and pollutant monitoring. The
21 State Board should allow these efforts to continue and not waste these funds,
22 which ultimately delay pollutant reductions, by sending everyone back to
23 the proverbial starting gate.

24 Dated: January 15, 2016

RICHARDS, WATSON & GERSHON
A Professional Corporation
NORMAN A. DUPONT
NICHOLAS R. GHIRELLI

25
26
27 By:



NORMAN A. DUPONT
Attorneys for Respondents
City of Norwalk, City of Artesia,
City of La Mirada

EXHIBIT "A"

GATEWAY WATER MANAGEMENT AUTHORITY

Los Angeles Gateway Region
Integrated Regional Water Management
Joint Powers Authority

16401 Paramount Blvd., Paramount, CA 90723 ☐ 562.663.6850 phone 562.634.8216 fax ☐ www.gatewayirwmp.org

AGENDA

Regular Meeting of the Board of Directors
Thursday, January 14, 2016 at 11:30 a.m.
Progress Park Plaza, 15500 Downey Avenue, Paramount, CA

1. Roll Call
2. Determination of a Quorum
3. Additions to Agenda (Govt. Code Sec. 54954.2(b))
4. Oral Communications to the Board
This is an opportunity for members of the public to address the Board on any item under the jurisdiction of the agency. Depending upon the subject matter, the Board may be unable to respond until the item can be posted on the agenda at a future meeting in accordance with provisions of the Brown Act.
5. **Consent Calendar: (Acted as one item unless withdrawn by request)**
 - a. Minutes of the Board Meeting of November 12, 2015 (Enclosure)
 - b. Warrant Register Report and Ratify List of Warrants for December 2015 and Approve List of Warrants for January 2016 (Enclosure)
6. Presentation – Results of the Central Basin MWD Audit (Kevin Hunt)(Enclosure)
7. Discussion/Action Regarding On-Call Consulting Process (Enclosure)
 - a. Ratify On-Call Consulting Process for 2016
8. Discussion/Action Regarding Board Member Appointment Process in Accordance with the Newly Adopted Bylaws (Enclosure)
9. Update Regarding 2015 IRWM Grant Application
10. Update Regarding 20x2020 Regional Alliance
11. Discussion/Action Regarding Letter of Support for Green Streets Program – Measure R2 (Enclosure)

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12. Discussion/Action Regarding Prop 84 Round 2 Stormwater Grant

- a. Authorize Executive Officer to Release the Notice Inviting Bids to fulfill the Proposition 84 grant: Multi-Agency, Multi-Watershed Project to Incorporate LID BMPs into Major Transportation Corridors in the Gateway Region of Los Angeles upon Completion of Legal Counsel Review (Enclosure)

13. Gateway Region Watershed Management Plan (WMPs) and MOU and/or Amendment Activities

- a. Lower Los Angeles River Upper Reach 2 Watershed Group
 1. Ratify Authorization to release the Request for Proposal and Scope of Work for A Feasibility Study for LAR UR2 (Enclosure)
- b. Lower Los Angeles River Watershed Group
- c. Los Cerritos Channel Watershed Group
- d. Lower San Gabriel River Watershed Group

14. Executive Officer's Report

15. Directors' Comments/Reports

16. Adjournment

Christopher Cash, Board Chair ☐ Adriana Figueroa, Vice-Chair ☐ Charlie Honeycutt, Secretary/Treasurer

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AGENDA ITEM NO. 12

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January 14, 2016

SECTION 12: Discussion/Action Regarding Prop 84 Round 2 Stormwater Grant

SUMMARY

The Gateway Water Management Authority (GWMA) is acting as the lead agency, overseeing and administering of the Proposition 84 grant. The eight (8) cities of Bell Gardens, Downey, Lynwood, Norwalk, Paramount, Pico Rivera, Santa Fe Springs and Vernon are participating in the grant efforts with the Gateway. All participating cities are members of the GWMA. The bid specifications outline the grant requirements, treatment system locations and work to be performed to fulfill the construction aspects of the Proposition 84 grant.

The bid specifications are based on plans approved by the State Water Resources Control Board, and are a necessary part in fulfilling the State Water Resources Control Board grant agreement with GWMA.

BACKGROUND

On December 4, 2014, GWMA was awarded a Proposition 84 grant by the State Water Resources Control Board to implement Low Impact Development (LID) treatment systems along major transportation corridors. The installation of these treatment systems is expected to decrease the loading of metals at multiple sites along the Los Angeles River, San Gabriel River, and Los Cerritos Channel. The cost for complete implementation of the grant is \$1.34 million. Of this total amount, 80% will be provided by the State Water Resources Control Board as part of the awarded grant and 20% will be required (in matching funds) from the participating cities. Eight (8) cities are fully participating in the GWMA's effort (there are 11 cities total that are participating in the grant; however, the Cities of Whittier, Signal Hill and South Gate are contracting and managing the grant independent of the GWMA. Each City has previously signed and executed a sub-recipient

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agreement with the GWMA that outlines the details of the partnership between the GWMA and the cities.

DISCUSSION

Eight (8) cities in the Prop 84 grant, Bell Gardens, Downey, Lynwood, Norwalk, Paramount, Pico Rivera, Santa Fe Springs and Vernon, participating in a regional multi-watershed project through the Gateway Water Management Authority (GWMA). The treatment systems include: eighteen (18) tree box filters, and ten (10) bioretention tree wells. The table below lists the responsible city for each treatment system in the Proposition 84 grant project.

To date, several milestones have been completed to include CEQA, final designs, and development of a monitoring plan. Final plans have been approved by the State Water Resources Control Board. The next step in continued implementation of the Proposition 84 grant would be to release bid specifications and select a contractor. Construction is anticipated to last for approximately eight months. Associated activities for construction will include mobilization and site preparation, installation of BMPs and proper documentation. All relevant project information is included in the bid specifications to be released.

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| City | LID BMPs | Location |
|------------------|--|--|
| Bell Gardens | (1) Tree box filter | (1) Florence Avenue at Garfield Avenue |
| Downey | (4) Tree box filters | (2) Brookshire Avenue at Gardendale Street at Northeast and northwest corner, (2) Pangborn Avenue at Firestone Boulevard at Northeast and northwest corner |
| Lynwood | (10) Bioretention Tree Wells (3) Tree box filters | Locations to be determined (1) Clark Street at Atlantic Avenue, (2) Clark Street at Wright Road |
| Norwalk | (2) Tree box filters | (1) Imperial Highway and Volunteer Avenue, (1) Firestone Boulevard and Imperial Highway |
| Paramount | (2) Tree box filters | (2) Alondra Boulevard west of Hunsaker Avenue |
| Pico Rivera | (2) Tree box filters | (1) Beverly Boulevard and Tobias Avenue, (1) Slauson Avenue and Paramount Boulevard |
| Santa Fe Springs | (2) Tree box filters | (1) Alondra Boulevard and Shoemaker Avenue, (1) Alondra Boulevard and Marquardt Avenue |
| Vernon | (2) Tree box filters | (2) 26th Street |

FISCAL IMPACT

1. The fiscal impact to the GWMA is negligible in comparison to the full grant funds. GWMA will incur administration costs that have been allocated from the grant funds.
2. The total grant is \$1.34 million, with 80% of this cost provided by the State Water Resources Control Board, and 20% matched by the participating cities.
3. GWMA has already collected the grant cost match deposit from the participant cities.

RECOMMENDATION

Authorize the Executive Officer to release the bid specifications and Notice Inviting Bids to fulfill the Proposition 84 grant: Multi-Agency, Multi-Watershed Project to Incorporate LID BMPs into Major Transportation Corridors in the Gateway Region of Los Angeles, upon completion of legal counsel review.

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PROOF OF SERVICE

I, NICK R. GHIRELLI, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On January 15, 2016, I served the within document(s) described as:

**RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION AND
ADDENDUM TO PETITION FILED BY NATURAL RESOURCES DEFENSE COUNCIL,
INC., LOS ANGELES WATERKEEPER, AND HEAL THE BAY TO LA REGIONAL
BOARD'S DECISION ON LOWER SAN GABRIEL RIVER WATERSHED
MANAGEMENT PROGRAM**

(BY E-MAIL) By transmitting a true copy of the foregoing document(s) to Petitioners, the LA Water Board and Permittees included in the e-mail addresses set forth below.

SFleischli@nrdc.org; BHayat@nrdc.org; RKampalath@healthebay.org;
arthur@lawaterkeeper.org; bruce@lawaterkeeper.org; Daniel@lawyersforcleanwater.com;
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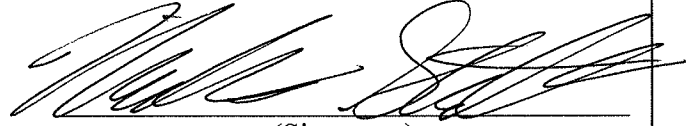
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jguerrer@dpw.lacounty.gov; kjones@dot.ca.gov

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

Executed on January 15, 2016, at Los Angeles, California.

NICK R. GHIRELLI
(Type or print name)



(Signature)