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Attorneys for Petitioners
COUNTY OF LOS ANGELES and
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

BEFORE THE
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)	PETITION FOR REVIEW
)	
THE COUNTY OF LOS ANGELES)	[Water Code § 13320(a) and
AND THE LOS ANGELES COUNTY)	23 CCR 2050]
FLOOD CONTROL DISTRICT)	
FOR REVIEW OF ORDER OF)	
EXECUTIVE OFFICER OF)	
REGIONAL WATER QUALITY)	
CONTROL BOARD, LOS ANGELES)	
REGION)	
_____)	

Petitioners the County of Los Angeles and the Los Angeles County Flood Control District (collectively “County”) respectfully petition the State Water Resources Control Board (“State Board”) to review an order of the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) under Water Code § 13267 issued on September 25, 2006 (“Order”), directing Petitioners and

other parties to revise a monitoring plan prepared under a Total Maximum Daily Loads (“TMDL”) program.

A. SUMMARY OF PETITION

On August 7, 2003, the Regional Board adopted an amendment to the Water Quality Control Plan for the Los Angeles Region (“Basin Plan”) to incorporate the Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (“Marina TMDL”). The TMDL subsequently was approved by the State Board and U.S. EPA and has been made part of the Basin Plan. 23 Cal. Code Reg. § 3939.4. The Marina TMDL provides that “responsible jurisdictions and agencies” shall conduct compliance monitoring of certain “major drains” and at other locations, including Mothers’ Beach. The Marina TMDL further provides that the responsible jurisdictions and agencies will submit a coordinated monitoring program (“CMP”) for locations in the Marina, including three locations off Mothers’ Beach and in various basins located in the Marina.

Petitioners and the other jurisdictions and agencies have submitted a CMP that complies with the requirements of the Marina TMDL (the CMP is attached as Exhibit C). The CMP originally was submitted on July 16, 2004. The Regional Board commented on the CMP, requesting changes, in a letter dated August 11, 2005. A revised CMP, dated April 27, 2006, was submitted on May 25, 2006. In addition to Regional Board input, the CMP also received input from Santa Monica BayKeeper and Heal the Bay.

The Order issued by the Regional Board Executive Officer, however, unilaterally orders Petitioners and the other jurisdictions and agencies to revise the CMP to provide for daily monitoring of Mothers’ Beach, despite the fact that the Marina TMDL expressly leaves the decision on whether to conduct daily or weekly monitoring to the sole discretion of the implementing jurisdictions and agencies. The order further orders the CMP to be revised to provide for weekly monitoring of several basins that are not listed as impaired on the 303(d) list, despite the fact that the Marina TMDL expressly leaves to

the implementing jurisdictions and agencies the discretion to recommend the frequency of monitoring.

The Order is in conflict with the Basin Plan and is therefore an exercise of improper rulemaking and also contravenes the purpose and plain meaning of Water Code § 13267. The Order violates Section 13267 by failing to set forth how the burden of the requested information bears a reasonable relationship to the need for the information, and by failing to identify the evidence that supports requiring the need for the report.

B. PETITION FOR REVIEW

1. Name, Address, Telephone Number and E-mail Address of Petitioners:

County of Los Angeles and
Los Angeles County Flood Control District
c/o Donald W. Wolfe, P.E.
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With a copy to:

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2. Regional Board Action Which State Board Is Requested To Review and Copy of Order: Order of Jonathan S. Bishop, Regional Board Executive Officer, dated September 25, 2006, sent to Donald Wolfe, Director of Public Works, County of Los Angeles. A copy of the Order is attached as Exhibit A.

Petitioners request that the State Board review the entire Order, and specifically the following provisions:

(1) Requirement 1 on Page 2 of the Order, requiring three monitoring sites off Mothers' Beach to be sampled five times per week.

(2) Requirement 2 on Page 2 of the Order, requiring the sampling of monitoring sites in Basins A, B, C, G and H on a weekly basis.¹

3. Date on Which Regional Board Executive Officer Acted: September 25, 2006.

4. Statement of Reasons Why Action was Inappropriate or Improper: Petitioners seek this review because:

(1) The Order requires a monitoring program, which program was submitted pursuant to the Marina TMDL, to be revised in a fashion that is inconsistent with the plain requirements of the TMDL. The Regional Board, in adopting the Marina TMDL, made a judgment as to the amount and type of monitoring that would be required of the responsible jurisdictions and agencies. The Board's judgment was that, with respect to certain monitoring points (at "major drains" and off Mothers' Beach), the responsible jurisdictions and agencies could choose either daily or weekly monitoring. See Attachment A to Regional Board Resolution No. 2003-012 (attached hereto as Exhibit B), page 8.

¹ The Order also requires the jurisdictions and agencies, after the March 18, 2007 effective date of the summer dry-weather and winter dry-weather aspects of the TMDL, to submit daily monitoring data in addition to monthly reporting. As discussed elsewhere in this Petition, Petitioners dispute that the Order can direct daily monitoring, and thus object to this third requirement on that ground. Petitioners are, however, willing to submit any monitoring data to the Regional Board, collected on whatever frequency, as soon as it is suitable for submittal.

In the compliance monitoring section of the TMDL, the Regional Board required that the jurisdictions and agencies “shall conduct daily or systematic weekly sampling at the initial point of mixing with the receiving water at all major drains, at existing monitoring stations and at other designated monitoring stations to determine compliance.” *Id.* (footnotes omitted). The Marina TMDL provided that the choice as to the frequency of this compliance monitoring, however, would be that solely of the implementing agencies: “The frequency of sampling (i.e., daily versus weekly) will be at the discretion of the implementing agencies.” Exhibit B, page 8, footnote 7.

The Order, while it purports to be issued under authority of the Porter-Cologne Water Quality Act and “does not rely on the requirements as contained in the Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL” (Exhibit A, page 3), expressly requires the County of Los Angeles and its co-implementing jurisdictions and agencies, the Cities of Los Angeles and Culver City and the California Department of Transportation, “to revise the Marina del Rey CMP, dated April 27, 2006, to incorporate the requested requirements noted above.”

The first of those requested requirements is for sampling of three monitoring sites (MdRH-1 through MdRH-3) off Mothers’ Beach five times per week, despite the plain language of the Marina TMDL that leaves to the implementing agencies the election as to whether daily or weekly sampling is appropriate. The Order, thus, violates the terms of the Basin Plan, and therefore can only be construed as an attempt to amend the TMDL. Absent a formal rulemaking process, such amendment is plainly unlawful.

The second of the Order’s requirements also conflicts with the Marina TMDL and thus the Basin Plan. This requirement is for weekly monitoring of Basins A, B, C, G and H. Compliance monitoring of these basins is not required under the Marina TMDL, because the basins were not listed as impaired on the 303(d) list. The TMDL, however, provided that the CMP should include monitoring of all of the Marina basins, including the non-303(d) listed basins. *See* Exhibit B, page 11: “The monitoring plans shall include

. . . at least one location in each of the other Marina del Rey Basins (i.e., Basins A, B, C, E, F, G, and H). The plan shall include the responsible jurisdictions' and responsible agencies' recommended sampling frequency at each location."

In the CMP submitted by Petitioners and the other jurisdictions, the monitoring conducted in these basins is denoted as "ambient monitoring," intended to provide "a regular snapshot of the water quality with respect to bacterial indicators within each of the basins." Exhibit C, page 3-3. The CMP provided for such monitoring on a monthly sampling frequency recommended by the responsible jurisdictions and agencies.. The CMP provided further that "[f]requent exceedances of bacteriological standards at these locations may trigger additional source identification efforts." *Id.*

Instead of either accepting the frequency recommended in the CMP, or working with the jurisdictions and agencies to reach a mutually agreeable monitoring frequency, the Executive Officer issued the Order. This act was done in contravention of both the language of the TMDL, which indicates that the jurisdictions and agencies are to recommend the sampling frequency.

The unilateral action of the Executive Officer, in issuing an Order that violates the plain terms of the Marina TMDL by specifying the monitoring frequency to be applied in the CMP, violates the Porter-Cologne Water Quality Act and is an ultra vires act, done outside of the administrative process required for amendment of the Basin Plan.

(2) The second ground on which Petitioners seek review is that the Order improperly seeks to impose a long-term, indefinite monitoring requirement on Petitioners and the other jurisdictions and agencies, an act beyond the powers given to the Regional Board and its staff in Water Code § 13267. In adopting Section 13267, the Legislature intended that the statute be used to compel the furnishing of "technical or monitoring program reports" in conjunction with "conducting an investigation" related to the establishment or review of a water quality control plan or waste discharge requirement, or

in connection with an “action” relating to a plan or requirement authorized by Division 7 of the Water Code. Water Code § 13267(a)-(b).

The phrase “conducting an investigation” indicates that the Legislature intended Section 13267 to be used as a tool to compel the production of discrete monitoring or technical information, and not to authorize a regional board, or its executive officer, to compel a party to perform general long-term monitoring with an indefinite term. As the Order itself notes, with respect to the required weekly monitoring of Basins A, B, C, G and H, “[m]onitoring will continue until the Regional Board approves any changes in the CMP.” Exhibit A at 2.

(3) The final ground on which Petitioners seek review is that the Order violates the express requirements of Section 13267 of the Water Code. That section provides, in relevant part, that when a person is required to provide technical or monitoring reports, “[t]he burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.” Water Code § 13267(b).

The Order fails completely in this regard. The Order contains no assessment of the potential burden, including costs, of the additional monitoring required. It identifies no “evidence” supporting the need for the reports, other than a report that considered beach contamination along over 160 kilometers of coastline in Los Angeles and Orange Counties and derived a cumulative health cost impact from that contamination.

In discussing the supposed need for more frequent monitoring at Mothers’ Beach, the Order states that it has “been determined” that the beach requires more frequent monitoring “based on historical water quality,” which “based on available data” has been shown to be worse than a reference beach used in the Marina TMDL. The Order also states that due to limited circulation, water quality is “spatially variable from one end of

the beach to the other.” Nowhere in the Order, however, is there any identification of these alleged data. Moreover, nowhere in the Order is there any attempt to quantify the burden, including costs, of the requested additional monitoring, in further violation of the statute.

The action taken by the Executive Officer in issuing the Order violated the Porter-Cologne Water Quality Act and the California Code of Regulations and other provisions. Please see the Statement of Points and Authorities attached as Exhibit D and incorporated herein.

5. How Petitioners are Aggrieved: The County is one of the responsible jurisdictions for the Marina TMDL and as such in part is responsible for carrying out, or paying for, the monitoring required under the TMDL. It is anticipated that the additional, unlawful monitoring required under the Order will cost many thousands of dollars in addition to the significant sums that will be spent to comply with the monitoring requirements under the Marina TMDL. The Order will arbitrarily and unnecessarily require Petitioners to expend substantial additional funds to comply with an unlawful order, and, in Petitioners’ view, without achieving any additional water quality benefit.

6. The Action That Petitioners Request The State Board to Take: Petitioners request the State Board to issue an order:

- (a) setting aside the Order in its entirety; or
- (b) ordering the Executive Officer to withdraw the Order.

7. Statement of Points of Authorities in Support of Legal Issues Raised in the Petition: Please see attached Exhibit D.

8. Statement that the Petition Has Been Sent to the Regional Board: A copy of this petition was mailed to the Executive Officer of the Regional Board, Mr. Jonathan S. Bishop, on October 25, 2006.

9. Statement Regarding Whether Substantive Issues or Objections in the Petition were Raised Before the Regional Board: The substantive issues and objections raised in

this petition could not have been raised before the Regional Board, because the Order was a unilateral action of the Executive Officer that did not come before the Regional Board at hearing. Nonetheless, Petitioners have engaged in discussions with the Executive Officer in an attempt to resolve the issues raised by the Order.

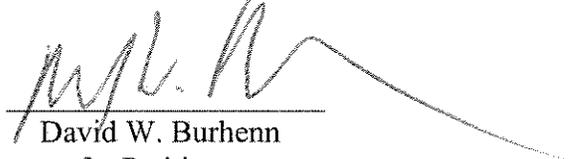
Dated: October 25, 2006

Respectfully submitted,

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