

(4) the amendment contains internally inconsistent and ambiguous language.

In addition, the Regional Board failed to comply with the provisions of CEQA, failed to make requisite findings, failed to support its findings with substantial evidence, and failed to provide Petitioner a proper adjudicative hearing. The action taken by the Regional Board was, among other things, an abuse of discretion and in violation of the Clean Water Act, Porter-Cologne Water Quality Act, Government Code, Public Resources Code, California Code of Regulations and due process.

Petitioner refer further to the Petition filed on or about October 16, 2006 by the County of Los Angeles and the supporting exhibits, including the Statement of Points and Authorities, and request that it be incorporated into the record in this Petition.

As a result of this unlawful amendment of the MS4 Permit, Part 2.5 is not lawfully part of the Permit, and cannot provide the basis for NOVs or for a request for information relating to any alleged exceedances of such RWLs.

Moreover, on information and belief, Petitioner allege that the water quality objectives and beneficial uses giving rise to the RWLs that are at issue in this petition were established improperly and in violation of the Porter-Cologne Water Quality Act as they relate to stormwater.<sup>1</sup> As such, the RWLs cannot be enforced through either the NOV or form the basis for the March 4, 2008 Order.

**D. The Executive Officer Has Improperly Used Water Code § 13383 As Authority For Information Request in The Order; The Order Seek Information That Is Not “Reasonably Required;” and, The Order Seek Information On Discharges From Third Parties or Watersheds Not Included in the MS4 Permit**

1. The Information Sought Under Water Code § 13383 Is Limited to a Permittee’s NPDES Discharge

Water Code § 13383 was added to the Porter-Cologne Act in 1987, so as to “assure consistency with the requirements for state programs implementing the Federal

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<sup>1</sup> “Storm water” is defined under the federal Clean Water Act regulations to include urban runoff, *i.e.*, “surface runoff and drainage.” 40 Code Fed. Reg. § 122.6(b)(13).

Water Pollution Control Act, as amended . . . .” Legislative Counsel’s Digest, Senate Bill No. 1486, Chapter 1189. The intent of the Legislature, thus, was to conform California law to the monitoring and reporting requirements of the Clean Water Act, which are found in Section 308, 33 U.S.C. § 1318(a).<sup>2</sup>

The intent was not, however, to provide regional boards with a broad investigative tool to probe discharges having no connection with the point source discharge for which the NPDES permit had been issued. Indeed, the language of the Clean Water Act on which Section 13383 is based refers specifically to the “owner or operator of any point source.”

The Order, by contrast, seek information far beyond the scope of Petitioner’ point source discharges covered by the MS4 Permit, as set forth in Section 2 of the Petition. First, the Order require Petitioner to identify the sources of the violations, without regard to whether the source comes from Petitioners’ own MS4 discharge, and without regard to whether Petitioner has that information or could reasonably obtain it. For, example, prior to issuance of the NOV and Order, the County of Los Angeles voluntarily funded a study to determine the sources of bacteria at one location. The County set aside up to \$1 million for that one study. If Petitioner is required to perform additional such studies in order to avoid being found in noncompliance with the Order, Petitioner could have to expend multi-million dollar sums, and even then there is no assurance that the source of the violations will be determined.

Second, the Order seek an “evaluation” of the dry weather discharges from the MS4 at each noncompliant shoreline and harbor location, regardless of whether Petitioner are responsible for the discharge. With respect to the single monitoring location at the mouth of Ballona Creek, the Order requires an evaluation of upstream sources (even

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<sup>2</sup> Section 308 of the Clean Water Act provides authority for the EPA Administrator to require “The owner or operator of any point source” to supply information. 38 U.S.C. §1318(a) (emphasis added).

though this Creek is subject to a separate BC TMDL), and also of unstated sources “in proximity” to the shoreline monitoring locations. Order, pp. 3-4. The Order further demands the production of exculpatory evidence relating to sources of pollution not associated with Petitioner’ MS4 discharges, even though those sources might be natural (such as birds or other wildlife) or legal responsibility for regulating such sources may lie with some other discharger or the Regional Board itself. Thus, the Order purports to require Petitioner to examine other sources and discharges in order to prove its own discharges could not have caused an exceedance at the shoreline monitoring.

These requests conflict with the plain meaning of Section 13383. As noted above, Section 13383 was intended to provide a mechanism whereby the Regional Board can obtain information regarding a *permittee’s* discharges. The statute was adopted to give the State and Regional Boards the authority to include monitoring and record keeping requirement in NPDES permits, consistent with the Clean Water Act, not to give the Regional Board the power to order NPDES permittees to perform broad investigations of natural causes of pollution or discharges not their own. Instead of asking for information about Petitioner’ discharges, the Order requires a broad investigation into the exceedances without regard to Petitioner’ discharges. This Order goes far beyond that which is authorized by section 13383.

2. Any Information Sought Under Section 13383 Must Be “Reasonably Required” by the Regional Board

Section 13383(b) also requires that when a regional board seeks information from a permittee, such information must be “reasonably required.” As noted above, the information required by the Order seeks information on discharges that are not part of the MS4, but are merely “sources in proximity to the shoreline monitoring location.” There may be many sources of bacteria near a shoreline monitoring location that are unrelated to discharges from the MS4, including septic systems, animals, water craft and bathers. The Regional Board itself found that in connection with the BC TMDL there were certain

likely “natural” sources of bacteria that fed into the Ballona Estuary. It is not reasonable for the Executive Officer to require Petitioner to generate information about these sources when that information is not in Petitioner’ possession and is unrelated to Petitioner’ discharges.

3. The Order Cannot Require Petitioner to Provide Information on Discharges That Are The Responsibility of Third Parties or as to which There Are No RWLs in the MS4 Permit

The Order requires the provision of information that relates to discharges and/or releases of bacteria that are the responsibility of third parties or to RWLs which are not yet incorporated into the MS4 Permit. As noted above, the Order requires an “evaluation” and “supporting documentation” on whether alleged violations of the RWLs were caused by “sources in proximity to the shoreline monitoring location.” These sources would include those having no connection to the MS4 and potentially are not even of human origin, since birds and other wildlife may be significant contributors of bacteria, as has been noted in the staff reports for the various bacteria TMDLs considered by the Regional Board. *See* MS4 Permit Factual Finding E.33. *See also* Total Maximum Daily Loads for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary and Sepulveda Channel at 20-21, 29 (Staff Rpt., April 4, 2006.)

Moreover, the Order requires Petitioner to investigate one monitoring location directly impacted by discharges from the Ballona Creek watershed, even though the BCB TMDLs has compliance dates that are in the future and the RWLs associated with discharges from Ballona Creek have *not* been incorporated into the MS4 Permit and are therefore not enforceable. Requiring Petitioner to investigate and evaluate sources within these watersheds is therefore arbitrary and capricious and seeks information that is not “reasonably required” by Water Code § 13383.

**E. The NOV and Order are not Factually Supported**

The NOV and Order are based on alleged exceedances at one sampling locations as to this Petitioner. That data, however, does not establish that Petitioner' MS4 discharges caused any exceedance at issue.

First, as set forth above, the monitoring locations were selected for the purpose of measuring compliance with the SMBB and Marina TMDLs, not assessing the quality of Petitioner' MS4 discharges. All of the sites are the subject of multiple sources, natural and otherwise. The sole monitoring site referenced in the NOV issued to this Petitioner is located at the mouth of Ballona Creek, itself the recipient of many sources other than Petitioner. Thus, the sampling data gathered at the one Ballona Creek specific monitoring site was not designed to monitor the nature and quality of Petitioner's MS4 discharges. There is no evidence the alleged exceedances were caused by Petitioner' discharges. It is arbitrary and capricious for the Executive Officer to so contend.

The Executive Officer failed to properly calculate the geometric mean that constitutes the basis for many of the purported violations. The method to calculate the geometric mean is set forth in the SMBB and Marina Coordinated Shoreline Monitoring Plans.<sup>3</sup> According to these plans:

The geometric mean is defined in Webster's Dictionary as "the nth root of the product of n numbers." Thus, the 30-day geometric mean calculation for the SMBB TMDLs will be calculated as the 30th root of the product of 30 numbers (the most recent 30 day results). For weekly sampling, the 30 numbers are obtained by assigning the weekly test result to the remaining days of the week. If more samples are tested within the same week, each test result will supersede the previous result and be assigned to the remaining days of the week until the next sample is collected. This rolling 30-day geometric mean must be calculated for each day, regardless of whether a weekly or daily

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<sup>3</sup> Permit Finding E. 36 states, "[c]ompliance with the Receiving Water Limitations shall be determined using monitoring data obtained in conformance with the Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004; the Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan dated April 13, 2007; and the Monitoring and Reporting Program CI 6948."

schedule is selected.

*See* Sec. 2.2.1 Rolling 30-day Geometric Mean Limits, Santa Monica Bay Beaches Bacterial TMDL Coordinated Shoreline Monitoring Plan. In other words, the calculation of the geometric mean for each day should use thirty values, extrapolating of the result of a given day sample to subsequent unsampled days in order to calculate values for each of the past thirty days before running the calculation. This determination of a geometric mean is also consistent with that indicated in the BC TMDL, which again requires that:

“If weekly sampling is conducted, the weekly sample result will be assigned to the remaining days of the week in order to calculate the daily rolling 30-day geometric mean.”  
*Regional Board Resolution No. 2006-11, Attachment A, Table 7-21.1 (Elements of BCB TMDL including description of “geometric mean targets”).*

Contrary to both the monitoring plan for the SMB Beaches TMDL and the commitments made in the Ballona Creek TMDL concerning proper calculation of the geometric mean for purposes of enforcement, the Executive Officer apparently used *only* actual summer dry weather data; and did not extrapolate data by filling in dates with no monitoring data with the most recent data result. Additionally, wet weather data was not used in calculating the geometric means and when the data values were qualified with a “<” the numeric value was used without a qualifier.

The method used by the Executive Officer can result in artificially higher geometric mean values than the data supports. Where the Executive Officer’s manner of calculating the geometric means resulted in artificially inflated values, the calculations cannot be used to support allegations of bacteria exceedances. As such, the Executive Officer could not base the NOVs or the Order on these values. Finally, to the extent that the Executive Officer did not properly calculate the geometric mean, then it violated the Clean Water Act’s unambiguous requirement for calculation of a true “daily” limit. *See, Friends of the Earth, Inc. v. EPA*, 446 F.3d 140, 144 (D.C. Cir. 2006).

**F. The Monitoring Required by the Order Modifies the MS4 Permit without a Noticed Hearing**

The MS4 Permit contains a monitoring program (Monitoring and Reporting Program No. CI 6948) that was incorporated into the permit at the time of its adoption on December 13, 2001. This monitoring program is very detailed and requires, *inter alia*, mass emissions, water column toxicity, tributary, and other monitoring for a variety of constituents and over a detailed timeline.

The MS4 Permit is both a NPDES permit and waste discharge requirement (“WDR”) issued by the Regional Board under the Porter-Cologne Act (see Water Code §§ 13370-13389). A NPDES permit and WDR cannot be issued or modified except through prior notice and hearing. Water Code § 13378. The Act further provides that only a *Regional Board* can modify a WDR, and that this function *cannot* be delegated to the executive officer. Water Code § 13223(a) (“Each regional board may delegate any of its powers and duties vested in it by [the Porter-Cologne Act] excepting only the following: . . . (2) the issuance, *modification*, or revocation of any water quality control plan, water quality objectives, or *waste discharge requirement*.”) (emphasis supplied).

The Order essentially creates a massive new addition to the MS4 monitoring program. The Order requires Petitioner to provide information on the sources of exceedances at each of the shoreline and harbor monitoring sites for which it is purportedly “jointly” responsible, provided details regarding dry weather discharge from the MS4 at each site, and evaluate the sources of exceedances at the Ballona and Malibu Creek monitoring stations, both upstream and in the proximity of the monitoring site..

The Order, however, was issued with notice and a public hearing. To the extent the Order requires Petitioner to expand its monitoring efforts, the Order constitutes a modification to the MS4 Permit without notice and hearing.

**G. The NOV and Order Unlawfully Imposes on Petitioner Responsibility for the Discharges of Others**

The Order (and related NOV) is based on the allegation that Petitioner is jointly responsible for the alleged exceedances. For example, the NOV states: “The City of Beverly Hills is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.” (NOV issued to City of Beverly Hills at p.2). Of course, since the “site” referenced is a monitoring location in the waters of the Pacific Ocean, one might assume that the Regional Board is now purporting to exercise jurisdiction over all of California, who have “permittees” with land area within a watershed draining to the Pacific Ocean. To the contrary, Petitioner is not responsible for the discharges of others and neither the Clean Water Act nor the Porter-Cologne Act provides to the contrary. Petitioner is responsible solely for its own discharges.

**H. The Order represent an Unfunded State Mandate that Cannot Be Imposed Without a Subvention of Funds**

Utilizing the guise of an “information request” pursuant to Water Code Section 13383, in fact the Order represents an unfunded state mandate. It requires the Petitioner to prepare and submit a multi-million dollar analysis of sources, potential sources, natural or anthropogenic along a 9-mile plus drainage flow to the Ballona Estuary as a “report.” This constitutes an enormous financial burden upon Petitioner. This determination belongs in the first instance to the Commission on State Mandates. Government Code §§ 17551 and 17552. It is unlawful, however to impose an unfunded State Mandate without also providing a subvention of funds.

**I. The Order Is Based Upon a System for Calculating Exceedences for Another Watershed Area, but Even Those Calculations Were to Be Revisited by the Regional Board in July 2007, Which the Board Has Not Done.**

As previously noted, the City of Beverly Hills and its MS4 system drains into the Ballona Creek watershed, which has a separate TMDL with a separate implementation

schedule and a monitoring compliance plan that has not yet been adopted by the Executive Officer. The Regional Board has opted to “cherry pick” its data and apply it against the City of Beverly Hills by using standards, exceedance criteria, and monitoring compliance methods from the SMB Beaches TMDL and then apply that data to the City. This “cherry pick” method is legally and technically incorrect. More fundamentally, even the Regional Board agreed that the SMB Beaches TMDL merited a fundamental reconsideration. At the Board put it in its 2004 Malibu Creek TMDL:

“The SMB Beaches TMDLs are scheduled to be reviewed in July 2007 (four years from the effective date of the SMB Beaches TMDLs). The review will include a possible revision to the allowable winter, dry-weather and wet-weather exceedance days based on additional data on bacterial indicator densities in the wave wash; to re-evaluate the reference system selected to set allowable exceedance levels; and to re-evaluate the reference year used in the calculation of allowable exceedance days. In addition, the method for applying the 30-day geometric mean limit also will be considered.”

*Regional Water Board Resol. No. 2004-019R, Attachment “A” Table 7-10 Malibu Creek and Lagoon Bacteria TMDL, at p. 6 (implementation).*

Despite this commitment, the Regional Board has failed to review even the SMB Beaches TMDL, choosing instead to apply old data which it knows stem from an initially flawed methodology to another watershed (Ballona Creek) in a flawed effort to “tie-in” the City of Beverly Hills to a problem it did not create nor contribute to.

### **III. Conclusion**

For the foregoing reasons the NOV and the Order are unlawful. Petitioner requests that the State Board issue an order either:

(a) setting aside the Regional Board's Executive Officer's Order and NOV in its entirety; or

(b) directing the Regional Board Executive Officer to withdraw the Order and NOV directed to Petitioner.

**EXHIBIT “D”**

**TO PETITION TO**

**STATE WATER BOARD BY**

**CITY OF BEVERLY HILLS**

**EXHIBIT D – TECHNICAL ARGUMENTS, INCLUDING INCORRECT  
CALCULATION OF GEOMETRIC MEAN FOR ALLEGED VIOLATIONS  
OF THE SANTA MONICA BAY BEACHES BACTERIA TMDL  
INCORRECTLY APPLIED TO CITY THAT DISCHARGES ONLY TO  
BALLONA CREEK WATERSHED**

The Executive Officer and technical staff to the Los Angeles Regional Water Quality Control Board (“RWQCB”) used a method to calculate the geometric mean that conflicts with the method approved by the RWQCB for the Santa Monica Bay Beaches Bacteria TMDL and may result in higher geometric mean values than the data actually shows. The geometric mean calculations were used to allege violations of Water Code § 13376 in the Notice of Violation (“NOV”) and used as authorization for imposing the § 13383 Order, issued together on March 4, 2008. Hence, the alleged violations have been inaccurately calculated and the RWQCB has not properly proved the violations of Water Code § 13376. As such, the RWQCB is not authorized to impose liability under Water Code § 13385 or establish a monitoring, inspection, entry, reporting, or recordkeeping requirement under Water Code § 13383. Moreover, to the extent that the miscalculation of the geometric average means that the analysis is not based upon a true calculation of a “daily” exceedence, then the RWQCB is in violation of the plain meaning of the Clean Water Act. *Friends of the Earth, Inc. v. EPA*, 446 F.3d 140, 144 (D.C. Cir. 2006).

In the NOV and corresponding Order, the RWQCB alleges that the City has violated the waste discharge limits for the Santa Monica Bay established by the LA MS4 Permit (Board Order No. 01-182, as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042). The waste discharge limits are also set forth in the Basin Plan, as adopted by the RWQCB on January 24, 2002, and commonly referred to as the Santa Monica Bay Beaches Bacteria TMDLs. The Bacteria TMDLs were incorporated into the LA MS4 Permit on September 14, 2006, by Order R4-2006-0074.

Under the Santa Monica Bay Beaches Bacteria TMDLs, the responsible agencies were required to submit a Coordinated Shoreline Monitoring Plan to the RWQCB for approval in late 2003. The Monitoring Plan identifies all monitoring locations, the types of monitoring and the frequency of monitoring to be conducted by the responsible agencies at each site. The RWQCB approved the Coordinated Shoreline Monitoring Plan on April 28, 2004. The monitoring data collected under the Monitoring Plan is compiled monthly and submitted to the RWQCB. The RWQCB relied on this coordinated shoreline monitoring data to support its allegations in the NOV and corresponding Order; however, the method used to calculate the geometric mean conflicts with the method that was approved by the RWQCB under the Monitoring Plan and may result in artificially inflated results.

The approved Plan illustrates specifically how the geometric mean is to be calculated.

The geometric mean is defined in Webster's Dictionary as "the nth root of the product of n numbers." Thus, the 30-day geometric mean calculation for the SMBBB TMDLs will be calculated as the 30th root of the product of 30 numbers (the most recent 30 day results). For weekly sampling, the 30 numbers are obtained by assigning the weekly test result to the remaining days of the week. If more samples are tested within the same week, each test result will supersede the previous result and be assigned to the remaining days of the week until the next sample is collected. This rolling 30-day geometric mean must be calculated for each day, regardless of whether a weekly or daily schedule is selected.

*See* Sec. 2.2.1 Rolling 30-day Geometric Mean Limits, Santa Monica Bay Beaches Bacterial TMDL Coordinated Shoreline Monitoring Plan.

In the separate TMDL issued for bacteria in the Ballona Creek and Estuary, the Regional Board adopted similar language mandating the method of applying a geometric means test for potential violations:

"The geometric mean targets may not be exceeded at any time. The rolling 30-day geometric means will be calculated on each day. If weekly sampling is conducted, the weekly sample result will be assigned to the remaining days of the week in order to calculate the daily rolling 30-day geometric mean."

Regional Water Quality Control Board, Resolution No. 2006-011 (June 8, 2006), Appendix "A" at p. 4.

In other words, the calculation of the geometric mean for each day should use thirty values, which requires extrapolation of the result of a given day sample to subsequent unsampled days in order to calculate values for each of the past thirty days before running the calculation. RWQCB staff has reported that the method used to calculate the rolling 30-day geometric mean in the NOV used *only* actual summer dry weather data; staff did not extrapolate data by filling in dates with no monitoring data with the most recent data result, as required under the Plan. Additionally, wet weather data was not used in calculating the geometric means and when the data values were qualified with a "<" or ">," the exact numeric value was used without a qualifier. Staff has admitted that while the method outlined in the Plan was approved based on previous discussions with various RWQCB departments and the United States Environmental Protection Agency, RWQCB staff has since re-evaluated this approach and unilaterally found it to be inappropriate.

This method can result in higher geometric mean values than the data shows and these artificially inflated mean values cannot be used to support allegations of bacteria exceedance. Finding No. 36 of LA MS4 Permit, states, "[c]ompliance with the Receiving Water Limitations shall be determined using monitoring data obtained

in conformance with the Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004; the Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan dated April 13, 2007; and the Monitoring and Reporting Program CI 6948." Compliance with the waste discharge requirements has not been determined in conformance with the Monitoring Plan; hence, the alleged violations have been incorrectly calculated and the RWQCB has not properly proved a violation of Water Code § 13376. As such, the RWQCB is not authorized to impose liability under Water Code § 13385 or establish a monitoring, inspection, entry, reporting, or recordkeeping requirement under Water Code § 13383.

### **INCORRECT CALCULATION OF NUMBER OF VIOLATIONS AND IMPROPER RELIANCE ON MONITORING DATA**

The NOV incorrectly calculates alleged Receiving Waters Limitations violations by monitoring site for each bacteria indicator, when the TMDL expresses waste load allocations by the number of days that an exceedance is present. In Table 1 of the NOV, the RWQCB alleges multiple violations on the same day for days when more than one indicator of exceedances may have been reported, as summarized in the Total RWL Violations by Site column. According to Numeric Target and Waste Load Allocations set forth in Table 7-4.1 of Attachment A to Resolution No. 02-004, the single sample targets at each existing shoreline monitoring site are assigned an allowable number of *exceedance days* for summer dry weather and winter dry weather. This same limitation is set forth in the TMDL for bacteria in the Ballona Creek and Estuary watershed, set forth in Table 7-21.1 of Attachment A to Resolution No. 2006-17. Thus, any citation of multiple violations for the same monitoring day should be stricken from the NOV.

The NOV also incorrectly utilizes additional monitoring data for determining compliance with the TMDL that was not to be used before the LA MS4 Permit was amended on August 9, 2007.

As specified in Table 7-4.3 of Attachment A to Resolution No. 02-004 for dry weather, the responsible jurisdictions and agencies were to select between daily and weekly shoreline sampling when preparing the Monitoring Plan. Accordingly, under section 4.1 Sampling Schedule, the Plan states that, "[t]he proposed compliance monitoring program comprises 67 sites monitored on a weekly basis. All routine samples will be collected on Mondays, and accelerated samples collected on Wednesdays and Fridays." Accelerated sampling is triggered at a monitoring location whenever analysis of a Monday sample indicates that an exceedance has occurred. Weekly sampling resumes for that location once the accelerated sample results demonstrate that bacteria levels no longer exceed the limits. The Monday data set, along with any required accelerated sampling, would be utilized in determining compliance with the TMDL as referenced in Finding E. 32 and in footnote 5 of the Receiving Waters Limitation Provision of the LA MS4 Permit at the time the permit was reopened on September 14, 2006. However, when the MS4 Permit was reopened

to incorporate the Marina del Rey Bacteria TMDL on August 9, 2007, the same finding and footnote were further revised to provide that monitoring data collected through the Monitoring and Reporting Program CI 6948 of the LA MS4 Permit would also be used to assess compliance with the Receiving Waters Limitations. Under CI 6948, additional monitoring on four other days of the week (Tues-Thurs) has been conducted at various monitoring sites throughout the jurisdictional groups. This additional monitoring data should not be used for determining compliance with Santa Monica Bay Beaches Bacteria TMDL/Receiving Waters Limitations provision of the MS4 Permit on dates before the MS4 Permit was amended on August 9, 2007.

### **ADDITIONAL TECHNICAL DEFECTS**

Petitioner has requested that the Petition be placed in abeyance while we attempt to reach an amicable resolution with the Regional Board. Towards that effort, the City is continuing to investigate and collect data related to the matters raised in the NOV and Order. At this time, the City is aware of the following discrepancies in the documents that giving rise to this Petition:

- (1) The Order to the City of Beverly Hills cites one sample point, defined only as “SMB-BC-01, Ballona Creek”. On information and belief, this sample point is in the water wash at the edge of the Ballona Estuary. But, this sample point is subject to impact from natural (non-anthropogenic) sources of bacteria loading, as was admitted by the Regional Board staff in a report on the Ballona Creek, Ballona Estuary, & Sepulveda Channel TMDL for bacteria dated April 4, 2006 at p.29. The calculation, however, does not attempt to determine the potential impacts from natural sources to the total bacteria counts observed in the single-sample results, and is therefore improper.
- (2) The Order to the City of Beverly Hills cites only one sample point, “SMB-BC-01, Ballona Creek” which is, on information and believe, miles downstream from the City’s MS4 system and subject to impacts from a number of other anthropogenic and natural sources of bacteria other than the City’s MS-4 system.
- (3) The Order to the City of Beverly Hills cites purported exceedences on April 24, 2007, and various days in September 2006, all of which are dates prior to the effective date of the Ballona Creek Bacteria TMDL. The City cannot be held responsible for violations of a location purportedly at Ballona Creek before the effective date of the bacteria TMDL for that watershed.

We anticipate that as the investigation continues, Petitioner may discover additional discrepancies or information that may give rise to additional claims. City requests that it be able to supplement this Petition as the investigation uncovers additional information relevant to these matters.