## I. OVERVIEW

On September 17, 2015, American Rivers, the Natural Resources Defense Council (NRDC), and the Los Angeles Waterkeeper (hereinafter, collectively the Petitioners) petitioned the Regional Administrator of EPA Region 9 to make "a determination that currently unpermitted stormwater discharges from privately-owned commercial, industrial, and institutional [CII] sites are contributing to violations of water quality standards in the Alamitos Bay/Los Cerritos Channel watershed, and therefore require National Pollutant Discharge Elimination System (NPDES) permits pursuant to section 402(p) of the Clean Water Act (CWA)."[1]

On July 10, 2013, the Conservation Law Foundation, NRDC, American Rivers, and the California Coastkeeper Alliance petitioned the Regional Administrator of EPA Region 9 to make a similar determination that CII sites are contributing to violations of water quality standards in impaired waters throughout Region 9, and therefore require NPDES permits. Region 9 declined to begin the designation process for stormwater discharges from CII sites throughout the Region, concluding that there was insufficient information on which to base a categorical residual designation of currently unregulated stormwater discharges from such sites.[2] Region 9 concluded that it needed additional information on a watershed or localized basis to designate discharges from CII sites individually or categorically. Additionally, Region 9 concluded that existing water quality protection programs were in place to address discharges from the majority of CII facilities in the Region.

The current Petition seeks designation for permitting of all non-NPDES-permitted stormwater discharges from CII sites. The Petition defines "non-NPDES-permitted stormwater discharges" as any stormwater discharge from a private property, or from a portion of property, that is not subject to post-construction stormwater requirements under an NPDES permit, and includes stormwater discharges from properties (or portions thereof) that are within the geographic boundaries of regulated municipal separate storm sewer systems. As described in the Petition, the Petitioners recognize that stormwater discharges associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), are already regulated. For these categories of industrial facilities, the Petitioners request permitting of those portions of a facility not already regulated.

On December 16, 2015, Region 9 provided an interim response to the Petitioners indicating additional review time would be necessary and that a final determination on the Petition was anticipated by early summer. This document constitutes the Acting Deputy Regional Administrator's final response to the Petition.[3]

## II. STATUTORY AND REGULATORY BACKGROUND

In 1987, Congress amended Section 402 of the CWA and established a phased approach to regulating discharges "composed entirely of stormwater," requiring some, but not all, point source

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[1] At the same time, the Petitioners submitted a second Petition to the Region 9 Regional Administrator to designate the same sources in the Dominguez Channel and the Los Angeles/Long Beach Inner Harbor watershed. That Petition is addressed in a separate response. Additionally, the Petitioners also petitioned the Regional Administrator in Region 3 to designate the same categories of sources discharging into certain watersheds in that Region.

[2] Region 9's response is available at: https://www3.epa.gov/region9/water/npdes/stormwater.html

[3] The Acting Regional Administrator is recused and has delegated the authority to respond to the Petition to the Acting Deputy Regional Administrator.

discharges of stormwater to be regulated. Water Quality Act § 405, codified as CWA § 402(p). In the first phase, Congress required NPDES permits for discharges from municipal separate storm sewer systems (MS4s) serving a population greater than 100,000, and stormwater discharges associated with industrial activity. CWA § 402(p)(1), (2), 33 U.S.C. § 1342(p)(1), (2). Additionally, the Act provides for NPDES permits for any stormwater discharge determined by EPA or an authorized state to contribute to a violation of water quality standards (WQS) or to be a significant contributor of pollutants to waters of the United States.[4] CWA § 402(p)(2)(E), 33 U.S.C. § 1342(p)(2)(E).[5] In 1990, EPA promulgated permit application regulations for these discharges pursuant to § 402(p)(4), 33 U.S.C. § 1342(p)(4). 55 Fed. Reg. 47990 (Nov. 16, 1990) ("Phase I rule"). The Phase I rule included a provision allowing any person to petition the EPA to require an NPDES permit for a stormwater discharge that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. 40 C.F.R. § 122.26(f)(2).

In the second phase, Congress required the EPA, after conducting studies and reporting on the results to Congress, to issue regulations designating additional stormwater discharges to be regulated "to protect water quality." CWA § 402(p)(5), (6), 33 U.S.C. § 1342(p)(5), (6). Stormwater discharges designated for regulation under § 402(p)(6) were not necessarily required to be regulated through NPDES permits. Rather, Congress required that the EPA "establish a comprehensive program to regulate such designated sources." *Id.* In 1995, the EPA completed studies and submitted a report to Congress describing additional stormwater discharges under consideration for regulation. Based on this report, the EPA promulgated regulations in 1999 ("Phase II rule") designating two additional categories of stormwater discharges for regulation, certain small MS4s[6] and small construction sites (1-5 acres), and requiring NPDES permit coverage for these discharges. 64 Fed. Reg. 68722 (Dec. 8, 1999).

The Phase II rule also added to the regulatory authority for designating additional stormwater discharges for NPDES permit coverage ("residual designation authority" or "RDA") to allow designation of a category of discharges within a geographic area if determined to contribute to a violation of a water quality standard or to significantly contribute pollutants to waters of the United States. 64 Fed. Reg. at 68781; 40 C.F.R. § 122.26(a)(9)(i)(D).[7] These residual designation provisions are based on the authority of both §§ 402(p)(2)(E) and 402(p)(6), recognizing the permitting authority's potential need to regulate individual unregulated stormwater discharges on a case-by-case basis, as well as the potential need to regulate stormwater discharges on a geographic categorical basis to address local concerns or to make progress in complying with water quality standards. *See* 64 Fed. Reg. at 68781. Any discharge or category of discharges designated under the RDA regulation is subject to NPDES permitting. 40 C.F.R. § 122.26(a)(9)(ii), (iii).

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[4] Relevant to this Petition, the state of California has been authorized by the EPA to administer the NPDES permit program, including the issuance of NPDES stormwater permits, except on Indian Country lands.

[5] This case-by-case authority to designate stormwater discharges for NPDES permits was codified at 40 C.F.R. § 122.26(a)(1)(v). 54 Fed. Reg. 255 (Jan. 4, 1989). *See also* 55 Fed. Reg. 47990, 47993 (Nov. 16, 1990).

[6] Regulated small MS4s are primarily separate storm sewer systems serving municipal populations within "urbanized areas" as defined by the Census Bureau based on the latest census. 40 C.F.R. §122.32(a). This term also includes other publicly owned separate storm sewer systems similar to MS4s (e.g., military bases, large hospital or prison complexes, highways) and small MS4s outside urbanized areas based on criteria developed by the State; at minimum, municipal entities outside urbanized areas with a population greater than 10,000 must be considered for permitting. 40 C.F.R. §§ 122.26(b)(16); 40 C.F.R. § 123.35(b).

[7] The Phase II rule also allows for designating stormwater discharges for NPDES permit coverage if stormwater controls are needed for such discharges based on wasteload allocations in a TMDL. 40 C.F.R. § 122.26(a)(9)(i)(C). This basis for designating stormwater discharges was not raised in the Petition.

## III. SUMMARY OF PETITION AND REGION 9 DETERMINATION

In the Petition, the Petitioners assert the following: (1) portions of the Los Cerritos Channel and the Colorado Lagoon, located in the Alamitos Bay/Los Cerritos watershed, are impaired by copper, zinc, and/or ammonia pollution, (2) stormwater discharges from CII sites contain copper, zinc and ammonia, contributing to water quality impairments in the Alamitos Bay/Los Cerritos watershed and (3) existing programs are not adequately addressing the contributions from CII sites to impairments in the watershed.

In support, the Petitioners cité EPA guidance and reports in which the EPA has concluded that urban stormwater discharges are sources of pollutants. Petitioners also point to various reports and studies, including the National Stormwater Quality Database (NSQD), to illustrate typical pollutant loads from different land uses, including CII sites. Finally, the Petitioners cite to Total Maximum Daily Loads (TMDLs) established by the EPA and California to illustrate the specific sources of pollutants leading to impairments in the Los Cerritos Channel and Colorado Lagoon.

Region 9 has reviewed the Petition requesting designation of CII sites in the Alamitos Bay/Los Cerritos Channel watershed and, for the reasons explained below, declines to grant the Petition at this time.

## IV. PETITION REVIEW CRITERIA

As discussed in the 2013 Petition response, the EPA has identified a number of factors to consider in exercising its individual and categorical designation authority. For a case-by-case determination, under section 402(p)(2)(E), the EPA has described as relevant factors, the available water quality and sampling data as well as "the location of the discharge with respect to waters of the United States; the size of the discharge, the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors." 55 Fed. Reg. 47990, 47993 (Nov. 16, 1990). As noted in early guidance with respect to designations under CWA § 402(p)(2)(E), State reports generated under CWA section 305(b) are critical sources of information for making designation determinations.[8]

In the development of the Phase II rule, the EPA considered designation of additional categories of stormwater sources for regulation under the NPDES permit program, based on three factors. 64 Fed. Reg. 68722, 68780 (December 8, 1999). The EPA considered: 1) the likelihood for exposure of pollutants to precipitation at sources included in that category, 2) whether sufficient data are available on which to make a determination of potential adverse water quality impacts for the category of sources, and 3) whether such sources were adequately addressed by other environmental programs. *Id.* The likelihood of exposure of pollutants to precipitation at industrial sources was also a factor in defining the

[8] *Designation of Stormwater Discharges for Immediate Permitting*, August 8, 1990, available at http://www.epa.gov/npdes/pubs/owm0220.pdf at 12.

scope of "stormwater discharges associated with industrial activity" in the Phase I rule. *See* 55 Fed. Reg. at 48008.[9] These basic factors are also relevant in evaluating the Petition.[10]

In a letter from the EPA Assistant Administrator for Water to the Vermont Agency of Natural Resources (Mehan Letter), the EPA elaborated on these factors.[11] The EPA noted that "[n]either the CWA nor implementing regulations impose a non-discretionary duty to designate sources" and that a decision to "exercise its discretion to designate (or not) sources should be based on available information and relevant considerations." Mehan Letter at 1. Noting that sufficient information to determine causes of impairment or to identify stormwater sources of the impairment may not be available in some circumstances, the EPA further stated that while it has not defined a threshold level of pollutant contribution that would trigger a finding that a source is contributing to a violation of a WQS or is a significant contributor of pollutants to waters of the U.S., "it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body." Mehan Letter at 2. However, the EPA also noted that "other water quality protections that are already in place" are relevant to consider with respect to whether to designate a source or when to make such designation or permit application requirement effective. "Vigorously implemented controls that otherwise might be 'voluntary' may provide a reasonable basis to defer designation of a particular source." Mehan Letter at 3.

Region 9 has evaluated the Petition and the data submitted with the Petition in light of the factors discussed above. The Region also reviewed additional reports and data to aid in its evaluation of the Petition. The Region consulted both the California State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board, since California is authorized to implement the NPDES program. In sum, the factors considered by the Region in evaluating the Petition are:

1. Likelihood of exposure of pollutants to precipitation at sites in the categories identified in the Petition;
2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites;
    a. Data with respect to determining causes of impairment in receiving water quality
    b. Data available from establishment of Total Maximum Daily Loads; and
3. Whether other federal, state, or local programs adequately address the known stormwater discharge contribution to a violation of a water quality standard.

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[9] The Phase I rule provision, excluding from the definition certain industrial stormwater discharges based on the assumption that there is little or no exposure of materials or activities to precipitation was remanded. *NRDC v. EPA*, 966 F.2d 1292, 1305 (9th Cir. 1992). However, the underlying rationale that exposure of industrial pollutants to precipitation is a relevant factor was not questioned. Rather, the EPA's exclusion was remanded for lack of record support. To cure this defect, in the Phase II rule the EPA promulgated a conditional exclusion for owners/operators of industrial activities to certify that the facility meets the "no exposure" requirements of the rule. 64 Fed. Reg. at 68782-87; 40 C.F.R. § 122.26(g).

[10] The EPA's use of these factors in deciding not to designate additional stormwater sources in the Phase II rule was upheld. See *Environmental Defense Center v. EPA*, 344 F.3d 832, 861 (9th Cir. 2003).

[11] Letter from G. Tracy Mehan, III to Elizabeth McLain, with attachment "Answers to Questions Raised," dated Sept. 16, 2003.

## V. ANALYSIS

### *A. Likelihood of Exposure of Pollutant Sources at CII Sites*

As the data submitted with this Petition are similar and, in many instances, identical to data submitted with the 2013 Petition, Region 9 adopts its previous assessment of such data.[12] Therefore, for the purposes of this Petition, Region 9 accepts that CII sites have significant amounts of impervious surfaces that are exposed to a variety of pollutants, including copper, zinc, and nitrogen compounds such as ammonia.

### *B. Sufficiency of Available Data on Which to Make a Determination that CII Sites Contribute to Water Quality Standards Exceedances*

As discussed in detail below, the Region finds that data submitted by Petitioners along with analyses conducted by the EPA and California demonstrate that, as a category, CII sources contribute to water quality impairments for copper and zinc in the Los Cerritos Channel and Colorado Lagoon.

#### 1. Information Submitted by Petitioners

The Petitioners provided GIS maps and zoning information indicating that CII sources occupy about 22 percent of the watershed. This is supported by information developed by the EPA and California in developing total maximum daily loads (TMDLs) for the watershed (discussed below). The Petition also provides estimates of the proximity of CII land use to impaired waters showing that over 93 percent of CII land use is located with one-half mile of Los Cerritos Channel, a tributary, or the Colorado Lagoon. The Petition provides loading estimates using data from the NSQD, which is supported by relevant literature, demonstrating high pollutant loads from certain categories such as commercial sources, and comparatively lower loads from institutional sources.[13]

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[12] The 2013 Petition did not address sources of ammonia in stormwater. While ammonia may be present in stormwater, urban runoff is not commonly a significant source of ammonia. Robert Pitt et.al, in *The National Stormwater Quality Database, version 4.02*, January 2015 provides an average concentration of 0.77 mg/l for ammonia in urban runoff (http://www.bmpdatabase.org/nsqd.html. For comparison, the 2013 EPA water quality criteria for ammonia are 17 mg/l (1 hour average) and 1.9 mg/l (rolling 30 day average) at pH of 7.0 and temperature of 20° C. However, literature review indicates that sources of ammonia impairments may include fertilizer use in areas exposed to stormwater, improper industrial/sewage connections to the storm drain, or improper disposal of cleaning products containing ammonia), and may also be generated in the receiving water from bacterial decomposition in the sediment of organic material that was discharged in stormwater. *See* U.S. EPA., Ammonia, Introduction, https://www3.epa.gov/caddis/ssr_amm_int.html; *See also*: Center for Watershed Protection. 2004. Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, October 2004.

[13] For examples, *see* Stein, E.; Tiefenthaler, L.; and Schiff, K. 2007. *Sources, Patterns and Mechanisms of Stormwater Pollutant Loading from Watersheds and Land Uses of the Greater Los Angeles Area*, Southern California Coastal Water Research Project Technical Report No. 510; Tiefenthaler, L., Schiff, K., and Bay, S. 2001. *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall.* Southern California Coastal Water Research Project Technical Report No. 340; Robert Pitt et.al, *The National Stormwater Quality Database, version 4.02*, January 2015 http://www.bmpdatabase.org/nsqd.html last accessed July 12, 2016.

## 2. Total Maximum Daily Load Source Assessments

In many cases, TMDL analyses are likely the most relevant and readily available sources of data to assess whether CII sites are contributing to particular WQS exceedances in a particular watershed. CWA section 303(d) requires that states identify waters not meeting WQSs. States must develop TMDLs for all such waters in accordance with a prioritized schedule developed by the state. In developing a TMDL, a quantitative assessment is made of the relative pollutant contributions from point sources, nonpoint sources, and natural background, and the degree to which reductions in pollutant discharges are needed to meet applicable WQS. TMDLs are the sum of wasteload allocations (WLAs) for point sources, load allocations for non-point sources and natural background along with a margin of safety sufficient to ensure compliance with WQSs. Once a TMDL is approved by the EPA, any NPDES permit authorizing discharges to the waterbody must include requirements consistent with the TMDL. 40 C.F.R. § 122.44(d)(1)(vii)(B). If a TMDL's load allocations and WLAs are met, the waterbody should meet WQSs and beneficial uses will be protected. There are two approved TMDLs that address metals (zinc and copper) in the area covered by the Petition. Below we consider the source assessment information in those TMDLs.

### a. Los Cerritos Channel Metals Total Maximum Daily Load

In 2010, the EPA established the Los Cerritos Channel Metals TMDL to address metals impairments (including zinc and copper) in the upper freshwater portion of the Los Cerritos Channel.[14] This TMDL analyzes the various sources of metals entering the channel, including stormwater sources, and sets WLAs and load allocations for the various sources. For stormwater sources, WLAs are established for the MS4s in the watershed, including Caltrans, as well as for industrial and construction sources (the entire watershed is contained within the jurisdictional boundaries of regulated MS4s).

The TMDL analysis recognizes that unpermitted CII sources are an important land use in the watershed, and that runoff from these sources may be contributing significant loadings of pollutants, such as metals, into the Los Cerritos Channel. For example, commercial and industrial land uses are estimated to make up 24 percent of the watershed. Specific loadings from these land uses were not determined in the TMDL but were instead incorporated into the overall loadings attributed to MS4 sources.[15] The supporting documentation for the TMDL states that MS4s would need to achieve a reduction of approximately 70 percent of metals discharged to meet the MS4 WLAs.

### b. Colorado Lagoon Organochlorine Pesticides, PAHs, PCBs, Metals and Sediment Toxicity Total Maximum Daily Load

EPA approved the Colorado Lagoon Organochlorine (OC) Pesticides, PAHs, PCBs, Metals and Sediment Toxicity TMDL (Colorado Lagoon Toxics TMDL) on June 14, 2011.[16] For stormwater sources, mass-based WLAs are established for the MS4 discharges in the watershed, including the City of Long Beach, Caltrans, and the Los Angeles County Flood Control District. As described in the

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[14] Available at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/Established/Los%20Cerritos%20Channel%20Metals%20TMDL/03-18-10LosCerritosChannel-metalsTMDLs.pdf

[15] The TMDL does include WLAs for industrial stormwater dischargers regulated under an NDPES permit pursuant to 40 C.F.R. § 122.26(b)(14).

[16] Available at http://63.199.216.6/bpa/docs/R09-005_RB_BPA.pdf.

TMDL, MS4 discharges are overwhelmingly the largest sources of these pollutants entering the Lagoon, accounting for nearly 99 percent of the total, with the City of Long Beach being the largest single contributor.

The analysis in the Colorado Lagoon Toxics TMDL recognizes that runoff from CII sources may be contributing significant loadings of pollutants such as metals into the Lagoon; however, as described by the TMDL, these loadings are incorporated into the loading for the MS4s. The TMDL analysis concluded that MS4s would need to achieve a reduction of approximately 90% of toxics discharged to comply meet the WLAs. The supporting documentation for the TMDL contemplates that the necessary reductions in the discharges of toxics pollutants should be achieved by July 2018.

The Colorado Lagoon Toxics TMDL also includes an implementation plan that includes remedial actions suggested for the reductions needed to meet the MS4 WLAs. These remedial actions include relocation of an existing storm drain, low flow diversions, a new vegetated bioswale, cleaning of an existing culvert, new channel construction and removal of contaminated sediment. Several of these actions were completed several years ago, including relocation of the existing storm drain, the low flow diversions, partial completion of the vegetated bioswale, cleaning of the existing culvert and partial removal of contaminated sediment.

### 3. Paradigm Environmental Study of Southern California Watersheds

The Region committed to further study the relative significance of runoff from different land uses in its response to the 2013 Petition. In 2014 the Region funded a study to conduct a source analysis in two urban watersheds in southern California.[17] The two watersheds selected were the Chollas Creek watershed in San Diego and the upper, freshwater portion of the Dominguez Channel watershed in Los Angeles County (which is the subject of a similar Petition for designation).

The study, conducted by Paradigm Environmental, generated estimates of the total pollutant loading of various pollutants (including zinc and copper) in runoff from different land uses (including CII sources) in both watersheds. The study also estimated the relative importance of the various land use categories in contributing pollutants on a per acre basis. In general, the study found that, among CII categories, commercial, industrial and roadways tended to be large contributors of pollutants overall and above average contributors on a per acre basis. Institutional sources tended to be below average contributors.

The study also estimated the pollutant load reductions that would be necessary for the different land use categories to address existing water quality impairments in each watershed, assuming controls were placed on all land use categories. Although the required reductions vary among the categories, this study found that all CII categories in the Dominguez Channel watershed would require some reduction, leading to the conclusion that all CII categories are contributing to the existing impairments in that watershed. The Alamitos Bay/Los Cerritos Channel watershed is similar to the Dominguez Channel watershed in that TMDLs for both watersheds determined that large (and comparable) percentage

[17] Paradigm Environmental, Analytical Support for Stormwater Source Analysis, April 24, 2015.

reductions for metals would be necessary to comply with MS4 WLAs in each watershed.[18] Given the percentages of CII sources in each watershed, it is reasonable to extend the conclusions of this study to the Alamitos Bay/Los Cerritos Channel watershed.

### *C. How Discharges from CII Sites are Addressed by Existing Programs*

As noted above, one of the factors used by EPA in evaluating whether to designate certain sources for NPDES permitting under the Phase II regulations was the degree to which such sources were already being addressed. As detailed below, the Region believes compliance with the existing NPDES permits controlling stormwater discharges in the watershed will result in the Los Cerritos Channel and Colorado Lagoon meeting WQSs such that beneficial uses will be protected.[19] Therefore, the Region concludes that existing programs are already in place to address the pollutants of concern in the Alamitos Bay/Los Cerritos Channel watershed.

In California, the geographical boundaries of permitting authorities (also known as Regional Boards) are generally based on watershed boundaries. This provides opportunities to efficiently address water quality impairments, including TMDL implementation, on a watershed basis.[20] In Region 9, MS4 permit writers and permittees have developed extensive experience with MS4 programs and, relevant to this Petition, the permits issued by the Los Angeles Regional Water Quality Control Board (Regional Board) have been updated multiple times since they were originally issued.[21] The Regional Board has gained expertise in dealing with discharges to impaired waters and, as described below, is implementing TMDLs through MS4 permits, often in innovative ways.

#### 1. Los Angeles and Long Beach NPDES Municipal Separate Storm Sewer System Permits

The Regional Board has issued MS4 permits that cover municipal stormwater discharges in the Alamitos Bay/Los Cerritos Channel watershed. The current Los Angeles County MS4 Permit was adopted on November 8, 2012 and covers discharges from 86 permittees within Los Angeles County; the current City of Long Beach MS4 Permit was adopted on February 6, 2014 and covers discharges from the City of Long Beach. The Los Angeles and Long Beach MS4 Permits have very similar requirements and, unless otherwise noted, are hereinafter referred to as the MS4 Permits.

The MS4 Permits include requirements that discharges from the MS4 comply with the technology and water quality provisions of the CWA, including those associated with approved

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[18] Roughly 70% for both the upper, fresh water portion of the Dominguez Channel and the fresh water portion of the Los Cerritos Channel, and even higher for the Colorado Lagoon. Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL is available at: http://63.199.216.6/bpa/docs/R11-008_RB_BPA.pdf.

[19] On August 29, 2016 the California Supreme Court found that specific provisions in the 2001 Los Angeles MS4 Permit which required municipalities to conduct inspections of commercial and industrial sites were state mandates which may be subject to reimbursement from the state legislature. Permittees have filed a similar claim regarding the current MS4 Permit. However, the court decision did not modify the permit and regardless of the entity paying for the inspections, those provisions are enforceable NPDES permit requirements.

[20] The EPA formally endorsed watershed-based permitting in a memorandum dated January 7, 2003 from G. Tracy Mehan III, Assistant Administrator for Water, to the EPA Regions.

[21] The EPA recognized that stormwater programs would "evolve and mature over time." 55 Fed. Reg. 47990, 48052 November 16, 1990.

TMDLs.[22] The MS4 Permits contain receiving water limitations and minimum control measures (MCMs). A receiving water limitation is any applicable numeric or narrative WQS, or limitation to implement the applicable WQS, for the receiving water. The MS4 Permits contain receiving water limitations prohibiting discharges that cause or contribute to the violation of a WQS. MCMs are program elements the permittee is required to develop and implement, such as the Planning and Land Development Program and the Industrial and Commercial Facilities Program.

Relevant to this Petition, the Industrial and Commercial Facilities Program contained in the MS4 Permits requires permittees to develop a program to, among other things, track, educate, inspect, and ensure that commercial and industrial facilities comply with municipal ordinances and implement specific source control practices to reduce the discharge of pollutants.

Also relevant to this Petition, the Planning and Land Development Program requires permittees to implement a program to reduce the impact of development and redevelopment on water quality. Subject to certain limitations, permittees are required to ensure that all new development and redevelopment projects minimize impervious surfaces and control runoff through infiltration, bioretention, and/or rainfall harvest and use. As noted by Petitioners, however, the watershed has already been heavily developed. The water quality benefits from this MCM thus depend on the rate of redevelopment of the watershed. Redevelopment rates for the City of Los Angeles show annual redevelopment rates for residential, commercial and industrial areas of 0.18 percent, 0.15 percent and 0.34 percent, respectively.[23] Assuming these rates are reasonably representative for Los Angeles County overall, at least modest water quality benefits would accumulate over a number of years from the implementation of this MCM in the Alamitos Bay/Los Cerritos Channel watershed.

The MS4 Permits describe two ways in which a permittee can demonstrate compliance with the water quality and technology related provisions of the MS4 Permits, including receiving water limits. Under the first option, permittees can choose to develop watershed management programs (WMPs), which consist of customized strategies and control measures designed to ensure compliance with the provisions of the permits for a particular watershed. The WMPs provide a framework by which permittees can prioritize implementation of various requirements of the relevant MS4 Permit. If permittees do not choose to develop a WMP, they are subject to the baseline requirements of the MS4 Permit, including receiving water limitations and MCMs.

The Regional Board describes the reason for the optional WMPs in the fact sheets for the Los Angeles and Long Beach MS4 Permits:

> "[a]n emphasis on watersheds is appropriate at this stage in the region's MS4 program to shift the focus of the permittees from rote program development and implementation to more targeted, water quality driven planning and implementation. Addressing MS4 discharges on a watershed scale focuses on water quality results by emphasizing the receiving waters within the watershed. The conditions of the receiving waters drive

[22] CWA § 402(p)(3) provides that MS4 permits must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), a technology based level of control, in addition to "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." Additionally, 40 C.F.R. § 122.44.(d)(1)(vii)(B) requires that NPDES permits contain limits that "are consistent with the assumptions and requirements of any available [TMDL] for the discharge..."

[23] Dominguez Channel Watershed Management Area Group. 2016. Enhanced Watershed Management Program for the Dominguez Channel Watershed Management Area Group, Final. February 2016.

management actions, which in turn focus on the measures to address pollutant contributions from MS4 discharges."

Los Angeles MS4 Permit, Fact Sheet at F-42.

The MS4 Permits require permittees who choose to develop WMPs to use the Regional Board's Watershed Management Areas (WMAs) as boundaries, either in collaboration with other permittees in the same WMA, or individually.[24] Permittees, as part of a WMP, must conduct a source assessment to identify pollutant sources in discharges to and from the MS4 to receiving waters. In conducting this source assessment, permittees are required to review a variety of potential sources of information, including TMDL source assessments as well as findings from the permittee's Industrial and Commercial Facilities Program. Based on the source assessment, the WMPs must identify the water quality priorities within each WMA to be addressed by the program, noting which are highest priority, high priority and medium priority. The MS4 Permits require that permittees make compliance with effluent limits established pursuant to TMDL WLAs the highest priority. At a minimum, the ranking must include achieving applicable water quality based on TMDL requirements included in the MS4 Permits and control pollutants for which the receiving water is impaired when the source assessments indicate that the target pollutant is discharged from the MS4.

The MS4 Permits also require a monitoring program designed to meet the program objectives set forth in Attachment E of the MS4 Permits. These objectives include assessing the impacts of MS4 discharges on the receiving waters and determining compliance with the water quality-based effluent limits of the permits, including requirements consistent with TMDL WLAs. Outfall and receiving water monitoring is required in assessing compliance. As an alternative to baseline monitoring requirements found in Attachment E, the MS4 Permits provide permittees the option to develop and implement customized monitoring programs on an individual basis (referred to as integrated monitoring programs or IMPs), or in conjunction with other permittees in a particular watershed (referred to as coordinated integrated monitoring programs or CIMPs).

As an alternative to WMPs, the MS4 Permits allow permittees to develop an enhanced watershed management program (EWMP). Pursuant to the MS4 Permits, in addition to the WMP requirements described above, EWMPs comprehensively evaluate opportunities within the permittees' jurisdictional areas for multi-benefit regional projects that, where feasible, retain all stormwater runoff from the 85$^{th}$ percentile, 24-hour storm event. Additional benefits include flood control and water supply. Where such retention is not feasible, the permittee must demonstrate that other watershed control measures will ensure that permittees' discharges will comply with applicable water quality limitations. The EWMP must also ensure that a financial strategy is in place to implement the program. The permits provide an additional year to develop EWMPs given the more complex planning.

The permittees are also required to include a reasonable assurance analysis (RAA) for each water body/pollutant combination addressed by the WMP or EWMP. The RAA is a quantitative analysis that must be based on a peer-reviewed model and demonstrate that implementation of the WMP or EWMP will ensure the permittee's discharges comply with applicable water quality limitations and will not cause or contribute to exceedances of WQSs in receiving waters. Finally, the MS4 Permits require that permittees implement an adaptive management process. Every two years, from the date of program

[24] See http://www.swrcb.ca.gov/losangeles/water_issues/programs/regional_program/watershed/index.shtml for a list of watershed management areas in the Los Angeles Region.

approval, the permittees must adapt the WMP or EWMP to make it more effective, based on a consideration of, among other things, (1) progress toward meeting water quality goals, (2) new water quality data, and (3) public input.

The MS4 Permits require that WMPs, EWMPs, and C/IMPs be submitted to the Regional Board for approval. All documents submitted to the Regional Board for approval are made available to the public for review and comment as required by the MS4 Permits. The permittees must begin implementing the WMP/EWMP and C/IMP upon approval from the Regional Board. The relevant watershed management area for this Petition is the Los Cerritos Channel and Alamitos Bay WMA.[25] There are ten Phase I MS4s in the Alamitos Bay/Los Cerritos Channel watershed, including Caltrans. All permittees, other than Caltrans, are covered under either the Long Beach or Los Angeles MS4 Permit.[26] The Regional Board has approved WMPs for all MS4s covered under the MS4 Permits in the watershed. As all of the WMPs described below are newly approved, permittees have not yet had the opportunity to measure the effectiveness of their programs. The Region will continue to evaluate how each permittee is implementing the WMP.[27]

a. WMPs and C/IMPs in the Alamitos Bay/Los Cerritos Channel Watershed

Relevant to this Petition, three WMPs were developed and submitted by MS4 permittees in the Alamitos Bay/Los Cerritos Channel watershed. The upper freshwater portion of the watershed is almost entirely covered by the Los Cerritos Channel WMP (LCC WMP), submitted by the Los Cerritos Channel Watershed Group,[28] but a very small area referred to as the "County Island" (94 acres or 0.5% of the total) is covered by the Alamitos Bay/Los Cerritos Channel WMP.[29] The lower portion of the watershed, comprised of the Los Cerritos Channel Estuary Watershed and Alamitos Bay Watershed, is primarily covered by the City of Long Beach's Nearshore Watersheds WMP.

Drafts of the Los Cerritos Channel and Alamitos Bay/Los Cerritos Channel WMPs were submitted to the Regional Board on June 30, 2014. A draft of the City of Long Beach Nearshore Watersheds WMP was submitted on March 30, 2015. The Regional Board invited public comments on each of the draft WMPs after it was received. The Regional Board provided comments to the permittees on the draft WMPs, the drafts were revised, and then they were ultimately approved by the Regional Board as follows: the LCC WMP on July 21, 2015; the Alamitos Bay/Los Cerritos Channel on August 11, 2015 and the Long Beach Nearshore WMP on January 28, 2016.

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[25]http://www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/Water_Quality_and_Watersheds/los_cerritos_channel/summary.shtml

[26] Stormwater discharges from just under 3% of the land area of the watershed are regulated by the MS4 permit issued to Caltrans. LCC WMP, p 1-5.

[27] Implementation of portions of the WMPs are written to be contingent on the ability of the permittees to secure adequate funding. The Regional Board has stated that lack of adequate funding will not be accepted as an excuse for not meeting required loading reductions.

[28] The Los Cerritos Channel WMP was submitted by the Los Cerritos Channel Watershed Group which consists of: the Los Angeles County Flood Control District, and the cities of Bellflower, Cerritos, Downey, Lakewood, Long Beach, Paramount, and Signal Hill.

[29] The Alamitos Bay/Los Cerritos Channel WMP was submitted by the Alamitos Bay Los Cerritos Channel Group which consists of Los Angeles County and the Los Angeles County Flood Control District.

All permittees in the area covered by the Petition have developed and submitted IMPs or jointly developed and submitted CIMPs to the Regional Board. The Regional Board approved a final CIMP for the Los Cerritos Channel Watershed Group on July 28, 2015 and for the Alamitos Bay/Los Cerritos Channel Group on August 18, 2015. The city of Long Beach submitted a draft IMP to the Regional Board on March 30, 2015, and this IMP is currently under review by the Regional Board.

(1) Los Cerritos Channel and Alamitos Bay/Los Cerritos Channel WMPs

The LCC WMP is intended to address the portion of the Los Cerritos Channel impaired for metals and ammonia. The impairment is located in a 2.1 mile freshwater portion that is located just above the tidal prism.[30] Relevant to this Petition, the LCC WMP identifies copper, lead, and zinc as the "highest priority" pollutants to be addressed and identifies ammonia as a "high priority" pollutant. As required by the permit, the LCC WMP sets the highest priority as achieving pollutant loading reductions consistent with applicable WLAs. The LCC WMP includes interim compliance dates for the Los Cerritos Channel Metals TMDL occurring every three years, beginning September 30, 2017, with the final compliance by September 30, 2026. The LCC WMP notes the Los Cerritos Metals TMDL states that "automobile brake pads, vehicle wear, building materials, pesticides, erosion of paint and deposition of air emissions from fuel combustion and industrial facilities" are sources of copper, lead, and zinc in the watershed and describes activities to address such sources.

The LCC WMP does not propose any additional BMPs to directly control ammonia. As described in the LCC WMP, evidence indicates that Los Cerritos Channel is not impaired for ammonia and that significant quantities of ammonia are not present in stormwater discharges. The LCC WMP indicates that the Los Cerritos Channel has been proposed for delisting as impaired for ammonia from California's CWA § 303(d) list of impaired waters, but it is unclear when that might happen.[31] As noted in Attachment C to the LCC WMP, concerns with ammonia in the Channel are largely related to elevated pH levels that may occur during daytime dry weather conditions and give rise to higher levels of unionized ammonia. The LCC WMP explains that elevated pH levels can stem from the algal mat in the Channel and that the LCC WMP's program to reduce dry weather discharges should reduce the algal mat and thereby indirectly address any concerns with ammonia. The LCC WMP does commit the permittees to further monitoring of ammonia under the monitoring program and re-evaluation of ammonia under the adaptive management evaluation. While this situation merits further scrutiny in the future, the activities in the WMP show that the impairment is being addressed by an existing program.

In order to address metals impairment, the LCC WMP states that the permittees will focus first on total suspended solids reduction, as the Los Cerritos Metals TMDL notes the connections between sediment and metals loadings. The LCC WMP explains that the permittees will achieve the loading

[30] The Region reviewed the approved Alamitos Bay/Los Cerritos Channel WMP submitted by Los Angeles County and the Los Angeles County Flood Control District. This WMP covers a 94 acre "island" of land in Long Beach, under Los Angeles County jurisdiction. This small island makes up 0.5% of the total watershed area, and has one small commercial center containing one medical building. Over 89 acres of the "island" is residential. Therefore, the Region's analysis focuses on the approved LCC WMP.

[31] Region 9 checked the status of the proposal with the Regional Board and the State Board and found that a formal request for delisting has not yet occurred. The State Board last solicited data for listing/delisting decisions in 2010 and Region 9 anticipates that the State Board may again solicit such data in 2017 (or shortly thereafter) at which time a formal delisting request could be submitted, but it could be a few years thereafter before ammonia might actually be delisted.

reductions required by the MS4 WLAs for metals largely through new stormwater structural controls, such as green street retrofits, public parcel retrofits and regional controls; such controls would account for about 90% of the overall reduction. The LCC WMP also includes a variety of new non-structural BMPs to comply with the MCM requirements of the permits, such as soil stabilization ordinances, increased construction inspections, and enhanced street sweeping; these controls provide the remaining 10% of the overall loading reduction.

The LCC WMP also describes certain MCMs that will be altered from the requirements described in the MS4 Permits in order to address the highest priority pollutants.[32] Relevant to this Petition, the LCC WMP alters the Industrial and Commercial Facilities Program by incorporating a prioritization scheme for inspections. (All other MCMs will be implemented substantially as described by the MS4 Permits.) Under the modified Industrial and Commercial Facilities Program, permittees will prioritize critical industrial and commercial facilities based on the level of materials or activities that generate target pollutants and discharge to impaired waters. Facilities that are ranked high will be inspected twice per year, which is more frequent than required by the MS4 Permits (two times per five-year permit term for all critical facilities). Low priority facilities are inspected once per year. MCMs such as this will reduce pollutant discharges from existing CII sources by ensuring more effective BMP implementation at these facilities. The LLC WMP notes that it is difficult to precisely estimate the benefit of non-structural BMPs such as these, and the permittees estimated a 10% pollutant reductions from these activities in the reasonable assurance analysis. The LCC WMP also includes an adaptive management process to modify the controls as necessary if the assumptions prove inaccurate.[33]

The LCC WMP includes a reasonable assurance analysis that demonstrates quantitatively that the control measures will be sufficient to achieve the WLAs. The permittees have demonstrated that they will meet the first interim compliance date of September 30, 2017 set forth in the Los Cerritos Metals TMDL through implementation of non-structural control measures, such as enhanced street sweeping. As set forth in the Los Cerritos Metals TMDL and the MS4 Permits, the permittees will demonstrate by September 30, 2017 that either 10 percent of the total drainage area served by the storm drain system meet the wet-weather WLA for MS4s, or that a 10 percent reduction from current loadings is attained based on monitoring at an appropriate downstream location. The reasonable assurance analysis in the LCC WMP shows that substantial new controls do not necessarily have to be placed directly on discharges from CII sources. Instead, alternate controls are available, such as green street retrofits, public parcel retrofits and regional controls that are capable of providing the bulk of the pollutant loading reductions necessary to address the impairments, with the remainder coming from various non-structural controls. The Region will continue to evaluate progress toward meeting this metric and may require additional controls on sources in the watershed, including use of RDA, if appropriate.

(2) City of Long Beach Nearshore WMP

The City of Long Beach's Nearshore Watersheds WMP (Nearshore WMP) includes an analysis of the metals impairment in Colorado Lagoon and plans to address it. Colorado Lagoon Toxicity TMDL

[32] With the exception of the Los Angeles Flood Control District, which will implement control measures as described in the LA MS4 Permit.

[33] Implementation of portions of the LCC WMP is contingent on the ability of the permittees to secure adequate funding. The Regional Board has stated that lack of adequate funding will not be accepted as an excuse for not meeting required loading reductions.

sets out an interim WLA for zinc in the City of Long Beach's stormwater discharges. The Nearshore WMP identifies zinc discharges into Colorado Lagoon as one of the highest priority pollutants to be addressed, and sets meeting the Toxicity TMDL WLA as the highest priority.

Similar to the LCC WMP above, the Nearshore WMP states that in implementing the MCMs in the permit, Long Beach will prioritize inspection frequency and take into account the pollutants of concern. Specifically, Long Beach will modify its Industrial and Commercial Facilities Program to prioritize critical industrial and commercial facilities based on the level of materials or activities that generate pollutants of concern and discharge to impaired waters. Facilities that are ranked high will be inspected twice per year, which is more frequent than required by the MS4 Permits (two times per five-year permit term for all critical facilities). Low priority facilities are inspected once per year. As stated above, MCMs such as this will reduce pollutant discharges from existing CII sources by ensuring more effective BMP implementation at these facilities.

The Nearshore WMP also includes a suite of remedial actions (called the Colorado Lagoon Master Restoration Plan) for the Colorado Lagoon to address the impairments (including zinc) in the Lagoon. As noted earlier, several of these actions have already been completed. In press release dated May 26, 2016, the City of Long Beach provided a status update on the remaining actions, noting that the next phase of the project (including remaining bioswale construction and additional dredging activities) would begin in September 2016.[34]

Modelling in the TMDL indicates that implementation of all the actions in the Restoration Plan would result in meeting the WLAs. The implementation schedule in the Nearshore WMP had projected completion of bioswale and removal of all contaminated sediments by January 2016, and completion of all the remedial actions by January 2017. While the schedule has slipped somewhat, it is roughly on schedule to ensure that the WLAs in the TMDL will be met by July 2018 or slightly thereafter. Therefore, the EPA concludes that the impairment of concern in the Petition for this watershed is being addressed by this existing program. In the event that monitoring shows that these remedial actions are not resulting in attainment of WQSs, the WMP also includes an adaptive management process to modify the control measures as necessary.

b. Caltrans MS4 Permit and Statewide General Permits for Industrial Facilities and Small MS4s

Stormwater discharges from Caltrans roadways are regulated statewide in California by NPDES permit No. CAS000003, issued by the State Board in September 2012. Stormwater discharges from certain industrial facilities in California are also regulated by a statewide general permit (NPDES permit No. CAS000001), issued by the State Board in April 2014. In addition, stormwater discharges from small MS4s are regulated by a statewide general permit (NPDES permit No. CAS00004), issued by the State Board in February 2013. The LCC WMP and the Nearshore WMP assume that the requirements

[34] In a discussion on July 22, 2016 with Steve Cappellino of Anchor QEA (contractor overseeing the project), Region 9 learned that most contaminated sediment had already been removed from previous dredging in 2012. The remaining bioswale construction and sediment removal is expected to be completed by January 2017. The press release noted the City was still in the planning phase for the final component of the overall Restoration Plan (open channel from the Lagoon to Marine Stadium) and no estimate was provided on the time for completion. Anchor QEA indicated that design of this final component of the Plan is now underway and that completion of construction could be anticipated by mid to late 2018.

of these other permits will ensure that stormwater discharges from Caltrans roadways, regulated industrial facilities and small MS4s in the Alamitos Bay/Los Cerritos Channel watershed will be controlled as necessary to achieve the water quality goals of the watershed.

The LCC WMP and Nearshore WMP also estimate the pollutant loading reductions necessary for Caltrans, the industrial facilities and the small MS4s and subtract these reductions from the responsibilities of the MS4s covered by the WMPs. As an example, for the LCC WMP the fraction of the total necessary load reduction that is assigned to the other permitted entities is about 22.5 percent of the total. As discussed below, Region 9 has reviewed the requirements of the Caltrans MS4 permit and the industrial and small MS4 general permits and finds the permits support the assumption by the LCC and Nearshore WMPs, that Caltrans, industrial and small MS4 runoff will be controlled.

(1) The Caltrans MS4 Permit

Caltrans is subject to numerous (84) TMDLs statewide and the Caltrans MS4 permit requires that Caltrans prioritize the list of impaired reaches for which Caltrans is assigned a WLA and for which Caltrans will implement additional control measures. Caltrans submitted a draft list to the State Board in October 2014. After soliciting public comment on the draft list, the State Board approved a final list in September 2015. The Caltrans permit requires that Caltrans address all applicable TMDLs over a 20-year period through additional control measures such as stand-alone BMP retrofits, cooperative BMP implementation with other responsible parties or other pollutant reduction practices.

Although the Caltrans permit does not require an RAA as do the MS4 Permits issued by the Los Angeles Regional Board, the Caltrans permit does require that control measures proposed to comply with applicable TMDLs be submitted to the State Board each year for review and approval. Caltrans structural BMPs are also subject to the same numeric sizing criteria as those found in the Los Angeles County MS4 permit, and this will ensure comparable effectiveness. Finally, the Caltrans permit requires a monitoring program to demonstrate compliance with the applicable TMDLs, and an adaptive management program to modify the control measures as necessary depending on the monitoring results.

Of roughly 300 impaired reaches on the TMDL prioritization list, the Los Cerritos Channel is number 41 on the list. As a result, the impairment of concern in the Petition will be addressed toward the beginning of the 20-year compliance period provided by the permit. The October 2015 TMDL status report submitted by Caltrans notes that Caltrans is currently negotiating with other stakeholders in the Los Cerritos Channel watershed to implement certain structural BMPs in the watershed to address the metals TMDL.[35]

(2) The Statewide Industrial General Permit

When issued in 2014, the industrial general permit included a list of TMDLs with requirements applicable to regulated industrial facilities, but did not include any specific implementation requirements. As noted in the Findings for the general permit, the intent of the State Board was that the development of specific requirements for TMDL WLA implementation would be coordinated with the Regional Boards subsequent to permit issuance. In early 2016, the Regional Boards publicly noticed a series of draft proposals for incorporation of applicable TMDL WLA requirements into the industrial

[35] California Department of Transportation, Total Maximum Daily Load Status Review Report, October 2015.

permit. For the Los Cerritos Channel metals TMDL, the Los Angeles Regional Board publicly noticed a proposal on March 1, 2016. EPA Region 9 provided comments on the Los Cerritos Channel proposal and numerous other proposals for incorporation of TMDLs as well.[36]

The State Board is currently reviewing the comments received on the proposals in preparation for proposal of an overall modification of the general permit to incorporate TMDL WLAs statewide. Region 9 will closely review the modification when it is proposed and provide comments as appropriate. Region 9 believes that the industrial permit is an appropriate vehicle to establish controls on discharges from industrial facilities in the Los Cerritos Channel to address the impairments that are of concern in the Petition.

(3) The Statewide Small MS4 General Permit

The specific MS4s that are subject to the Small MS4 General Permit in California are listed in Attachments A and B to the permit. Within the jurisdiction of the Los Angeles Regional Board, the only permitted MS4s are non-traditional MS4s listed in Attachment B. Attachment G to the general permit also includes many of the TMDL WLA requirements applicable to the MS4s. As noted in the fact sheet, however, when the permit was issued in 2013 the State Board recognized that some of the requirements of Attachment G may need refinement, or in the case of the Los Angeles Regional Board, TMDL WLA requirements were omitted entirely from Attachment G and need to be added. The State Board indicated that one year would be provided for the development by the Regional Boards of appropriate revisions/additions to Attachment G, which would then be incorporated into the general permit after a public comment period.

Attachment B to the permit lists only two small MS4s in the Alamitos Bay/Los Cerritos Channel watershed that are regulated by the permit; these are California State University Long Beach and the Long Beach Veterans Affairs Medical Center. Region 9 expects that revisions to the Small MS4 General Permit to incorporate WLAs will be publicly noticed later this year. The small MS4s are already subject to the MCM requirements of the permit and will also be subject to applicable TMDL requirements after permit modification. As in the case of the industrial permit, Region 9 believes that the Small MS4 General Permit is an appropriate vehicle to establish controls on institutional sources to address the impairments that are of concern in the Petition.

### *D. NPDES Authorized State Views*

While the reasons above are alone sufficient for denying the Petition, Region 9 also solicited and considered the views of State regulators concerning the Petition and the implications for State programs. The California State Water Board and the Regional Board both expressed concern that permitting CII sources would have significant resource implications for the State NPDES permit program in order to create a new permit process for CII sources and would divert scarce resources away from other important programs.[37] These views are consistent with the national policy stated in the CWA: "to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available

[36] March 29, 2016 letter from David Smith, EPA Region 9, to the Los Angeles Regional Water Board.
[37] See Record of Communication, dated August 2, 2016, between David Smith, Manager, NPDES Permits Section, EPA Region 9 and Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board.

manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government." CWA § 101(f); 33 U.S.C. 1251(f).

## VI. CONCLUSION

Region 9 has reviewed the Petition requesting designation of CII sources in the Alamitos Bay/Los Cerritos Channel watershed in light of the three principal factors described above for evaluating sources proposed for designation. Region 9 concludes that the pollutants of concern are exposed to stormwater at CII sources and that there are sufficient data available to demonstrate that stormwater discharges are contributing to water quality impairments in the Alamitos Bay/Los Cerritos Channel watershed.

The Region also concludes that existing programs are underway to adequately address the impairments. These programs rely primarily on new green infrastructure retrofit projects to obtain the reductions in pollutant discharges needed to achieve the water quality goals of the watershed. The MS4 Permits also require a rigorous analysis showing that the water quality goals will be met once the new projects are completed. Water quality monitoring programs are in place to measure progress and verify attainment of the goals. Finally, the WMPs required by the MS4 Permits include an adaptive management program to modify the mix of controls (or add additional controls) if necessary depending on the monitoring results or other pertinent new information.

Region 9 and California will continue to monitor the watershed and assess opportunities where additional pollutant reductions may be warranted; this could include the use of RDA as noted earlier. The State Water Board has also indicated that when the Small MS4 General Permit is reissued, provisions for more effective stormwater management and pollutant control by public education institutions such as school districts will be considered.[38]

The focus and direction of the existing programs in the Alamitos Bay/Los Cerritos Channel watershed are also consistent with the approach taken by the State Water Resources Control Board in its review of the Los Angeles County MS4 Permit where the State Board recommended a balanced approach between immediate, but often incomplete, solutions and allowing enough time and leeway to invest in infrastructure that will provide for a more reliable trajectory away from storm water-caused pollution and degradation.[39] Region 9 is also mindful of the resource implications that a designation of CII sources could have on the State NPDES program. As noted above, the State expressed concerns regarding the potential resource consequences of designating CII sources.

After evaluating all the pertinent information and considering the views of the NDPES authorized State, Region 9 denies the Alamitos Bay/Los Cerritos Channel Petition to designate CII sources for NPDES permits.

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[38] September 6, 2016 Memo from Karen Larsen, Deputy Director, Division of Water Quality, State Water Resources Control Board to David Smith, Water Division, EPA Region 9

[39] State Water Resources Control Board, Order WQ 2015-0075 at 80.