

## California Regional Water Quality Control Board, San Diego Region

**TO:** Parties and Interested Persons, Tentative Order No. R9-2013-0001,  
Via Lyris List

**FROM:**   
Tomas Morales, Chair  
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

**DATE:** May 1, 2013

**SUBJECT: ORDER ON PROCEDURAL ISSUES AND  
ORDER OF PROCEEDINGS FOR CONTINUED PUBLIC HEARING**

### PROCEDURAL RULINGS

This Order resolves outstanding procedural issues related to the San Diego Regional Water Quality Control Board's (San Diego Water Board) proceeding to consider Tentative Order No. R9-2013-0001, the San Diego Regional MS4 Permit. At the April 10 and 11, 2013, public hearing, many Parties used electronic presentations. Electronic presentations used by Parties during their oral presentations were required to be provided in advance to the San Diego Water Board and are accepted into the record for the San Diego Regional MS4 Permit. At the end of the hearing day on April 11, the Board also accepted into the record the April 2011 Report titled "Meeting Water Quality Standards for San Diego's Recreational Waters: A Cost Benefit Analysis" prepared by the City of San Diego (City of San Diego Report).

Several written documents were either referred to or provided to the San Diego Water Board at the April 10 and 11 hearing, for which no determination as to acceptance into the record was made. To ensure a clear record, this Order identifies those untimely documents that were submitted before or at the April 10 and 11 hearing that are not part of the record. These are: (1) April 11, 2013, two page letter to the San Diego Water Board from the San Diego County Copermittees elected officials;<sup>1</sup> (2) Redline/Strikethrough Tentative Order (118 pages) provided by San Diego County on April 10;<sup>2</sup> (3) "Request for Continuance; Objections to Hearing and Hearing Process if Continuance is Denied" (two page document lacking indication of authorship but provided by the County of San Diego); and (4) 215 letters from Surfrider Members provided in advance of the April 10 hearing but after the close of the written comment period on January 11, 2013.<sup>3</sup>

<sup>1</sup> Elected officials were provided a time certain to orally comment during the hearing.

<sup>2</sup> The San Diego Water Board notes that San Diego County used a separate electronic presentation and handout consisting of 28 slides that was included in the record. In addition, a separate electronic presentation and handout with redline/strikethrough changes to the Tentative Order was used on behalf of San Diego County Copermittees. That presentation, with an orally noted correction to the "and/or" language in slide 26, was also accepted into the record.

<sup>3</sup> A Surfrider representative speaking as an Interested Person on April 10 orally referred to these 215 letters and read the contents of the letter into the record. Oral comments at the hearing are included in the record.

In addition, since April 11, 2013, the San Diego Water Board received written comments on the written Errata (Options 1 and 2) circulated by San Diego Water Board staff. As specified in the Notice of Continued Public Hearing dated April 19, written comments on the Errata will not be accepted or included in the record. Parties and Interested Persons may orally comment on the Errata at the May 8 hearing and presentation time has been allowed for that purpose.

The San Diego Water Board received written comments on the City of San Diego Report from Parties and also from San Diego County Taxpayers Association and Clean Water Now, non-Parties. These latter two non-Party submissions are relevant to the topic raised in the City of San Diego Report. With the clarification provided below as to reference materials, all timely written comments on the City of San Diego Report, including those of non-Parties, are accepted into the record.

San Diego County Coastkeeper, Orange County Coastkeeper, Inland Empire Waterkeeper and Natural Resources Defense Council requested that the San Diego Water Board accept into the record five studies enclosed with their timely written comments. Two of these studies, Haile (1999) and Given (2006) are already in the record for this proceeding. The remaining three studies will not be accepted into the record. There is insufficient time for staff, Parties and the Board to review these studies and properly respond before the May 8 hearing. It is also important to note that none of the reference materials, studies or website information referenced in the April 2011 City of San Diego Report are included in the record by virtue of admission of the Report. To the extent any of those materials were previously made part of the record, they remain in the record. The Environmental Groups' renewed objection to the admission of the City of San Diego Report is overruled.

Finally, on April 10, the San Diego Water Board considered and accepted into the record an April 4, 2013, letter to the Board from State Legislators and an April 10, 2013, letter from Congressional Representatives to United States Environmental Protection Agency (USEPA). The San Diego Water Board also recently received an April 10, 2013, letter from State Legislators to Governor Jerry Brown concerning the Tentative Order. The latest letter presents similar issues and, together with the San Diego Water Board's response, is included in the record. USEPA's response to the Congressional Representatives' letter is also included. These short letters raise policy issues and it benefits the Board's processes that the responses be included.

### **ORDER OF PROCEEDINGS FOR MAY 8, 2013, HEARING**

The Notice of Public Hearing Continuation issued on April 19, 2013, identified time remaining for Parties to complete rebuttal testimony and make closing statements. In addition, the Board allocated additional time for oral comments on (1) the written Errata circulated by staff on April 19, 2013, (2) the City of San Diego Report and (3) revisions to the Tentative Order as released on March 27, 2013 to the extent a Party or Parties had insufficient time to review and comment on revisions prior to the start of the hearing on April 10 and 11, 2013 (collectively "Additional Matters"). The San Diego Water Board expects the Parties to complete their remaining presentations, inclusive of rebuttal testimony and comments on Additional Matters, at one time. Parties with "remaining time" (Copermitees (**36 minutes**), Environmental Groups (**5 minutes**), Building Industry Coalition (**13 minutes**) may reserve all or a portion of their remaining time for closing statements.

Therefore, the public hearing will continue on May 8, 2013, in the following general manner, subject to modification by the Chair for good cause:

- **Staff** will present the written Errata, may comment on or respond to matters raised during the hearing, including the City of San Diego Report.<sup>4</sup>
- **USEPA** may comment on the Additional Matters (limited to approximately **15 minutes**)
- **Copermittees: 36 minutes** remaining for rebuttal (may reserve for closing statements); **45 minutes** to comment on the Additional Matters
- **Environmental Groups:**<sup>5</sup> **5 minutes** remaining for rebuttal (may reserve for closing statements); **15 minutes** to comment on the Additional Matters.
- **Building Industry Coalition:**<sup>6</sup> **13 minutes** remaining for rebuttal (may reserve for closing statements); **15 minutes** to comment on the Additional Matters.
- **Interested Persons:** Interested persons have **15 minutes total**. The San Diego Water Board heard from all Interested Persons who wished to speak at the April 10 and 11, 2013, hearing. Interested Persons may use the **15 minutes** to comment on the Additional Matters. **Clean Water Now**, while not a Party, will have **3 minutes of the total 15 minutes** to comment on Additional Matters and will be allowed to comment first when the Board hears from Interested Persons.

To the extent Parties wish to make closing statements, they will be heard in the following order:

- Building Industry Coalition
- Environmental Groups
- Copermittees
- USEPA
- Staff (including any recommendation from the Executive Officer)

Following closing statements, the Board may ask questions, deliberate and vote.

As a reminder, San Diego Water Board Members and Legal Counsel may ask questions at any time. Time for these questions and responses will not count against a Party's or Parties' time.

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<sup>4</sup> Staff has approximately 47 minutes remaining for rebuttal and closing statements. There is no time limit on staff's presentation of the Errata or responses to matters raised during the hearing, including the City of San Diego Report.

<sup>5</sup> See April 3, 2013, Ruling on Requests for Designation as Parties for the parties comprising the "Environmental Groups."

<sup>6</sup> See April 3, 2013, Ruling on Requests for Designation as Parties for the parties comprising the "Building Industry Coalition."