Via e-mail to lwalsh@waterboards.ca.gov

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

December 10, 2012

RE: Supplemental Comments for Aliso Watershed in South Orange County
San Diego Regional Municipal Separate Storm Sewer System (MS4) Permit,
Tentative Order No. R9-2012-0011

The South Laguna Civic Association, established in 1946, supports comments and recommendations submitted September 14, 2012 by the "Environmental Groups" regarding the administrative draft of the San Diego Regional Municipal Separate Storm Sewer System (MS4) Permit, Tentative Order No. R9-2012-0011 ("Administrative Draft Permit").

While a regional permit can provide improved levels of efficiency, smaller, high value habitats and coastal receiving waters established as critical marine life recovery areas may be overlooked. The Aliso Watershed in south Orange County represents an area requiring closer consideration.

Aliso Creek discharges 1 to 5 million gallons per day of dry weather urban runoff from known inland MS4 point sources. Twenty years of monitoring reports and over $20 million have clearly

identified at least one dozen offending storm drains with daily dry weather flows exceeding 150,000 gallons per day (GPD). Only one storm drain in Laguna Niguel has received a Clean-up and Abatement Order during this period.

As recently as 1982, surveys of Aliso Creek indicated no flows throughout the dry season. In fact, early ranching of Aliso Canyon with subsequent destruction of critical native trees and vegetation led to long drought conditions and widespread, fatal dehydration of cattle.

Today, the primary source of elevated creek flows originates exclusively from inland over-irrigation and careless discharges of recycled water. Non-native creek flows transport a toxic variety of pollutants and carcinogens from residential, commercial and municipal known point sources with measurable quantities of herbicide, pesticide, fertilizer, automotive and similar residues to protected creek, estuary and coastal receiving waters. Aliso Beach is permanently posted for contaminated water and remains a risk to public health and safety.
(Please see Exhibit A – 2011 Aliso Creek Daily Flow/e.g., August 1, 2011 @ 7.6cfs = 4.9 MGD)

Economics of Water Pollution

Water Districts profit significantly from the sales of recycled water yet fail to be held accountable by the SDRWQCB for illicit discharges generated specifically by careless over-irrigation. Over-irrigation produces hundreds of thousands of dollars in excess revenues each year to inland Water Districts that persistently ignore the impact of their product water. Profiting from water pollution discharges to protected receiving waters is illegal as adjudicated by Friends of the Earth v Laidlaw (2000) and other statutes and regulations.

"District Court found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the permit's mercury discharge limit; nevertheless, the court concluded that a civil penalty of $405,800 was appropriate. In particular, the District Court found that the judgment's "total deterrent effect" would be adequate to forestall future violations..." (Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc. - 528 U.S. 167 (1999)

In the Aliso Watershed, recycled water sold for irrigation and over watering produces an average creek discharge flow of 3 MGD during the nine month dry season. Sold at $1000 per Acre Foot (AF), this irrigation product water yields revenues to inland Water Districts of over $10 million during the five year MS4 Permit cycle. (calculation: 3 MGD = 9 AF x $1000/AF x 300 days = $ 2.7/year x 5 year permit cycle = $10 mil+).

Lacking effective enforcement measures by the SDRWQCB, these excessive and illegal profits encourage increased sales of irrigation water without any accountability for the obvious impacts of water products to protected creek and coastal receiving waters. The Irvine Ranch Water District, El Toro Water District, Santa Margarita Water District and Moulton Niguel Water District must not be allowed to profit from water pollution.

Persistent violations of MS4 requirements are acknowledged by all parties yet the SDRWQCB refuses to invoke effective enforcement measures and fines. Without economic disincentives, offending Water Districts gain illegal profits while inland cities accumulate tax property revenues from poorly

engineered development projects. Citations against the more egregious offending storm drain dischargers can release funds for effective mitigation measures and support incentives for regional MS4 compliance.

Environmentally Sensitive Areas (ESA)

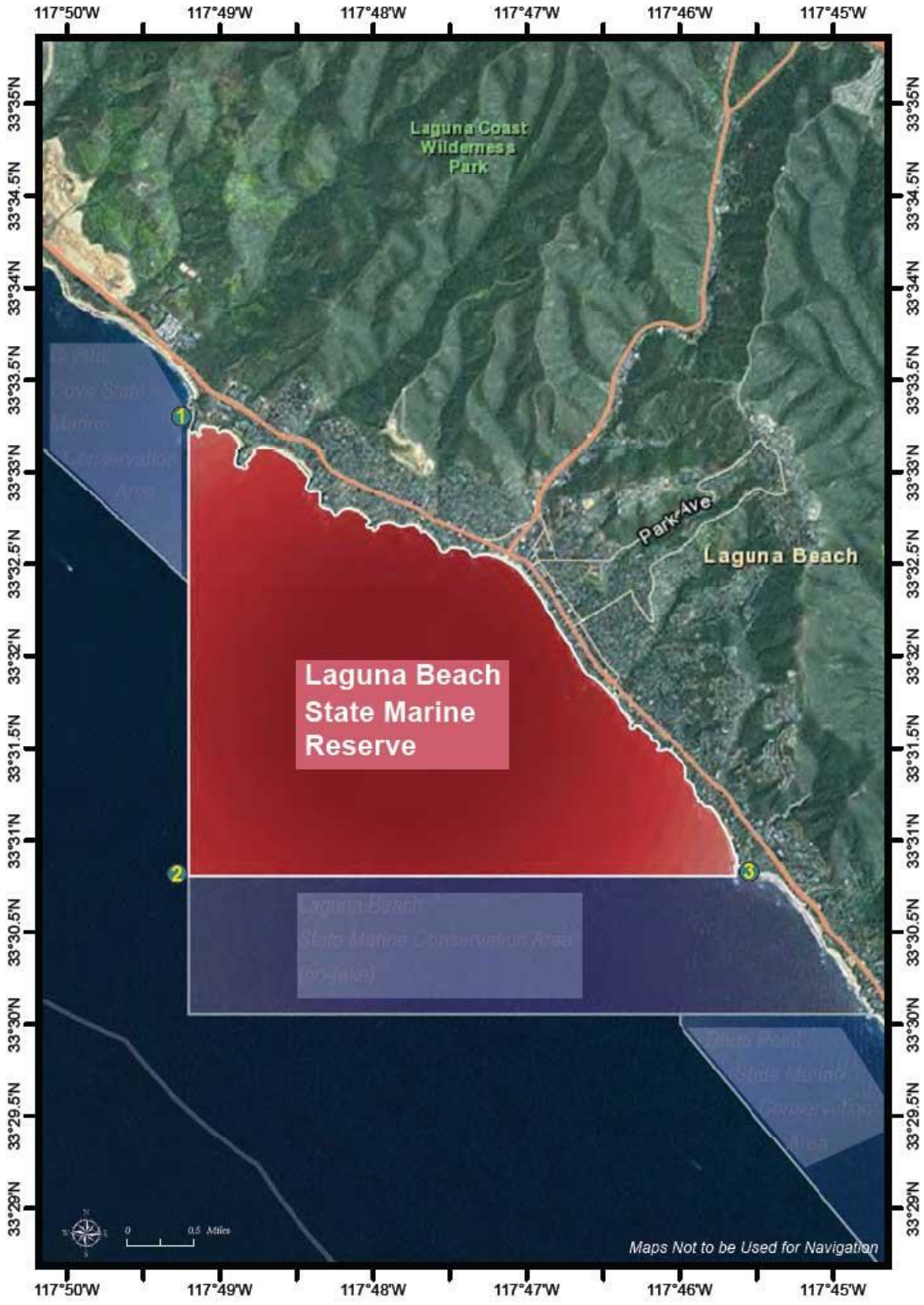
The Aliso Watershed is a compact 34 square mile area suffering decades of neglect and pollution originating from poorly engineered residential developments among inland cities. Plans to add 17,000 new houses to South Orange County in the coming years will exacerbate the water pollution crisis facing Laguna Beach. Runoff management plans fail to control dry weather urban runoff and knowingly contribute directly to increased flows and erosion during routine storm events.

The Aliso Creek Wilderness Park remains degraded from erosion impacts to streambed habitat and threatens to expose critical sewage infrastructure transporting 10 to 15 million gallons of secondary sewage to the Aliso Creek Ocean Outfall only 1.2 miles offshore. A recent study by TetraTech for the South Orange County Wastewater Authority (SOCWA) determined the integrity of creek infrastructure to be capable of failure in as little as 5 years. Coastal receiving waters at the mouth of Aliso Creek are impaired by polluted urban runoff flowing at 1 to 5 million gallons per day (GPD). Aliso Creek is listed as a 303(d) Impaired Water Body by the Clean Water Act and continues to fail to meet present and previous MS4 Permit requirements. (Exhibit B – Aliso Creek Watershed 303(d) Impaired Waterbodies)

All Co-Permitees, as signatories to the MS4 Permit, are legally responsible for water quality in terms of coastal receiving waters. The regulatory and legal nexus is clear between unpermitted discharges by inland Co-Permitees, creek erosion and infrastructure damage, ocean pollution and public health hazards associated with these contaminated daily flows.

Aliso Beach, at the mouth of the federally listed contaminated creek, is permanently posted. However, coastal receiving waters are protected as the Laguna Beach State Marine Conservation Area established unanimously by the California Fish & Game Commission on January 1, 2012.

Laguna Beach State Marine Reserve



The proposed MS4 Permit does not adequately address efficacious measures to protect creek and coastal receiving waters while allowing contaminated discharges to persist without adequate enforcement actions. Lacking meaningful enforcement actions, inland cities as Co-Permitees, persist in ignoring or circumventing water quality regulations with impunity while creek and coastal receiving waters and ESA habitats continue to be incrementally degraded by polluted dry weather flows. Damage to coastal habitats is cumulative and potentially expensive in terms of restoration.

Likewise, failed Best Management Practices (BMP) stormwater facilities required as a Condition of Approval for inland residential, industrial and municipal developments are inadequately engineered devices incapable of mitigating elevated flows from stormwater events directed to creek and coastal receiving waters. The cumulative impacts of contaminated dry weather discharges and elevated stormwater flows have destroyed the functions of the Aliso Estuary (a protected coastal wetland), tidepools, fish nurseries and local kelp forests.

Shellfish areas in California receive the highest water quality protection standards. The economic value of shellfish to the economy is well established and place names such as Abalone Point, Mussel Cove, Shellfish Beach, etc. along Laguna Beach's coastal receiving waters suggests the prominence of shellfish habitat in the local area. Routine underwater surveys of mussel grounds near the mouth of Aliso Creek reveal large areas of dead shellfish likely exposed to the urban runoff plume. Dry weather discharges and elevated stormwater flows to Laguna Beach's coastal receiving waters are incompatible with protection of ESA Shellfish habitat and should be vigorously regulated and prohibited in the proposed MS4 Permit.

Laguna's coastal receiving waters are prime foraging grounds for protected marine life including coastal dolphins, gray whales and blue whales.

Safari/Marc Carpenter, via Associated Press

A blue whale surfacing at 1000 Steps, South Laguna

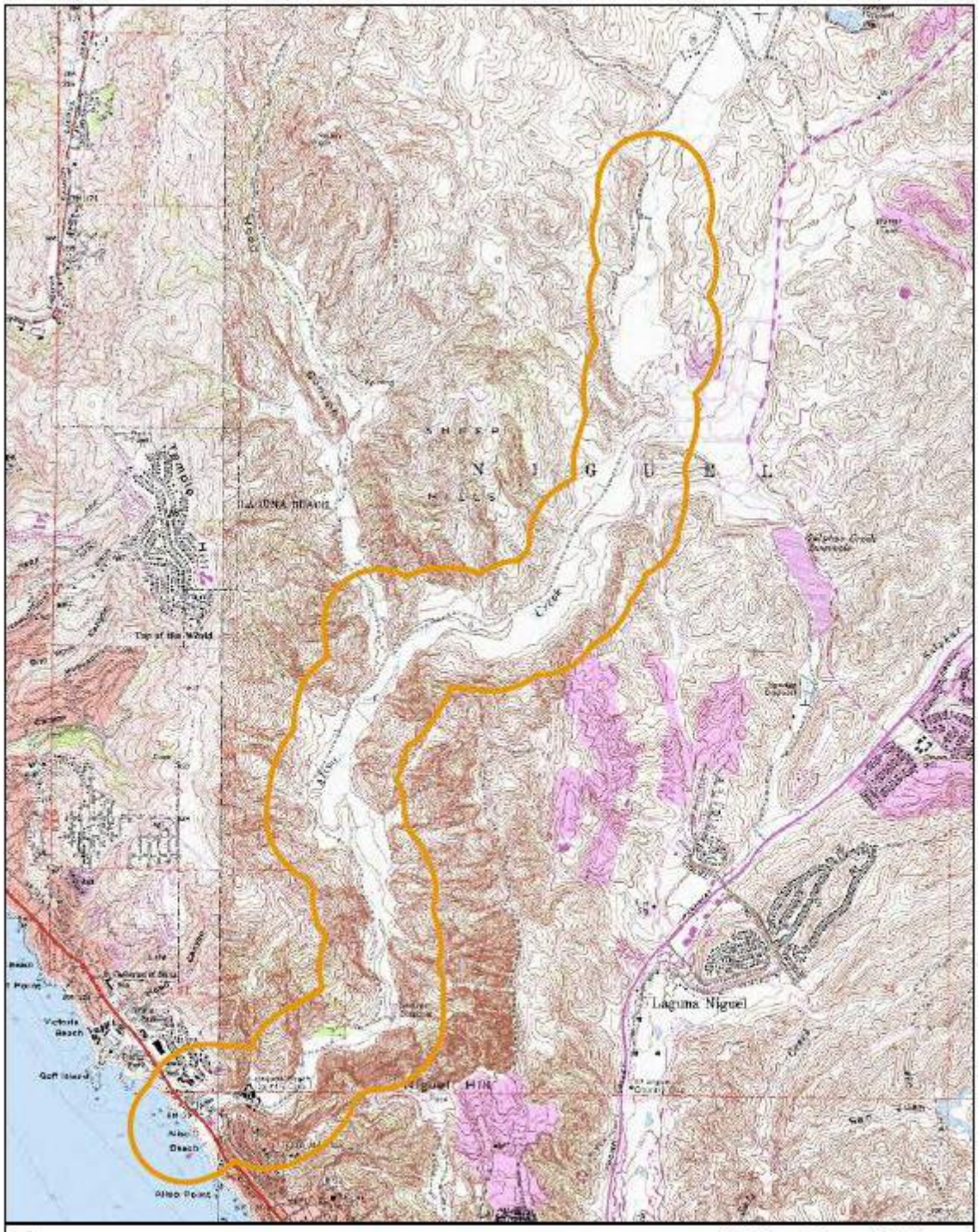
The California Coastal Act is specific in protecting the health and welfare of marine mammals among other species. Therefore, the proposed MS4 Permit must address water quality inconsistencies among regulating agencies.

1. California Coastal Act, Article 4, Section 30230. Recent summer sightings of federally protected Blue Fin Whales feeding at the location of the Aliso Ocean Outfall suggest the need for compliance with the Coastal Act. The unseasonal presence of marine mammals feeding on krill indicates the presence of phytoplankton populations sustained by nutrient rich urban runoff and offshore sewage discharge plumes migrating to surface waters. New research also highlights the presence of hormonal endocrine disruptors in recycled water and sewage discharges as a contributing factor in the feminization of male fish.

2. California Coastal Act, Article 4, Section 30231. The SDRWQCB overlooks requirements for "the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

3. Water Reuse Law, Water Code Sections 461-465 and Water Reclamation Law, Water Code Sections 13500-13556 requiring beneficial reuse of inland water product to implement recycled water throughout Laguna Beach in achieving a State mandated 20% reduction in imported water by 2020.

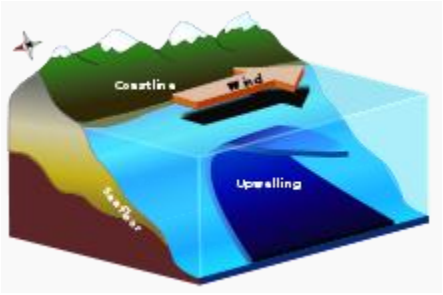
The recent Army Corp of Engineers Study Area Map recognizes the relationship of MS4 regulated areas by incorporating the coastal receiving waters for lower Aliso Creek project considerations. No similar map or chart is available to track and monitor regulated coastal receiving waters subjected to the contaminated urban runoff "freshwater lens".


N
CDM
Legend
Study Area Boundary
0.25 0 0.25
Miles
U.S. Army Corps of Engineers
Aliso Creek Ecosystem
Restoration Study
USGS Topographic Map
Figure 2.1-1

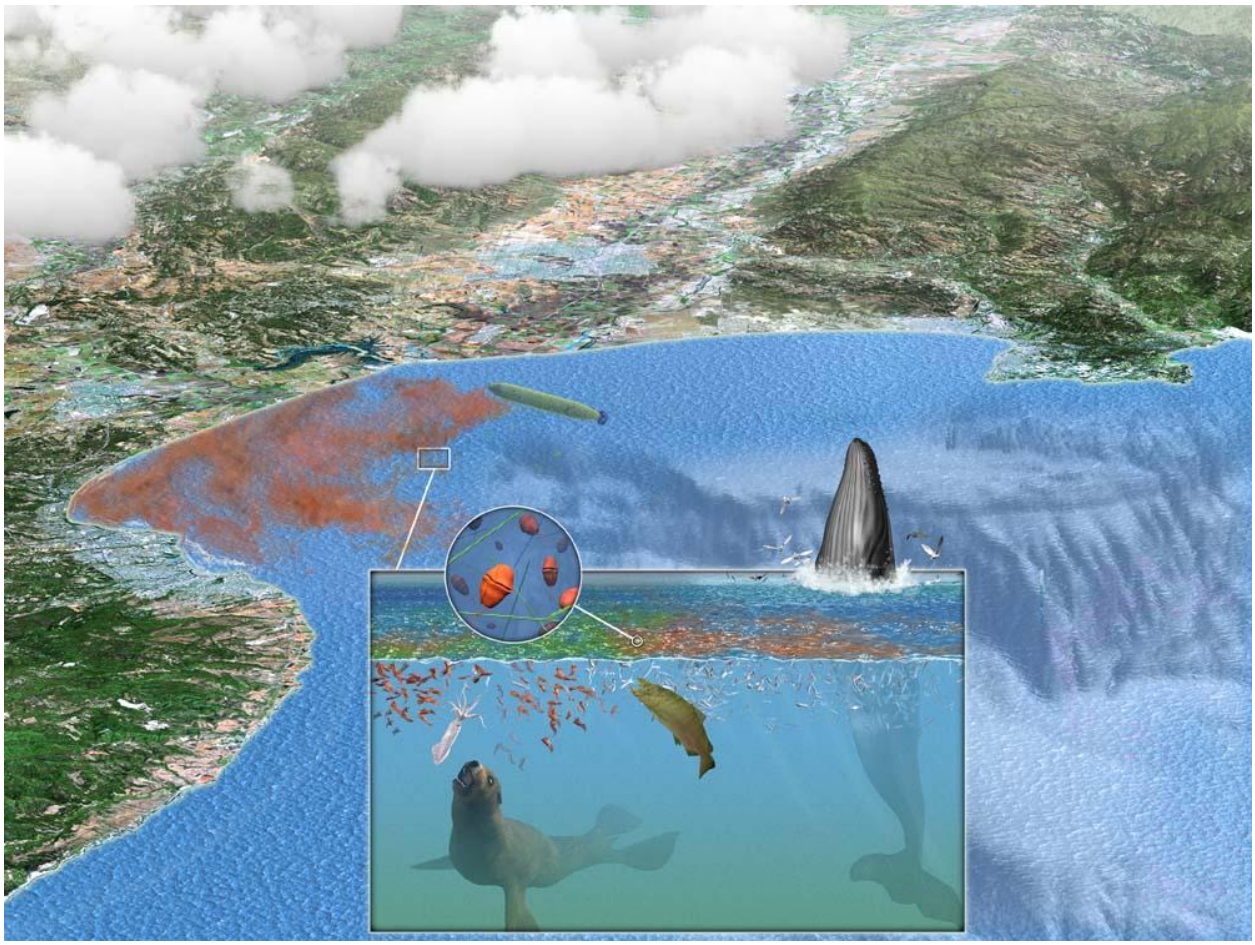
Urban Runoff, Secondary Sewage Discharges & Ocean Upwelling

Coastal receiving waters at the mouth of Aliso Creek are protected as the Laguna State Marine Conservation Area (SMCA). These important tidepool, rocky shore and kelp forest habitats, however, are subjected to multiple water pollution impacts from the combined urban creek urban runoff plume and Aliso Creek Ocean Outfall.

Ocean upwelling transports contaminates from the offshore sewage discharges to shore and mix with the visible creek urban runoff freshwater plume. Harmful algae blooms fed by these "nutrient rich" discharges plague coastal receiving waters and contribute to the destruction of kelp forests and shoreline fish nurseries. Beach visitors, often from regional low-income disadvantaged communities, suffer exposure to severe public health threats.



Multiple requests to South Coast Wastewater Authority for a comprehensive interactive map of the Aliso Creek coastal discharge plume and the Aliso Creek Ocean Outfall Plume are routinely ignored. An accurate map will identify protected coastal receiving water resources including tidepools, rocky fish nurseries and shellfish habitats, kelp forests, dolphin birthing and foraging grounds, as well as near shore whale migration routes. Charting dominant littoral currents and counter currents will reveal distribution patterns of urban runoff induced Harmful Algae Blooms and thermal plumes. Lacking such basic information, assurances of safe ocean water quality are presented without a fundamental scientific understanding of coastal dynamics.



Dry weather urban runoff plumes to Laguna's coastal receiving waters feed summer-long Harmful Algae Blooms (HABs) contributing to domoic acid poisoning of sea lions, whales, shellfish and fishing resources.

Hydromodification

The rapid regional development of residential tracts over the past few decades has been accomplished using grading techniques to create long, flat terraced building sites. In an effort to simplify construction on flat sites, natural contours are replaced with cut and fill earthworks removing natural top soils before paving over hydric substrates and native deep root vegetation. These practices expose expansive clay soils.

Developers avoid expensive deep caissons to bedrock or multiple dewatering wells and simply pour concrete pads over unstable clay substrate. City leaders seeking increased tax revenues and development fees utilize engineers unfamiliar with local clay soils and the semi-arid ecology to approve massive grading plans that ultimately fail.

Unsuspecting homeowners subsequently experience extensive expansion and contraction of clay subsoils following annual storm events. As foundations fail, water supply lines, sewage lines and

related infrastructure become compromised requiring expensive repairs. By this time, however, developers have either moved or filed for bankruptcy protection leaving thousands of present homeowners without remediation opportunities. Engineers, city planners and elected officials, while complicit, are not held accountable through enforcement by the SDRWQCB. Poorly engineered residential developments with substandard clay soils continue to be approved to aggravate the condition and burden taxpayers for expensive repairs.

The Aliso Watershed is a clear example of faulty hydromodification design. Beginning with the construction of the federal Chet Holfield Ziggerat Complex, large areas of the native creek with valuable hydric soils were paved over for massive parking lots. The channelized creek lost critical inland wetlands and groundwater percolation sites with the removal of over 1500 feet of the creek ox bow. This wetland site historically provided water, fish and double canopy vegetative cover for the early "Nigueli"... the name of a Juaneno Native American village once located near a lagoon along Aliso Creek. The City of Laguna Niguel derives its name from the Spanish designation of this critical creek ox bow area.

Systematic destruction of vast native watershed trees and vegetation to support early ranching activities continue to plague the effectiveness of this and many watersheds in the San Diego region. Developers and complacent city planners exploiting degraded ranchlands simply continue the “biodegradation” while avoiding the true costs to the environment and taxpayers for their profiteering urbanization schemes. Facing unrelenting pressure from developers, water districts and municipalities, regulatory agencies charged with protecting critical creek and coastal receiving waters, fail to invoke effective enforcement with measurable water quality benefits.

Recommended Actions

Poorly engineered projects can be re-engineered to achieve mandated water quality objectives.

1. Maps of all creek and coastal receiving waters indicating water quality impacts can be created by SCCWRP, Scripps, NOAA or any number of competent university or regulatory groups. A Bioregional Watershed Map will identify degraded land elements, offending storm drain outlets and candidate areas for re-forestation and estuarine/coastal restoration.

2. On an annual basis, citations against the primary six known storm drain point sources in each watershed can incrementally compel clean-up and abatement throughout a given watershed bioregion without the burden of costs to abate all points of contamination at once. Failed Best Management Practices (BMPs) urban runoff facilities, required as a Condition of Approval for inland residential developments, can be retrofitted with dry weather diversions to local Publically Owned Treatment Works (POTWs) or, alternatively, re-engineered with deep groundwater injection wells.

3. Fines must be allocated to re-vegetate impaired watersheds and kelp forests to restore the native functions of semi-arid creeks and protected coastal receiving waters. A re-forested Aliso Canyon with a canopy similar to San Mateo Creek will qualify for California Cap and Trade

funding to offset costs. Restoration of natural habitats is demonstrated to be the best, most cost effective measure for improving watershed water quality.

4. Restoration of high value coastal wetlands and estuaries will guarantee protection of natural beach sand berms and provide measurable improvement to coastal receiving waters. Funds from the California Coastal Conservancy and other wetland recovery resources can offset costs.

5. Watershed restoration will offer multiple community benefits by reducing destructive stormwater flows, eliminating pollutants and increasing eco-tourist revenues to surrounding cities. Large street cisterns incorporating designs proposed by GeoSynTech for the re-development of the Aliso Golf Course can serve as a model for extensive rainwater harvest/reuse systems. Restoration of some or all of the 1500 foot Aliso Creek Ox Bow in Laguna Niguel can restore hydric soils to reduce stormwater impacts.

6. Increased use of recycled water for wildland fire suppression along the entire Highway 73 Toll Road bisecting the Laguna Greenbelt will maintain a healthy, fire safe wilderness area. Orange County Measure M and State Proposition funds are available to offset costs. Increased use of recycled water reduces ocean discharges to the Laguna State Marine Conservation Area.

7. A citywide network of recycled water for all of Laguna Beach will reduce imported water demand significantly and increase water security, disaster preparedness and fire suppression resources. Revenues from routine use for irrigation mandated Fuel Modification Zones will provide new revenue streams. Laguna Beach is the only Orange County city without a comprehensive recycled water program and remains a "once use" community of valuable imported water.

The MS4 Permit Renewal process offers the opportunity to advance beyond failed measures and begin the renewal of the region's unique watershed and coastal ecology. All Stakeholders can benefit through proactive initiatives and, as the overall watershed ecology improves, the cost savings from stormwater damage, water pollution, protracted litigation and public health threats will become evident. The South Laguna Civic Association has offered constructive, critical information and suggestions during the previous MS4 Permit cycle which have been largely ignored to the public's detriment.
(Exhibit C – SLCA Comments on Tentative Order No. R9-2007-0002 NPDES, No. CAS0108740)

Cooperation and courage are essential and the South Laguna Civic Association remains committed to working towards real, measurable, sustainable solutions. On behalf of our community and the many visitors from throughout the world to our shores, we thank you for your review and support of our recommended actions.

Michael Beanan

Vice President
South Laguna Civic Association

mike@southlaguna.org

Attachments

Exhibit A - Daily Mean Discharge in Cubic Feet/Second - Water Year Jul 2011 to Jan 30, 2012
Exhibit B - Aliso Creek Watershed 303(d) Impaired Waterbodies)
Exhibit C – SLCA Comments to Tentative Order No. R9-2007-0002 NPDES, No. CAS0108740

Exhibit A - Daily Mean Discharge in Cubic Feet/Second Water Year Jul 2011 to Jan 30, 2012

Day	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
1	5.5	7.6	5.7	4.9	4.9	4.9	5.6		
2	5.4	6.3	5.6	4.6	4.8	4.8	5.6		
3	5.3	5.6	5.6	4.6	4.8	5.2	5.7		
4	5.8	5.4	5.5	12	26	4.9	5.6		
5	5.8	5.4	5.9	145	13	5	5.9		
6	5.5	5.4	6	28	20	5.4	5.8		
7	5.4	5.5	5.6	10	11	5.7	5.7		
8	5.5	5.4	5.4	6.9	6.9	6	7.1		
9	5.8	5.7	5.4	5.8	5.7	6.5	6		
10	5.7	5.6	8.4	5.3	5.2	5.9	5.6		
11	5.7	6	7.8	5	5.1	5.7	5.7		
12	5.8	5.8	7.1	5	36	22	5.7		
13	5.7	5.8	5.7	5.1	18	16	5.8		
14	5.8	5.7	5.2	5.1	8.7	8	5.4		
15	6	5.6	5.2	4.9	6.3	38	5.5		
16	5.9	5.7	5.1	4.9	5.5	18	19		
17	5.9	5.7	5.4	5	5.3	8.2	7.4		
18	5.9	5.4	5.3	5.3	5.2	6.9	6.1		
19	5.9	5.7	5.1	5.4	5.1	6.3	5.7		
20	5.8	5.7	5.1	5.4	86	6.4	5.5		

21	5.8	5.6	5	5.6	36	6		69	
22	6	5.6	5	5.3	10	5.5		16	
23	5.9	5.8	5.1	5.5	7.2	5.4		56	
24	5.9	5.8	5.1	5.5	6.1	5.5		19	
25	6	5.7	5.1	5.6	5.6	5.5		9.2	
26	5.6	5.8	5.1	5.3	5.4	5.7		7.3	
27	5.6	5.6	5.2	4.9	5.3	5.8		6.6	
28	5.7	5.6	5	4.9	5	5.7		6.1	
29	5.9	5.6	5	4.7	5.1	5.5		5.9	
30	5.7	5.8	5	4.7	5.1	5.7		------	
							------	------	---
31	8.9	5.8	------	4.8	------	5.9		---	

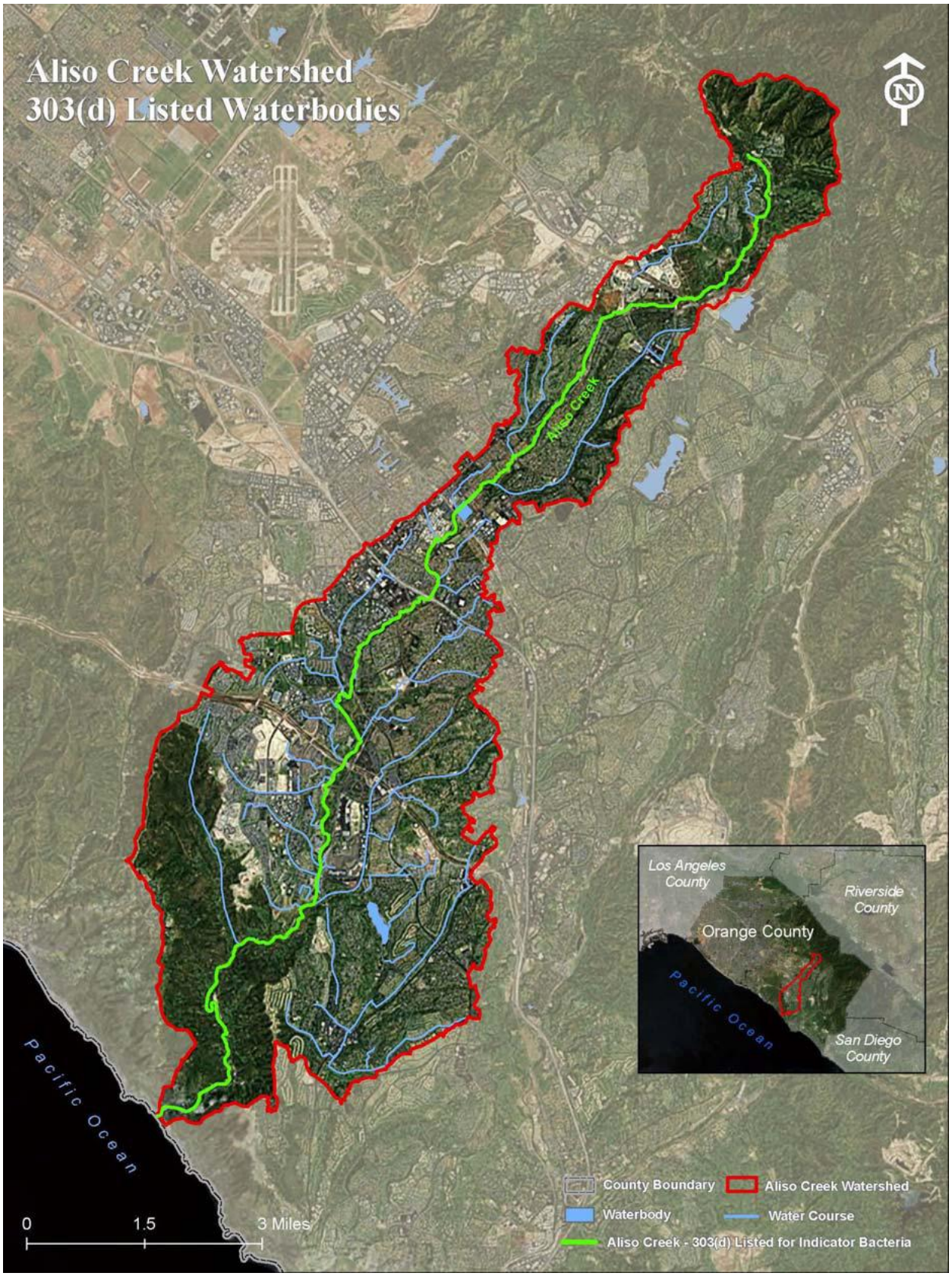

Aliso Creek Watershed
303(d) Listed Waterbodies
N
Aliso Creek
Pacific Ocean
0
1.5
3 Miles
Los Angeles County
Riverside County
Orange County
Pacific Ocean
San Diego County
County Boundary
Aliso Creek Watershed
Waterbody
Water Course
Aliso Creek - 303(d) Listed for Indicator Bacteria

Exhibit C - SLCA Comments to 2007 MS4 Permit

Jeremy Haas April 11, 2007
California Regional Water Quality Control Board
San Diego Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123
RE: Tentative Order No. R9-2007-0002 NPDES, No. CAS0108740

The members of the community of South Laguna represented by the South Laguna Civic Association, established in 1946, recognizes urban runoff from dry weather flows continues to be discharged through regional storm drain systems permitted exclusively to convey rain water.

The proposed SDRWQCB Tentative Order No. R9-2007-0002 knowingly, willfully and intentionally perpetuates a threat to health and safety while contributing to degradation of local creek and coastal water resources by allowing MS4 storm drain systems to transport polluted water originating from the imported water supply industry.

Dry weather flow rates in the subject watershed presently exceed all previous flow rates and are recognized as the principle source of nutrient loading and ocean pollution. Chemical fingerprinting analysis of urban runoff by the Santa Margarita Water District attributes the source of 60% to 90% of urban runoff dry weather flows as originating from imported water sources in either Northern California or Colorado. Dry weather flows to storm drains are from anthropogenic influences rather than natural storm events.

Seminal research by the University of Southern California and others concludes urban runoff is responsible for feeding prolonged, destructive algae blooms along the Southern California Bight. In conveying inland sources of fertilizer and phosphates nutrients, dry weather urban runoff estimated at 5,000,000 gallons per day in the Aliso Watershed alone is causing increased outbreaks of domoic acid poisoning and deaths among sea mammals in Laguna Beach. The SDRWQCB fails to take into consideration impacts of uncontrolled dry season urban runoff on the health and welfare of coastal receiving waters. In spite of repeated requests, the SDRWQCB and Co-Permitees to not incorporate the urban runoff ocean plume into the watershed mapping procedure rendering decision making ineffective and monitoring activities scientifically incomplete.

As indicated in Staff Reports, the SDRWQCB, South Orange County Wastewater Authority (SOCWA), inland cities and County Co-Permitees continue to fail to Cleanup and Abate contaminated dry weather urban runoff flows and thereby violate key statues of the Porter-Cologne Act and Clean Water Act. In allowing the County and City Co-Permitees to continue to discharge polluted urban runoff water flows, the members of the SLCA and the general public are denied access to safe, unpolluted coastal recreational opportunities while exposing them to known respiratory and digestive illnesses. The incremental and cumulative discharge from Aliso Watershed storm drains also knowingly and willfully contributes to potential health risks from consuming local fish.

Likewise, potential private property values are threatened by disclosures during real estate transactions of public health hazards emanating from polluted coastal waters.

Residences at the mouth of Aliso Creek are permanently damaged by summer urban runoff from erosion and stagnant ponds. Damage from urban runoff pollution to critical kelp habitats and marine mammals characteristic of South Laguna Marine Reserve off of Aliso Beach are well documented in the scientific literature.

The Aliso Watershed has more than 64 storm drains with elevated fecal coliform levels and excessive flow rates. The inability of the SDRWQCB over the past 20 years to control illegal dry weather discharges suggests a pattern of failed interventions portending a dangerous precedent of chronic future water pollution to the community of South Laguna with a population of 5,000 residents and the general beach visiting public.

The South Laguna Civic Association (SLCA) seeks a thorough review of the laws, regulations and facts pertaining to mismanagement of the subject MS4 Storm Drain Permit. Verifiable action capable of significant reductions in dry weather flow rates must be implemented. Numerical flow rate reduction, specific performance benchmark deadlines and significant penalties for non-compliance must be incorporated into any credible permitting process. Interception of urban runoff flows at known inland point sources is technologically feasible through deployment of approved Best Available Control Technologies presently used by the development, military and oil industries. If necessary, a watershed Cleanup and Abatement Order can accelerate permitting and fast track measures until such time full compliance is achieved.

Failure to mitigate or comply requires the SDRWQCB to be directed to California Water Code Section 13304(a) and following to seek an injunction against the County and offending cities or perform the work itself. Concurrent with the present evaluation of Tentative Order No. R9-2007-0002, the SLCA seeks emergency action due to significant, immediate and potential harm from known health risks associated with dry weather urban runoff conveying elevated levels of fecal coliform and other contaminates to South Laguna since:

1. Substantial harm to the community of South Laguna will continue to occur this summer from exposure to dry-weather flows of contaminated urban runoff in the subject watershed. The approval of a systematically flawed MS4 Storm Drain Program will establish a dangerous precedent in the Aliso Creek Watershed and other impaired watersheds in the State of California to the detriment of South Laguna's public health and safety as well as the protection of natural resources.

2. Neither the inland cities, County, SDRWQCB, SOCWA nor public will incur substantial harm from issuance of a comprehensive dry weather storm drain management program. The South Laguna Civic Association, in fact, will benefit from incremental reduction of contaminated flows from inland storm drains into creek and coastal receiving waters. Establishing a pattern of enforcement and full compliance with cleanup and abatement laws will initiate additional timely actions by the SDRWQCB to improve water quality in the Aliso Watershed and elsewhere. Costs associated with a comprehensive program to control dry weather flows can be minimized by fines, deployment of cost saving water conservation measures and revenues generated from beneficial reuse opportunities of 5 million gallons of urban runoff per day in the Aliso Watershed.

3. As indicated in this and other communications, substantial questions of fact and law are associated with the proposed Tentative Order No. R9-2007- 0002. The fact remains that immediate compliance and cessation of dry weather urban runoff is technologically and economically feasible as demonstrated by earlier diversions to the Moulton Niguel Water District's sewer treatment facility and, later, short term operation of mobilized urban runoff filtration units.

The narrative below cites a number of laws pertaining to enforcement of Cleanup and Abatement Orders (California Water Code Section 13304); the SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42); regulations and policies governing Environmental Justice (Government Code Section 65040.12 and Public Resources Code Section 72000).

The County and City Co-Permitees concede their failure to Cleanup and Abate elevated levels of fecal coliform and increased urban runoff flow rates in the Aliso Watershed. The SDRWQCB does not comply with California Water Code Section 13304. Indeed, during the past 20 years, the Regional Board has failed to effectively intervene.

California Water Code Section 213300-13308, Chapter 5, provides the SDRWQCB Enforcement authority to issue a Cleanup and Abatement Order to remedy dry weather urban runoff.

Section 13304(a) "Upon failure of any person to comply with a cleanup and abatement order, the attorney general, at the request of the board, shall petition the Superior Court of the County for an issuance of an injunction requiring the person to comply with the order."

The SDRWQCB unwillingness to enforce compliance also violates Section 13304 (1)(b);(2)(a), (c), (e) to expend available money themselves to perform cleanup, abatement or remedial work; to intervene to perform the work itself; recover costs for cleanup and abatement work; and protect or prevent threatened probability of harm to persons, property or natural resources.

It is again worth noting, temporary compliance was achieved in 2003 utilizing mobilized water filtration units recognized among Best Management Practices (BMP). During its brief period of operation, the above BMP treated over 14 million gallons at JO3PO2 to reduce fecal coliform from 10,000 cfu's to less than 1. The SDRWQCB, SOCWA, Moulton Niguel Water District, City of Laguna Niguel and County dischargers arbitrarily elected to terminate this effective technology to experiment with low cost constructed wetlands, which ultimately failed to reach compliance levels for fecal coliform at the JO3PO2 outlet and took no effort to remove flows originating from abandoned imported water sources.

The SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42) specifically directs the Regional Board to take action against the following:

- Any knowing, willful, or intentional violation of the (Porter Cologne Act)
- Any violation of (the Porter Cologne Act) that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive edge advantage.
- Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- Any violation that cannot be corrected in 30 days.

The SDRWQCB has taken no action pursuant to the above policies while proceeding to accommodate City and County Co-Permitees, Water Districts, SOCWA and developers at the expense of and detriment to the members of the SLCA and the general public.

Section 13350(m) of the Porter-Cologne Clean Water Act defines nuisance as anything which meets all of the following requirements:

1. Is injurious to health, or is indecent of offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property.

2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

3. Occurs during, or as a result of, the treatment or disposal of wastes.

Dry weather urban runoff meets and exceeds the legal definition of "nuisance" by virtue of it's widespread impacts to water quality variables. "Waste" refers to "waste water" knowingly and willfully generated by imported and reclaimed water sold at reduced rates that ignore significant post-irrigation dry weather urban runoff impacts.

Members of the South Laguna Civic Association are at particular risk of injurious health from frequent exposure to pollution in Aliso Creek and recreational coastal water activities. Such threats and illnesses create an obstruction to the free use of public property at local County parks, protect State Marine Reserves and beaches to thereby interfere with the comfortable enjoyment of life and property.
The extent of annoyance and damage is unequal with increasing harm to individuals such as swimmers, surfers, SCUBA divers, etc. with more frequent contact to polluted creek and ocean waters according to recent studies by the University of California, Irvine. Young children playing long hours at the beach and pregnant women are particularly high-risk populations.

The casual relationship occurring with the discharge of contaminated urban runoff wastewater with elevated fecal coliform levels is well established in scientific and medical literature as to impose a viable threat to the community of South Laguna. Government Code Section 65040.12 and Public Resources Code Section 72000 states:

"…the fair treatment of people of all races, cultures and income with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies"

The proposed Tentative Order No. R9-2007-0002 is discriminatory and violates the State of California's definition of Environmental Justice.

As previously noted, the community of South Laguna and visitors to the Aliso Creek Watershed and Aliso Creek County Beach have entreated the SDRWQCB for decades for relief from polluted urban runoff flows resulting from the non-regulation or enforcement of the County/City's chronic storm drain discharges of dry season urban runoff. Local low income and working class residents have suffered damages to health, safety and liberty in their access to Aliso Creek and the Pacific Ocean.

Despite the obvious tangible and verifiable nature of these damages, South Laguna and the general public have yet to receive any effective regulatory assistance either from the State or Regional Water Boards. This failure to provide relief is not due to any lack of knowledge or information. The SDRWQCB has repeatedly and extensively investigated the mechanism by which storm drains physically convey fecal coliform bacteria and other contaminants downstream into the Aliso/Woods Canyon Regional Wilderness Park, South Laguna and the Aliso Creek County Beach. There remains no doubt that the City/County dry weather storm drain discharges are the cause of summer beach and ocean pollution.

Despite this clear and present causal relationship, the SDRWQCB and Staff have denied pleas from the public for remedial action in the form of abatement of nonseasonal storm drain urban runoff, beneficial reuse for sustainable treatment projects, water conservation and immediate temporary mobilized emergency capture/treatment options common among petrochemical, agribusiness and development economic sectors. In addition, the SDRWCB has not supplied a contingency emergency plan to protect our community and the public from current and summer dry weather MS4 storm drain discharges.

Instead, the Regional Board has relied on promulgating more general directives and future contamination tables, which may or may not be effective in abating polluted urban runoff. The proposed Tentative Order No. R9-2007-0002 is to accommodate the failures of inland Water Districts, SOCWA, Cities and County at the expense of the community, public and ocean ecology.

The SDRWQCB action when combined with the Staff and City/County history of ineffective action towards the residents and visitors of South Laguna, have the cumulative effect of giving second class status to the physical health and safety needs of the public in the Aliso Watershed. Thus any action by the Regional Board to approve the use of MS4 Storm Drain System to knowingly convey dry weather urban runoff flows is discriminatory and violates the State of California's definition of Environmental Justice.

Conclusion

The general regulations, requirements and studies pertaining to the Aliso Creek Watershed and associated MS4 Storm Drain System are clearly not effective in controlling water pollution or the effects of artificially elevated flow rates during the area's annual ten month dry season.

More than twenty years and $20 million dedicated to achieve compliance in a relatively small, compact 34 square miles residential development watershed is an enormous investment and, ultimately, waste of taxpayer revenues. The failure to achieve compliance represents a lost opportunity to demonstrate effective interventions to protect communities like South Laguna from polluted urban runoff and sends a message to the public that urban runoff pollution cannot be controlled.

Despite the various failed efforts over two decades, the fact remains numerous State laws are being violated by the SDRWCB for allowing the discharge of dry weather flows with elevated fecal coliform and related contaminate levels to continue to pollute daily the protected receiving waters of Aliso Creek and the Pacific Ocean. By this communication, the SLCA reserves the right to appeal any unfavorable decision perpetuating dry season urban runoff flows to Aliso Beach, South Laguna to the SWRCB and State Attorney General for timely relief.

The South Laguna Civic Association appreciates the efforts by the San Diego Regional Water Quality Control Board to consider the enormous impacts of uncontrolled dry weather urban runoff pollution before approving a genuinely effective Storm Drain Permit Program for the Aliso Watershed.

Respectfully submitted,

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