

EOMPOA

East Otay Mesa Property Owners Association

January 10, 2013

Mr. Wayne Chiu, P.E.
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego California 92123-4340

**SUBJECT: Comment – Tentative Order No.R9-2013-0001, Regional MS4 Permit,
Place ID: 786088Wchiu**

Dear Mr. Chui:

Everyone, from every edge of the political and economic spectrum, supports improved water quality and environmentally healthy watersheds. The East Otay Mesa Property Owners Association (“EOMPOA”) represents the major landowners within the County portion of Otay Mesa, who collectively control more than 2,000 acres at the last large scale industrial development site in the County, also support the California Regional Water Quality Control Board’s (“Board”) goal of clean water for all users in the region.

However, after listening to public testimony at recent board workshops, and being briefed by co-permittees on the proposed Tentative Order No. R9-2013-0001, Regional MS4 Permit (“Tentative Order”), we are writing to express our significant reservations on the Tentative Order. In brief, our concerns fall into these broad categories:

1. Existing Tentative Order No. R9-2007-0001-- Over the last several years, local governments in San Diego have worked together with your staff and a host of technical experts to develop a Hydromodification Management Plan with reasonable and scientifically based standards. Your Board recently approved that Plan in July 2010. This draft permit ignores all of the good work invested in that Plan, which was developed at a significant cost to the public. The existing Plan has only been in effect for 2 years, with 3 years remaining prior to its expiration. Given the short timeframe that the existing Plan has been in practice, we do not yet have adequate data to determine if the measures within the existing Plan are sufficient. Pursuing a new tentative order at this time has not been scientifically validated and is premature.
2. Legal Issues--The attempt by Board staff to mandate a proposed in lieu fee for watershed and hydrologic unit improvements to projects that have no impacts and therefore, no nexus to the watershed or unit improvements is a direct violation of CEQA, according to multiple city attorneys who spoke to the issue at the December 12, 2012 public hearing. On such a key issue as a CEQA violation, why didn't Board counsel catch this error in advance in the draft permit?

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EOMPOA

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Page 2 of 3
MS4S Letter

3. Clarity on Pre-Development vs. Pre-Project Conditions--We are at a loss to find a definition of the term pre-development conditions in the Tentative Order. For such a significant determination and impact, the lack of clarity on this matter is concerning. In the most current public workshop on December 12, 2012, when a Board member pressed staff on this issue, the staff member was unable to clearly define what the term meant, how far back was a reasonable gauge of pre-development conditions and finally, when pressed about the source of a soils database found on the internet that would be used as a key determinant of compliance, staff was unable to describe the accuracy or source documents for the website's database.
4. Hydromodification--We disagree with the proposed deletion of the current exemption in the hydromodification permit approved by the Board in July of 2010 for projects that discharge stormwater into lined or engineered channels. Speaker after speaker in the public comment period of the December 12th workshop representing co-permittees and other stakeholders, gave numerous examples of the conflict they had with Board staff on this issue. Further, the potential waste of public and private dollars and man-hours spent on already approved permits under the current hydromod scheme would be shocking. And this leads to our next point.
5. Fiscal Impact--Why is there no credible economic analysis on the potential cost to the co-permittees and the public for the implementation of the Tentative Order? For a regulator, or staff, to propose such broad and sweeping changes to public policy, without any consequence to the cost of their grand ideal, is irresponsible.
6. Coordination with neighboring regional boards and publication of previous similar experiences--According to public testimony at the December 12th workshop, the neighboring regional water boards in North Orange County and the Inland Empire have already dealt with several of the issues contemplated in the San Diego Board's Tentative Order. Specific examples include pre-development vs. pre-project conditions. Why hasn't the experience of the neighboring boards on these critical issues been shared with the public so our decision could benefit from their experience?

SANDAG estimates that the industrial development of the East Otay Mesa sub-region can produce up to 42,000 well-paying jobs for unemployed San Diegans by 2020. When the total cost of environmental compliance from local, state and federal agencies is placed upon the backs of landowners in East Otay and other parts of our region with other habitat and environmental mandates, the financial return on economic development will simply not pencil out. Proposed projects will not develop, jobs will not be created, economies will not grow and the dream of an emerging economy will die hard. The cost of doing business in California has already pushed many businesses and developers out of the state and disincentive developers further would be a catastrophic loss to California.

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Page 3 of 3
MS4S Letter

If implemented as written, this Tentative Order, and the actions of the Board, will further degrade San Diego's economy. We will have an economy based on sand and suntan oil, with a lower income workforce to match, instead of a healthy and diverse economic base with well-paying jobs for all San Diegans.

We urge the Board to delay implementation of the Proposed Order and revisit the untimely, unfunded mandate, poorly drafted terminology, the lack of key definitions, the apparent CEQA violations and unjust burden on industry and the economy. The Tentative Order is not ready for implementation and should not be considered until data from the existing 2010 Plan is fully understood. It would be a public travesty and irresponsible act by the Board to enact the Tentative Order in its current form at this premature stage.

Sincerely,



Judd Halenza, Vice President
EOMPOA

cc: Assemblymember Ben Hueso
Supervisor Greg Cox
Richard Crompton, County of San Diego
Stephanie Gaines, County of San Diego

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