



# County of San Diego

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DIRECTOR

## DEPARTMENT OF PUBLIC WORKS

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September 14, 2012

Ms. Laurie Walsh  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

SUBJECT: COUNTY OF SAN DIEGO COMMENT SUBMITTAL ON THE  
ADMINISTRATIVE DRAFT MUNICIPAL SEPARATE STORM SEWER (MS4) PERMIT  
(TENTATIVE ORDER NO. R9-2012-0011)

Dear Ms. Walsh,

Thank you for the opportunity to comment on *Tentative Order No. R9-2012-0011 -- National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Administrative Draft Permit)*.

The comments provided herein are offered by the County of San Diego in addition to those that the County has submitted separately on behalf of the 21 Copermittees subject to Order 2007-0001. While the Copermittee comments represent a general consensus developed since the release of the Administrative Draft Permit in April 2012, we believe that additional input is needed to reflect the unique perspective of the County as Regional Principal Permittee and as a large jurisdiction covering portions of eight watershed management areas.

Below we have identified several additional issues for Regional Board consideration. We believe in particular that the first three issues warrant additional discussion, and we are anxious to continue dialoguing with Regional Board staff, representatives of the Orange and Riverside permit regions, and other parties as appropriate. We would also like to emphasize that the comment letters submitted by both of these counties provide

suggested principles that we agree are both useful and appropriate as a basis for much of this discussion.

#### 1. Relationship of WQIP and JRMP Requirements.

The relationship of Water Quality Improvement Plan (WQIP) and Jurisdictional Runoff Management Plan (JRMP) requirements must be clarified. In spite of the extensive discussion that has already occurred on this issue, there appears to be a considerable variety of opinions on the specific content to be addressed in each plan, how these plans are related, and how each supports compliance with applicable permit performance standards. We suggest that the following questions be considered as a basis for continued discussion:

- What is the required content, relationship, and phasing of all submittals under the permit?
- Must a WQIP contain all jurisdictional commitments within a WMA or only those related to the highest priority water quality issues?
- Is the JRMP intended to be a procedural document generally describing Copermittee programs? Or should it contain specific watershed and/or jurisdictional commitments?
- Will implementation of a publicly vetted and Regional Board-approved WQIP constitute compliance with the permit?
- What specific content should be contained in WQIP Annual Reports? Are these reports sufficient to describe jurisdictional compliance as a whole?
- What are appropriate timeframes for reporting various data, information, and results?

#### 2. Adaptive Management Provisions.

Adaptive management provisions of the Administrative Draft Permit should be fleshed out to ensure that they support meaningful program improvement over time. In particular, the County believes that a clear distinction should be made between normal iterative management processes (i.e., ongoing adjustments to programs and plans in response to experience obtained during routine implementation) and adaptive management (a structured process of identifying and addressing specific knowledge gaps with an aim toward resolving them over time). We believe that the two processes are fundamentally different in their aims, and with respect to the planning and resource commitments needed to sustain them. The best permit will be one that recognizes these distinctions, and that ensures the proper application of both processes. We suggest that the following questions be considered as a basis for continued discussion:

- Where are iterative and adaptive management processes most needed?
- Where do Copermittees have the discretion to make modifications? Where are approvals needed?
- Are there specific permit provisions that can or cannot be modified?
- Are there standards, criteria, other conditions that must be met to allow modification?
- Where approvals are needed for modifications, what is the process for obtaining them? What is the role of public review in this process?

Adaptive management provisions in the Administrative Draft Permit are currently consolidated under Section II.B.5. The Copermittees have suggested the addition of clarifying text in the introduction to Section II.E, as well as other specific edits throughout Section II.B. The County supports these changes, but additionally proposes that a separate section be established in the permit to consolidate, clarify, and emphasize iterative and adaptive management provisions.

### 3. Offsite Mitigation Programs.

Section II.E.3 of the Administrative Draft Permit requires the imposition of onsite retention and HMP controls for Priority Development Projects (PDPs). During discussions, Copermittees and industry representatives have emphasized the impracticability of meeting the proposed retention standard for all PDP sites. As an alternative that would provide greater flexibility in achieving compliance onsite, the Copermittees have proposed that a second tier of LID treatment options be added to the permit. The County strongly supports this proposal. However, even assuming acceptance of this proposed modification it's likely that PDPs will in some instances be unable to meet all applicable standards onsite. Therefore, we view the development of a mitigation program as an eventual necessity. Given this, it's critical that any limitations or constraints on the development or application of such programs be fully vetted prior to permit adoption. In particular, the County remains concerned that the mitigation project timing requirements contained in the Administrative Draft Permit would make regional controls infeasible in some cases or impose unrealistic and unacceptable liabilities on Copermittees for their completion and performance. Likewise, the use of mitigation funds, either internal or private, must be further explored to better understand their potential role. The required use of mitigation programs is new to this permit, and it's pragmatic to approach their imposition with caution. Unless the potential difficulties associated with such an undertaking are met up front, it's possible that the County will have little incentive to actively pursue them.

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4. Attachment E, Total Maximum Daily Load for Total Nitrogen and Total Phosphorus in Rainbow Creek Watershed.

The Rainbow Creek TMDL for Total Nitrogen and Phosphorous assigns a Load Allocation (LA) to the County MS4. The Administrative Draft Permit incorporates this Load Allocation as Wasteload Allocation (WLA). We are aware of no legal basis for such a change, and therefore believe it was made in error. We request that the Regional Board strike the Rainbow Creek TMDL from Attachment E of the Administrative Draft Permit.

5. Provision E.2.A, Non-Storm Water Discharge of Irrigation Runoff.

Section B.2 of Order R9-2007-0001 requires that discharges from irrigation water, lawn watering, and landscape irrigation be prohibited only where they have been identified as a significant source of pollutants to waters of the U.S. Section E.2.a of the Administrative Draft Permit categorically defines each of these discharge types as illicit discharges. Since an accompanying Technical Report has not been provided with the Administrative Draft Permit, the County is unaware of any rationale for the removal of these exemptions. We request that this rationale be provided as part of the public record. If not, we respectfully request that irrigation water, lawn watering, and landscape irrigation be added to Section E.2.a.(3) of the Administrative Draft Permit. If sufficient rationale is provided for their removal, we alternatively request that they be added to Section E.2.a.(4) since their control through statute, ordinance, permit, contract, order, or similar means would seem to constitute an appropriate management response.

Again, thank you for the opportunity to participate in the development of a new for the San Diego Region. We look forward to continued discussion of the issues raised above. Please contact Jon Van Rhyn (858) 495-5133 if you have any questions.

Sincerely,



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Watershed Protection Program,  
Department of Public Works  
County of San Diego