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Wayne Chiu
San Diego Water Board
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Re: Tentative Order – Formal Adjudicatory Proceedings

Dear Mr. Chiu:

Our office is writing you on behalf of the County of Orange and the Orange County Flood Control District (“County”) regarding the Hearing Notice and Order of Proceedings (Hearing Notice) released on March 18, 2013 governing the proposed adoption of Tentative Order No. R9-2013-0001 (Tentative Order).

We are concerned that the co-permittees have not been provided basic due process in the Hearing Notice and have not had adequate opportunity to provide written comment. While an adoption hearing has been scheduled for April 10 and 11, a revised Tentative Order and a response to comments have not been released. The Hearing Notice encourages co-permittees to consolidate their presentations, but given the extremely short time frame between the time those documents might be released and the informal hearing, such coordination is impossible. Furthermore, we are concerned that the Hearing Notice improperly attempts to limit the oral presentations to the original prior written comments of the permittees, and that there may be material additions to a revised Tentative Order that are not a logical outgrowth of the originally circulated Order that could necessitate additional written comments.

For these reasons, the County is concerned that comments will be inadequately limited in the record due to the informality of the current proceeding. We also note that our detailed written comments submitted on January 11, 2013 demonstrated strong factual and legal opposition to numerous provisions in the Tentative Order. As such, our office requests that a formal adjudicatory proceeding be conducted in accordance with California Administrative Procedure Act (APA) (Govt. Code sections 11400 *et seq.*), Evidence Code sections 801-805, Govt. Code section 11513 and title 23 of the California Code of Regulations, sections 648 *et seq.*, and that the order of proceedings follow the model set forth in title 23 Cal. Code Reg. section 648.5. The County

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requests that a minimum of three to four hours be set aside for the County to call witnesses, introduce evidence, cross examine Water Board staff and designated parties and conduct open and closing arguments and other presentations. The County reserves the right to modify the request for time depending on the timing and substance of the revised Tentative Order and Response to Comments.

We believe this request is consistent with the August 2, 2006 Memo from Chief Counsel regarding the Summary of Regulations Governing Adjudicative Proceedings before the California Water Boards.

Very truly yours,

NICHOLAS S. CHRISOS
COUNTY COUNSEL

By



Ryan M.F. Baron

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