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

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

A handwritten signature in black ink, appearing to read "Tomas Morales".

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

**DATE:** April 3, 2013

**SUBJECT: Ruling on Objections, Requests for Alternative Procedures, and Requests for Designation as Additional Parties to the Proceeding**

The San Diego Water Board received numerous objections and/or requests for alternative procedures from many Copermitees as well as from Natural Resources Defense Council, San Diego Coastkeeper, Orange County Coastkeeper, Inland Empire Waterkeeper and Clean Water Now.<sup>1</sup> The objections and requests for alternative procedures are addressed below. In addition, the San Diego Water Board received two sets of requests from entities seeking party status in this proceeding. As explained below, the requests for party status are granted. Finally, the San Diego Water Board has prepared a revised Hearing Procedures and Order of Proceedings to reflect modifications to the procedures for the upcoming hearing based upon requests from the parties. The Revised Hearing Procedures and Order of Proceedings document is attached.

### OBJECTIONS TO HEARING PROCEDURES AND ORDER OF PROCEEDINGS AND REQUESTS FOR ALTERNATIVE PROCEDURES

The objections to the hearing procedures and requests for alternate process can generally be grouped into five categories.

#### 1. Requests to Postpone the April 10/11 Hearing/Requests for Additional Written Comment Period and Opportunity to Introduce New Issues and Evidence

The revisions to the Tentative Order do not rise to the level of significance that require a new notice and comment period and therefore do not warrant postponement of the hearing. The revisions were made in response to written and oral comments received by the Board and concern matters that the Parties and interested persons knew to be at issue. Both state and federal law require a notice and comment

<sup>1</sup> The San Diego Water Board received late objections from the Orange County Board of Supervisors (March 26, 2013) and a Coalition of trade and industry organizations including Building Industry Association of San Diego County and others (April 1, 2013). These late comments are not accepted into the record, however neither comment letter raises novel objections and this ruling addresses the issues raised therein.

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period prior to the adoption of an NPDES permit. California Water Code section 13167.5 prescribes a notice and public comment period of at least thirty days prior to the adoption of waste discharge requirements, including NPDES permits. The section explicitly states, however, that it does not require the regional board "to provide more than one notice or more than one public comment period prior to the adoption of waste discharge requirements . . . ." State law therefore does not require a new notice and comment period.

Federal regulations promulgated pursuant to the Clean Water Act also require a thirty day public comment period on draft NPDES permits. As stated in section 124.10(b) of title 40 of the Code of Federal Regulations (40 C.F.R.), "public notice of the preparation of a draft permit shall allow at least 30 days for public comment." Nowhere do the regulations suggest that revisions to a draft permit, however significant, require an additional public comment period. In fact, 40 C.F.R. section 124.14(b) grants discretion to the EPA Regional Administrator to either "reopen or extend the comment period," "prepare a new draft permit, appropriately modified," or both – "if any data, information, or arguments submitted during the public comment period . . . appear to raise substantial new questions concerning a permit." Although not directly controlling on the States' authority, section 124.14 illustrates that the decision to reopen the comment period is discretionary, even if the comments raise substantial new questions concerning the permit.

Though the comments may trigger permit drafters to modify the permit, as was the case here, a new comment period is permissible but not required. (See, e.g., *In re Dominion Energy Brayton Point, L.L.C.* (Feb. 1, 2006, NPDES Appeal 03-12, 2006 WL 3361084.) In the context of administrative rulemaking, revisions to a proposed rule only require a new comment period if the modifications are not the "logical outgrowth" of the rule as it was initially proposed. (*NRDC v. USEPA* (9<sup>th</sup> Cir. 2002) 279 F.3d 1180, 1186-1188.) Even a substantial variation does not necessitate a new comment period so long as the final regulation is "in character with the original proposal." (*Id.*, quoting *Hodge v. Dalton* (9<sup>th</sup> Cir. 1997) 107 F.3d 705, 712.) Analogously, in the context of a permit proceeding, a new comment period is only required if the revised permit is essentially a new draft permit because the revisions are not the "logical outgrowth of" or "in character with" the permit as initially proposed. Here, the revisions to the Tentative Order are the direct consequence of the written and oral comments received during the written comment period and the two board workshops held in November and December 2012. As reflected by the tracked changes, the revisions to the Tentative Order address particular comments and do not fundamentally alter the character of the Tentative Order.

The purpose of the notice and comment requirements is not to lead to the circular result that agency proceedings are subject to a new round of written comments with every substantive revision. This scenario would result in an endless loop of comments and revisions. Rather, the public has a one-time right to comment on the issues raised by the Tentative Order. One of the purposes of the comment period is to provide the agency with additional information upon which it may choose to revise the draft language. Where the character and issues raised by the tentative permit remain substantially the same, however, and as is true here, there is no additional right to comment on those revisions. (See *Rybachek v. USEPA* (9<sup>th</sup> Cir. 1990) 904 F.2d 1276, 1286.)

Some parties assert that the Board is obligated to extend the public comment period to the close of the public hearing in this matter, citing 40 C.F.R., section 124.12(c). Reliance on section 124.12, subsection (c) is misplaced as it is inapplicable to the San Diego Water Board. (See 40 C.F.R. § 123.25.) Nonetheless, the parties and interested persons will have an opportunity to comment on the revisions to the Tentative Order at the hearing. At that time, commenters will have an opportunity to orally address the Board with concerns or other comments regarding the revisions. The parties are on notice that the Board is not obligated to and will not allow the introduction of new issues that do not concern the revisions to the Tentative Order.

Because a new written comment period is unnecessary, the San Diego Water Board will not postpone the hearing scheduled for April 10 and 11. The San Diego Water Board provided more than 70 days to review and submit written comments on the Tentative Order. Federal regulations only require that the Board provide at least 30 days for public comment. Accordingly, Parties and interested persons were provided with more time than the federal law requires. The Board has made extraordinary efforts to make the Tentative Order development process open, transparent, and inclusive. The permit development process began almost two years ago. Since that time, the Board has provided countless opportunities for Copermittees and stakeholders to raise concerns, ask questions, and engage in dialogue with Board staff regarding permit provisions. There were numerous facilitated staff-level stakeholder workshops. As a result, the draft Tentative Order was revised to address many of the concerns raised by Parties during meetings. The Tentative Order that was released on October 31, 2012 reflected these changes. Recent revisions to the Tentative Order are based upon oral comments at two public board-level workshops in November and December 2012 and on extensive written public comment received in January 2013.

While not specifically raised in written objections, neither applicable regulations nor due process require the Board to provide more time for parties and interested persons to review and respond to responses to comments prepared by San Diego Water Board staff. Federal regulations at 40 C.F.R. section 124.17 address responding to comments. 40 C.F.R. section 124.17(a) specifies that the response to comments must be issued when a final permit is issued and the "response shall: (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and (2) Briefly describe and respond to all significant comments on the draft permit . . . raised during the public comment period, or during any hearing. Section 124.17(c) requires that the response to comments "shall be available to the public." Nowhere do the regulations require that the Board's response to comments be provided in advance with opportunity to review and comment. As required by applicable regulations, the San Diego Water Board has prepared and made available to the public a response to significant comments on the draft permit received during the written comment period. Staff will respond orally to significant comments raised during the hearing.

## **2. Objection to Informal Process and Requests for Additional Process Including Cross-Examination, Rebuttal Testimony and Introduction of Exhibits**

Many of the Copermittees object to the San Diego Water Board's proposed use of the streamlined or generally "informal" process the Board ordinarily uses for adjudicative proceedings at which it considers adoption of permits (as opposed to prosecutorial proceedings such as those imposing administrative civil liability). One group of Copermittees requests that the Board invoke the processes in Chapter 5 of the Administrative Procedures Act.<sup>2</sup> In general, the Copermittees request the procedures that are enumerated under section 11513 of the Government Code, which is incorporated by reference in the applicable State Water Board regulations governing adjudicative proceedings (commencing with section 648 of title 23 of the California Code of Regulations). The Parties object to procedures for this hearing that do not specifically allow for parties to make opening or closing statements, present witnesses, submit exhibits, conduct cross-examination and provide rebuttal testimony.

After considering the specific requests, the Board will allow parties to use their allocated presentation times to complete their main presentation, opening or closing statements, introduce exhibits, present witnesses, present rebuttal testimony, and conduct cross-examination of other Parties. Questions from

<sup>2</sup> Other than section 11513, Chapter 5 of the Administrative Procedures Act (Gov. Code section 11500 et seq.) is inapplicable to San Diego Water Board proceedings. See Cal. Code Regs., *tit.* 23, § 648(c).

the Board and the time to answer them will not be charged against the Parties' time. If groups of designated parties sharing time wish to conduct cross-examination, they shall appoint a single person to do cross examination so the Board does not have multiple individual attorneys lined up to ask one or a handful of questions each. Additionally, Parties are reminded that direct testimony by party witnesses, if any, should be in narrative form to expedite the hearing process. Since the written comment period already closed, parties are also reminded that they may use exhibits as long as they are graphic depictions of evidence already in the record and are not a vehicle for seeking to introduce new evidence.

### **3. Requests for More Time to Make Presentations and for Individual Copermittee Time Allocations**

Many of the Copermittees requested that they be allocated individual blocks of time in which to make their presentations asserting that coordination with other parties was not possible because, at the time objections and requests for alternate procedures were due, the revised Tentative Order and response to comments had not been released. In light of the extensive opportunities for participation in the development of this Tentative Order and the limited scope of revisions to the Tentative Order (responding directly to stakeholder comments), it is not necessary to allocate additional time to the Parties. Nonetheless, the Board has considered the requests and number of Parties to this proceeding and will increase the previous allocations of time to Parties and some interested persons. The Hearing Procedures and Order of Proceedings will be revised to reflect that Copermittees will have four hours instead of three in which to coordinate their presentations, the Coalition of trade and industry groups (see Ruling on Designated Party Requests, below) will have 1.5 hours in which to make its presentation and the Environmental Group consisting of NRDC, San Diego Coastkeeper, Orange County Coastkeeper and Inland Empire Waterkeeper will have one hour in which to complete its presentation. Clean Water Now, although not a designated party, will have its requested six minutes in which to make its presentation and may comment prior to the coordinated Environmental Group.

### **4. Objections to Order of Proceedings/Presentations and Request for Greater Accommodation for Elected Officials**

Several Parties requested that the United States Environmental Protection Agency speak in the order of presentations immediately after Board staff. This request is reasonable and will be granted. One Party requested that the Board follow the order of proceedings set forth in section 648.5 of title 23 of the California Code of Regulations. The Board retains discretion to conduct the hearing in the manner it determines is most suitable to this particular matter, given the number and complexity of issues, parties and available hearing time. The Board declines to follow the Order of Proceedings set forth in section 648.5. Finally, one Party requests more flexibility to accommodate the different schedules of elected officials so that they may be heard other than at the 9:15 a.m. time certain established for April 11. The Board encourages elected officials wishing to speak to appear during the time certain established by the Board. If some elected officials are not able to attend during the time certain, they may speak along with other interested persons beginning at 4 p.m. on April 10 or may request the Board's permission to speak at a different time. The Board will endeavor to accommodate special requests while minimizing disruption to the orderly conduct of the hearing.

### **5. The Hearing Procedures and Order of Proceedings, including refusal to Postpone the Hearing, Violate the Parties' Rights to Due Process**

The Hearing Procedures, particularly as modified today, are not unfair and do not violate the Administrative Procedures Act or due process. Government Code section 11425.10, subdivision (a)(1), requires that an administrative agency provide "the person to which the agency action is directed notice

and an opportunity to be heard, including the opportunity to present and rebut evidence.” The Law Revision Commission Comments to that subdivision further state: “Subdivision (a)(1), providing a person the opportunity to present and rebut evidence, is subject to reasonable control and limitation by the agency conducting the hearing, including the manner of presentation of evidence, whether oral, written, or electronic, limitation on lengthy or repetitious testimony or other evidence, and other controls or limitations appropriate to the character of the hearing.” Government Code section 11425.10, subdivision (a)(1), also does not equate any specific procedures with an “opportunity.” (*Drumme v. State Bd. Of Funeral Directors* (1939) 13 Cal.2d 75, 80-81.) Rather, in administrative adjudicative proceedings, hearing officers are conferred substantial discretion and explicit authority to waive any requirement relating to adjudicative proceedings, except where in conflict with statutory or constitutional guarantees. (Cal. Code Regs., tit. 23, section 648, subd. (d); Cal. Code Regs., tit. 23, section 648.5, subd. (a). [“Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view towards securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board.”] This regulatory flexibility to control a proceeding is completely consistent with the statutory right to “notice and opportunity to be heard.” Courts have likewise acknowledged the ability of agencies to streamline hearings, while preserving the right to notice and comment. As the U.S. Supreme Court has noted, what constitutes a fair hearing before an administrative body varies with the circumstances. (*Gilbert v. Homer* (1997) 520 U.S. 924, 930.) Courts should also give “substantial weight” to the good-faith judgments of the hearing officer. (*Zuckerman v. State Bd. Of Chiropractic Examiners* (2002) 29 Cal.4<sup>th</sup> 32, 46.) This is particularly true where the permit process, which grants a privilege, is only subject to minimal due process. (See, e.g., *Sucn. Suarez v. Gelabert* (D.P.R. 1982) 541 F.Supp. 1253, 1264 [citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 335]; see also Wat. Code § 13263, [“All discharges of waste into waters of the state are privileges, not rights.”].) Consistent with these standards, the Parties have had and will continue to have notice and opportunity to be heard at the hearing.

## **RULING ON REQUESTS FOR DESIGNATION AS PARTIES**

On April 2, 2013, the San Diego Water Board received two separate sets of requests for designation as parties to the proceeding. For the reasons explained below, the requests are granted.

### **Request by Environmental Groups**

The requests made by the Natural Resources Defense Council, the San Diego Coastkeeper, and Orange County Coastkeeper and Inland Empire Waterkeeper (collectively the Environmental Group) are granted. The Environmental Groups are each hereby designated as additional parties to this proceeding, pursuant to section 648.1(a) of title 23 of the California Code of Regulations. In their request, the Environmental Groups note that they have been deeply involved in the development of the Tentative Order and have been extremely active as public interest organizations in storm water efforts. They state that they represent numerous members who recreate in the waters affected by the discharges regulated by the Tentative Order and who are impacted by pollution in storm water runoff and its resulting health impacts. Like other designated parties, the Environmental Groups have an interest in, and will be affected by, the Board’s decision in this proceeding. The Environmental Groups also have demonstrated that their interests are not adequately represented by existing Parties to the proceeding. Accordingly, the Board finds that the Environmental Groups’ perspective and participation as a party will be beneficial to further develop the issues before the Board. In addition, because all parties and interested persons will be subject to reasonable time limits to make presentations, there is no impact on the efficient conduct of the hearing itself.

While the members of the Environmental Group are each designated as parties, the Board expects the Environmental Group to complete their presentations (including opening/closing statements, argument, presentation of any witnesses, cross examination, presentation of evidence and/or rebuttal testimony)

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within the requested allocation of one hour. Other than Clean Water Now (see below) non-governmental organizations and environmental entities with similar interests in the outcome of the proceeding but not included in the membership of the Environmental Groups may speak as interested persons.

Clean Water Now, represented by Roger Butow, has not formally requested designated party status but has requested that it have six minutes to speak. The request for six minutes just prior to the commencement of the Environmental Groups joint presentation is granted.

**Request by Coalition of Trade and Professional Associations (Building Industry Coalition)**

The second set of requests for designation as parties is from a group of trade and professional associations referring to itself as the Coalition. The Board will refer to this coalition as the Building Industry Coalition for purposes of participation in this proceeding. The Building Industry Coalition consists of (1) Building Industry Association of San Diego County (BIASD), (2) Building Industry Association of Southern California (BIASC), (3) Associated General Contractors, San Diego (AGC), (4) San Diego Regional Chamber of Commerce (SDRCC), (5) Building Owners and Managers Association (BOMA), (6) San Diego County Apartment Association (SDCAA), (7) San Diego Association of Realtors (SDAR), (8) Alliance for Habitat Conservation, (9) San Diego Chapter of the American Association of Landscape Architects, (10) Associated Builders and Contractors (ABC), (11) Business Leadership Alliance (BLA) and (12) National Association of Industrial and Office Properties. The Coalition is not a legal entity but instead is a group of trade and professional associations sharing similar interests in the outcome of this proceeding. Like the Environmental Groups, the Building Industry Coalition's membership has participated extensively in the development of this Tentative Order. The Coalition's request for designation as a party cites that its 20,000 members will be significantly and directly affected by the outcome of these proceedings. The Building Industry Coalition has also distinguished its interests in the proceedings from existing Parties and from the Environmental Groups identified above. Accordingly, the Board finds that the Building Coalition's perspective and participation as a party will be beneficial to further develop the issues before the board. In addition, because all parties and interested persons will be subject to reasonable time limits to make presentations, there is no impact on the efficient conduct of the hearing itself.

While the members of the Coalition are each designated as Parties, the Board expects the Coalition and its members to share allocated time for making presentations of one hour for its complete presentation (including opening/closing statements, argument, presentation of witnesses, cross-examination and presentation of evidence). Other entities with similar interests in the outcome of the proceeding but not included in the membership of the Coalition may speak as interested persons.

Attachment: Revised Hearing Procedures and Order of Proceedings, April 3, 2013

cc: Distribution via email: San Diego County Copermittees  
(see attached address list) Orange County Copermittees  
Riverside County Copermittees  
Resource Agencies  
Distribution list via email: San Diego County MS4 Permit Lyris List  
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Riverside County MS4 Permit Lyris List  
San Diego Water Board Agenda Lyris List

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

# REVISED<sup>1</sup> HEARING PROCEDURES AND ORDER OF PROCEEDINGS

**Public Hearing to Consider Adoption of Tentative Order No. R9-2013-0001,  
NPDES No. CAS01092662 and Waste Discharge Requirements for  
Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the  
Watersheds Within the San Diego Region**

**April 10 and 11, 2013  
Beginning at 9:00 a.m. Each Day  
California Regional Water Quality Control Board, San Diego Region  
Regional Water Board Room  
San Diego Water Board Office Building  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340**

By prior public notice dated March 5, 2013, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) announced its intent to conduct a public hearing on April 10 and 11, 2013, to receive testimony and comments and consider adoption of Tentative Order No. R9-2013-0001, NPDES No. CAS0109266, *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* (Tentative Order). After consideration of all requests, taking into account that oral comments are limited to revisions to the Tentative Order, that the revisions were made in response to oral and written comments, the complexity and number of issues under consideration, the extent to which parties have coordinated, the number of parties and members of the public participating, the opportunity to submit written comments that are part of the administrative record, the extent to which the parties have identified unique interests, the time available for the hearing, and to allow the Board ample time to ask questions and deliberate, the following Procedures and Order of Proceedings, including time allocated to each Party or group of Parties and members of the public, will be followed at the April 10 and 11, 2013, public hearing. ~~This Order of Proceedings sets forth additional details on the procedures and order of presentations the San Diego Water Board will follow at the public hearing.~~

<sup>1</sup> [The applicable Hearing Procedures and Order of Proceedings are revised to reflect procedural rulings made on April 3, 2013.](#)

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## SCOPE OF HEARING

The Tentative Order was released for public review and comment on October 31, 2012. The written comment period ended January 11, 2013. All timely written comments received are posted on the San Diego Water Board website, at [http://www.waterboards.ca.gov/rwqcb9/water\\_issues/programs/stormwater/index.shtml](http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/stormwater/index.shtml). No subsequently filed written comments have been accepted into the record at this time. Other than speaker cards and copies of electronic presentations or exhibits (see below) no new written materials will be accepted into the record at the April 10-11, 2013 hearing. As indicated in prior notices, the scope of oral testimony at the public hearing will be ~~strictly~~ limited to summarizing the previously submitted written comments, commenting on revisions to the Tentative Order- made since the written comment period closed, and making policy statements. ~~No new issues may be raised at the hearing.~~ As determined by the Board in Rulings issued April 3, 2013, within the above constraints, Parties to the proceeding will also be allowed to use their presentation time to present witnesses, introduce exhibits, conduct cross-examination and offer rebuttal testimony. Parties are reminded that testimony and exhibits may not include the introduction of new evidence.

## PARTICIPANTS IN THIS PROCEEDING

Participants in this proceeding are identified as either "Parties" or "interested persons." It is not necessary to be designated as a party in order to participate in the hearing for this proceeding. Both interested persons and Parties will have the opportunity to present oral comments, to make arguments about the appropriateness, wisdom or utility of all or portions of the Tentative Order, and to comment on revisions to the Tentative Order. Both interested persons and Parties may be asked to respond to clarifying questions from the San Diego Water Board, staff, or others, at the discretion of the San Diego Water Board. However, interested persons may not present evidence and are not subject to cross-examination. An interested person may request more time to speak than is typically allotted to interested persons and such requests may be granted at the Chair's discretion.

San Diego County, Riverside County and Orange County Copermittees are designated as parties in this proceeding under the applicable State Water Resources Control Board's regulations set forth in California Code of Regulations, title 23, article 2, section 648, et seq. (See Cal. Code Regs., tit. 23, § 648.1(a).) The San Diego Water Board has discretion to determine who, in addition to the Copermittees, should be designated as a party for purposes of this proceeding. In its Ruling issued April 3, 2013, the Board has determined that the following entities are appropriate additional Parties to this proceeding.<sup>2</sup>

<sup>2</sup> The San Diego Water Board staff is not a party to the proceeding. This is a proceeding to consider adoption of a permit, which does not involve investigative, prosecutorial or advocacy functions. Staff's proposals, recommendations and participation in this proceeding are for the purpose of advising and assisting the San Diego Water Board in considering the Tentative Order.

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Additional Parties:

1. Natural Resources Defense Council
2. San Diego Coastkeeper
3. Orange County Coastkeeper
4. Inland Empire Waterkeeper

(Additional Parties 1 through 4 are collectively referred to as the Environmental Group)

5. Building Industry Association of San Diego County (BIASD)
  6. Building Industry Association of Southern California
  7. Associated General Contractors, San Diego
  8. San Diego Regional Chamber of Commerce
  9. Building Owners and Managers Association
  10. San Diego County Apartment Association
  11. San Diego Association of Realtors
  12. Alliance for Habitat Conservation
  13. San Diego Chapter of the American Association of Landscape Architects
  14. Associated Builders and Contractors
  15. Business Leadership Alliance
  16. National Association of Industrial and Office Properties
- (Additional Parties 5 through 16 are collectively referred to as the Building Industry Coalition)

## HEARING PROCESS

During the public hearing, San Diego Water Board staff will present an overview of the Tentative Order, written responses to comments received and recommended revisions to the Tentative Order. For this proceeding, San Diego Water Board staff will begin, followed by representatives of the following Parties or interested persons: 1) U.S. Environmental Protection Agency~~the San Diego County, Orange County and Riverside County Copermittees~~; 2)~~U.S. Environmental Protection Agency~~ the San Diego County, Orange County and Riverside County Copermittees; 3) Clean Water Now 4) the Environmental Group consisting of Natural Resources Defense Council, San Diego Coastkeeper, Orange County Coastkeeper and Inland Empire Waterkeeper~~Non-governmental Organizations (NGOs)~~; and 5) a Coalition of Building Industry trade and professional associations (Building Industry Coalition)~~Building Industry Groups~~.<sup>3,4</sup> Participants within these groups are encouraged to consolidate their presentations to save hearing time and/or avoid duplication.

<sup>3</sup> The groups within the Building Industry Coalition are: (1) Building Industry Association of San Diego County (BIASD), (2) Building Industry Association of Southern California, (3) Associated General Contractors, San Diego, (4) San Diego Regional Chamber of Commerce, (5) Building Owners and Managers Association, (6) San Diego County Apartment Association, (7) San Diego Association of Realtors, (8) Alliance for Habitat Conservation, (9) San Diego Chapter of the American Association of Landscape Architects, (10) Associated Builders and Contractors, (11) Business Leadership Alliance and (12) National Association of Industrial and Office Properties.

~~<sup>4</sup> These participants have been identified based upon prior participation through written comments, stakeholder meetings and public workshops held in November and December 2012.~~



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For Parties, the allocated times below include time for any opening statement, main presentation, presentation of witnesses, introduction of exhibits, cross-examination, rebuttal and/or closing argument. Direct testimony should be presented in narrative format. To facilitate the orderly conduct of the hearing, to the extent Parties within a consolidated Group wish to cross-examine other Parties' witnesses, they should designate one representative to conduct the cross-examination.

After these presentations, the San Diego Water Board will hear from the public (interested persons) and elected officials, subject to times certain (see below). Interested persons with similar concerns or opinions are encouraged to choose one representative to speak, and are encouraged to coordinate their presentations with each other and to summarize their written comments. Interested persons may not cede their unused time to others, but the Chair will entertain requests for extra time from interested persons speaking on behalf of multiple interested persons.

Speakers will be interrupted not earlier than 4:00 p.m. on April 10 so that the San Diego Water Board can hear from interested persons other than representatives of the groups identified by name in this order of proceedings. At 9:15 a.m. on April 11, ~~or as soon thereafter as practicable,~~ elected officials will be invited to comment.<sup>5</sup> ~~elected officials will be invited to speak.~~  
Interested persons may present comments and arguments about the appropriateness, wisdom or utility of all or portions of the Tentative Order, and may comment on revisions to the Tentative Order. However, interested persons may not present evidence and are not subject to cross-examination.

### ORDER OF PROCEEDINGS

Chair's opening remarks, introductory items, administration of the oath to persons who intend to testify	<b>10 minutes</b>
San Diego Water Board Staff Presentation	<b>1.5 Hours</b>
<u>US Environmental Protection Agency</u> <del>San Diego County, Orange County and Riverside County</del> <del>Copermittees</del>	<u>30 Minutes</u> <del>3 Hours (Total)</del>
<del>US Environmental Protection Agency</del> <u>San Diego County, Orange County and Riverside County</u> <u>Copermittees</u>	<u>43 Hours</u> <del>0 Minutes (Total)</del>
<u>Clean Water Now</u>	<u>6 minutes (Total)</u>

<sup>5</sup> If elected officials wishing to speak are unable to attend at this time certain, they may speak with interested persons on April 10 beginning at 4 p.m. and will be provided 5 minutes each. They may ask the chair to accommodate their schedule if they are unable to speak at either of these times certain.

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<p>Environmental <del>Group</del> <u>NGOs (Natural Resources Defense Council, San Diego Coastkeeper, Orange County Coastkeeper, Inland Empire Waterkeeper</u> <del>—(The Escondido Creek Conservancy, Coastkeeper, San Diego Canyonlands, Natural Resources Defense Council, Los Penasquitos Lagoon Foundation, Laguna Bluebelt Coalition, Friends of Rose Canyon Creek, Clean Water Now, Coastal Environmental Rights Foundation, Environmental Health Coalition, San Elijo Lagoon Conservancy, South Laguna Civic Association)</del></p>	<p><b>1 Hour (Total)</b></p>
<p><u>Building Industry Coalition: (1) Building Industry Association of San Diego County (BIASD), (2) Building Industry Association of Southern California, (3) Associated General Contractors, San Diego, (4) San Diego Regional Chamber of Commerce, (5) Building Owners and Managers Association, (6) San Diego County Apartment Association, (7) San Diego Association of Realtors, (8) Alliance for Habitat Conservation, (9) San Diego Chapter of the American Association of Landscape Architects, (10) Associated Builders and Contractors, (11) Business Leadership Alliance and (12) National Association of Industrial and Office Properties</u> <del>Building Industry/Industry (Association of General Contractors, Otay Land Company, Otay Ranch New Homes, American Society of Landscape Architects, BIA Regulated Coalition, BIA of Southern California, Industrial Environmental Association, San Diego Gas &amp; Electric, San Diego Green Building Council, Southern California Gas Company)</del></p>	<p><b>1.5 Hours (Total)</b></p>
<p>Interested Persons (Time Certain at 4 p.m. on April 10, 2013)</p>	<p><b>3 Minutes Each</b></p>
<p>Elected Officials' comments (Time Certain at 9:15 a.m. on April 11, 2013)</p>	<p><b>5 Minutes Each</b></p>

San Diego Water Board Members and Counsel may ask questions of Parties or interested persons at any time. Time for questions and answers will not count against the above time limits.

~~This allocated time includes time for any opening statement, main presentation, rebuttal and/or closing argument. San Diego Water Board Members and Counsel may ask questions at any time. Time for questions and answers will not count against the above time limits.~~

**OBJECTIONS TO PROCEDURES**

Other than as provided in this document, the San Diego Water Board intends to conduct this public hearing in a generally informal manner. Participants requesting alternative procedures, with procedural requests outside of the scope of this notice, or requesting more time to speak, must submit their requests or objections in writing to the San Diego Water Board staff member identified below no later than 5:00 pm on March 22, 2013. The San Diego Water Board will

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endeavor to accommodate reasonable requests and to respond to procedural objections and requests prior to the hearing. Untimely objections will be deemed waived. [The San Diego Water Board retains the discretion to modify the procedures set forth herein for good cause.](#)

### **EXHIBITS, POWER POINT AND OTHER COMPUTER DISPLAYS**

Participants may introduce Exhibits or use PowerPoint and other computer displays during their presentation to convey information electronically on the San Diego Water Board's computer. These displays will only be accepted if they summarize the information contained in documents that were timely submitted ~~in compliance with deadlines cited above and in prior notices~~. They will not be accepted if they contain any new testimony or evidence. Please note that any person planning to use an electronic presentation at the hearing is required to provide a sufficient number of printed copies of the presentation for distribution to board members and staff and a reasonable number of copies to be available for the public to access during the hearing. An electronic copy of any exhibit or presentation used during the hearing must be left with the San Diego Water Board's Executive Assistant for inclusion in the record. Electronic presentations will be posted on the San Diego Water Board's website as soon as practicable.

### **DOCUMENT AVAILABILITY**

The Tentative Order, and attachments thereto, timely received comment letters on the Tentative Order, [the Revised Tentative Order, Response to Comments,](#) and other information and documents relied upon are posted on the San Diego Water Board website at: [http://www.waterboards.ca.gov/rwqcb9/water\\_issues/programs/stormwater/index.shtml](http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/stormwater/index.shtml). A revised Tentative Order reflecting revisions since the written comment deadline and a responses to comments document will be available shortly. Parties and interested persons will be notified by e-mail when those documents are posted on the Board's website.

These documents are also available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

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

Arrangements for file review and/or obtaining copies of documents in the Administrative Record may be made by contacting the San Diego Water Board at (858) 467-2952. Appointments are encouraged so the documents can be readily available upon arrival. All timely received comment letters on the Tentative Order and responses to comments and other subsequent relevant documents will be available online as they are generated.

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**Staff Contact for Further Information**

For questions or comments concerning this notice, please contact Wayne Chiu by phone at (858) 637-5558, or by email at [wchiu@waterboards.ca.gov](mailto:wchiu@waterboards.ca.gov).



April 3, 2013

cc:

Distribution via email:  
(see attached address list)

San Diego County Copermittees  
Orange County Copermittees  
Riverside County Copermittees  
Resource Agencies

Distribution list via email:

San Diego County MS4 Permit Lyris List  
Riverside County MS4 Permit Lyris List  
Orange County MS4 Permit Lyris List

San Diego Water Board Agenda Lyris List

Tech Staff Info & Use	
Order No.	R9-2013-0001
Party (GT/CIWQS) ID	536787
File No.	n/a
WDID	n/a
NPDES No.	CAS0109266
Reg. Measure ID	387335
Place ID	786088
Person ID	n/a
Inspection ID	n/a

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Tentative Order No. R9-2013-0001 - 10 -

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