



Lisa A. Bartlett
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May 15, 2009

Mr. John Robertus
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court Suite 100
San Diego, CA 92123-4353

Subject: NWU:658018:BNEILL comments on San Diego Regional Water Quality Control Board Tentative Order No. R9-2009-0002, dated March 13, 2009 and tentative updates to the March 13, 2009 public release draft of said Order, updates as of May 5, 2009, NPDES CAS108740

Dear John:

The City of Dana Point prides itself on proactively & innovatively improving water quality and contributing to the body of knowledge concerning water quality science. Please consider our comments towards improving the language in this fourth term MS4 Stormwater Permit.

Since Tentative Order R9-2009-0002 has been so extensively expanded, our comments are commensurately significant and numerous. However, in an effort to help staff review the many concerns of the co-permittees we have tried to avoid duplicating technical comments that are being separately submitted on behalf of the co-permittees by the County of Orange. Please understand that the City strongly supports the jointly developed comments that you will be receiving from the County of Orange, even though they are not duplicated herein.

We also appreciate the open dialogue that your staff, led by Jimmy Smith, have had with the co-permittees since the revised draft was released. We feel that, within the authority they have been allowed to exercise to date, we have made great strides in sharing information and improving the language of the permit.

Please note that we are uncertain of the status of where the Tentative Updates Document, dated May 5, 2009, falls within the public comment process. We view the Tentative Updates Document as improvements to the draft order reflected in the updates. We have attempted to include comments on both the public release draft of the tentative order, dated March 13, 2009 and the Tentative Updates Document dated May 5, 2009.

Similar to the County comments, we have provided two attachments to this comment letter; the first reflecting our legal concerns (Attachment A), and a second containing additional technical comments (Attachment B).

It is difficult to summarize or prioritize our concerns at this point in the process given the large number of significant issues. I am afraid that at this point we are quite far apart in reaching agreement on provisions of the Permit, notwithstanding the significant progress to date on many of the myriad issues. In addition to the numerous concerns we expressed this last year with the first draft, your staff introduced "Seven Major Changes" in March to the Tentative order that do

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not reflect similar language to our neighboring Region 8 Draft Permit, which has reached substantial agreement between the Santa Ana Board and their co-permittee stakeholders.

We still have fundamental differences with the current language on replacing MEP, FETDs, MALS, NELS, over irrigation, LID, TMDL's, etc. as you will see in both our detailed comments provided in Attachments A & B, as well as in the County of Orange's comment letter, submitted separately. We have also expressed these concerns in the meetings we have had with your staff and the public. Generally, we agree with the approach Region 8 has taken on many issues, and we do support consistency, when it makes sense. However, we have encountered some challenges in working with your staff as they have been unable, at their level, or unwilling to propose similar language.

Notwithstanding the above, we do wish to reiterate that the recent collaborative approach that we have seen with your staff has resulted in certain improvements & clarifications, in language, and we hope to continue this process to develop a Permit that is technically workable and economically feasible, to meet our mutual goals.

Please review the attached comments and recommendations and carefully consider our legal concerns and respond. Thank you.

Sincerely,


Lisa A. Bartlett
Mayor

Enclosures: Attachment A, Legal Comments
Attachment B, Technical Comments

Cc: Doug Chotkevys, City Manager (w/o enclosures)
Patrick Munoz, City Attorney (w/o enclosures)
Brad Fowler, Director of Public Works and Engineering Services (w/o enclosures)
Lisa Zawaski, Sr. Water Quality Engineer (w/o enclosures)