



## THE CITY OF SAN DIEGO

November 19, 2014

VIA EMAIL TO: [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov)

Laurie Walsh, Water Resource Control Engineer  
San Diego Regional Water Quality Control Board  
2375 Northside Drive, Suite 100  
San Diego, CA 92108

Subject: Comment Letter – Tentative Order No. R9-2015-0001, Place ID:658018LWalsh

Dear Ms. Walsh:

The City of San Diego (City) appreciates the opportunity to provide comments on the Amendment to the Regional Municipal Separate Storm Sewer System (MS4) Permit for the San Diego Region (Tentative Order No. R9-2015-0001, herein referred to as the “Draft Amendments”) to incorporate the County of Orange, several Incorporated Cities of South Orange County, and the Orange County Flood Control District as Copermittees. The City is committed to protecting and improving water quality in the San Diego Region. From this perspective, the City provides the following comments below. More detailed comments are included in Attachment 1.

- *The City supports the proposed changes to the Areas of Special Biological Significance and hydromodification management provisions.*
- *The Draft Amendments should include revisions to Provision A to establish a linkage between the implementation of Water Quality Improvement Plans (WQIPs) and compliance with the Receiving Water Limitations and Discharge Prohibitions.* The City is expending significant resources to develop and implement WQIPs that include timely implementation of strategies, control measures, and other actions to make progress towards attainment of water quality standards. Therefore, the City requests that the Draft Amendments include implementation of a WQIP as a valid mechanism for demonstrating

### Transportation & Storm Water Department

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compliance with Receiving Water Limitations and Discharge Prohibitions. The disconnect in the MS4 Permit between the WQIPs and compliance with Receiving Water Limitations raises several significant issues: (1) it undermines the stated intent of the Regional Board to encourage prioritization of pollutants; (2) it requires resource-intensive watershed planning efforts that have no benefit to the Copermittees' ability to comply with the Receiving Water Limitations and Discharge Prohibitions; and (3) it calls into question whether WQIPs are properly required under the MS4 Permit.

- *The Draft Amendments should include a definition of Prior Lawful Approval to clarify the Regional Board's intent in allowing some new development projects to comply with prior requirements.* The current language in the MS4 Permit is unclear. A definition of Prior Lawful Approval should: (1) Provide a clear, bright line; (2) Provide a backstop to ensure that projects with older approvals comply with new requirements unless those approvals confer vested rights; (3) Protect vested rights; and (4) preserve Copermittees' land use authority.
- *The Los Penasquitos Sediment TMDL requirements in the Draft Amendments should be modified to ensure consistency with the TMDL.* The City supported and led the third-party TMDL process, and the resulting TMDL was approved by the Regional Board with broad support from all stakeholders. The City is concerned, however, that the Draft Amendments are inconsistent with the TMDL and place a disproportionate burden on Phase I MS4 Copermittees. In the attached table, the City recommends revisions to reconcile incorrect incorporation of interim and final compliance targets, omission of several compliance pathways identified in the TMDL, and the assignment of the entire compliance obligation to Phase I MS4 Copermittees without acknowledging the requirements of other Responsible Parties named in the TMDL.
- *MS4 Permit Attachment E should be modified to allow individual jurisdictional compliance with the TMDLs.* The City is committed to protecting and improving water quality and achieving compliance with TMDLs via the implementation of Water Quality Improvement Plans. However, language throughout Attachment E appears to preclude any Copermittee from using the WQIP compliance pathway unless all other Copermittees also are in compliance. The City has no authority to compel other Copermittees to comply and cannot be held liable for the actions or inactions of other agencies. Under federal Clean Water Act regulations that have been incorporated into the MS4 Permit, a Copermittee is responsible only for conditions relating to the discharges for which it is an operator.

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Laurie Walsh, Water Resources Control Engineer  
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Thank you for your time and consideration of these comments. If you have questions, please contact Ruth Kolb at (858) 541-4328 or at [rkolb@sandiego.gov](mailto:rkolb@sandiego.gov).

Sincerely,

  
Drew Kleis  
Deputy Director

DK\rk

Attachments: 1. City of San Diego Comment Table Regarding September 18, 2014 Revisions to  
Order No. R9-2013-0001  
2: Resolution No. R9-2012-0033 and Attachment A

cc: Tony Heinrichs, Deputy Chief Operating Officer  
Kris McFadden, Transportation & Storm Water Department Director  
Heather Stroud, Deputy City Attorney  
Ruth Kolb, Program Manager, Transportation & Storm Water Department  
Sumer Hasenin, Senior Engineer, Transportation & Storm Water Department  
Mike Hansen, Director of Land Use and Environmental Policy, Office of the Mayor