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24 WATER CONSERVATION DISTRICT  
25 and CITIES OF MURRIETA, TEMECULA  
26 and WILDOMAR

27 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

28 In the Matter of the Petition of: ) No. \_\_\_\_\_  
29 )  
30 RIVERSIDE COUNTY FLOOD CONTROL ) **PETITION FOR REVIEW**  
31 AND WATER CONSERVATION DISTRICT, )  
32 *et al.*, FOR REVIEW OF ACTION BY THE ) [Water Code § 13320]  
33 CALIFORNIA REGIONAL WATER QUALITY )  
34 CONTROL BOARD, SAN DIEGO REGION, IN )  
35 ADOPTING ORDER NO. R9-2015-0100 AND )  
36 ORDER NO. r9-2013-0001, AS AMENDED )  
37 \_\_\_\_\_ )

38 This Petition for Review is submitted on behalf of the Riverside County Flood Control and  
39 Water Conservation District (“District”), the County of Riverside and the Cities of Murrieta, Temecula

1 and Wildomar (“Riverside Petitioners”), pursuant to California Water Code § 13320 and 23 California  
2 Code of Regulations § 2050, for review of Order No. R9-2015-0100, which was adopted by the  
3 California Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”) on  
4 November 18, 2015, as well as provisions of the underlying municipal separate storm sewer system  
5 (MS4) permit (“Permit”), NPDES Permit No. CAS0109266, originally adopted by the San Diego  
6 Water Board as Order No. R9-2013-0001 on May 8, 2013, amended by Order No. R9-2015-0001 on  
7 February 11, 2015 and amended by Order No. R9-2015-0100 on November 18, 2015. Order No. R9-  
8 2015-0100 added the Riverside Petitioners to the Permit. These permittees are located, at least in part,  
9 within the Santa Margarita River watershed. The Permit is a single regional permit covering all  
10 municipalities operating MS4 systems within the boundaries of the San Diego Water Board.

11 **I. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PETITIONERS**

12 Petitioners are the Riverside County Flood Control and Water Conservation District, the  
13 County of Riverside and the Cities of Murrieta, Temecula, and Wildomar. All written correspondence,  
14 including e-mails, and other communications regarding this matter should be addressed as follows:

15 To the District:

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3 Associate Civil Engineer  
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18 With a copy to Petitioners' counsel:

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2 (Counsel for District and Cities of Murrieta, Temecula and Wildomar)

3 **II. SPECIFIC ACTION OF THE SAN DIEGO WATER BOARD FOR WHICH REVIEW**  
4 **IS SOUGHT**

5 The Riverside Petitioners request the State Water Resources Control Board ("State Board") to  
6 review two issues related to the alternative compliance path contained in Provision II.B.3.c of the  
7 Permit. The Petitioners strongly support this provision, and believe that it is consonant with the  
8 directions of the State Board in Order WQ 2015-0075 upholding the Los Angeles County MS4 permit  
9 ("LA Order"). The State Board made clear in the LA Order that all regional water boards should be  
10 guided by seven principles in fashioning alternative compliance provisions in stormwater permit.

11 This Petition is brought in support of the efforts of the San Diego Water Board and its staff to  
12 develop an alternative compliance path. The Riverside Petitioners ask the State Board to enhance and  
13 reinforce that path by requiring interim compliance (thus allowing permittee staff to focus on the  
14 development of alternative compliance documents) as well as an adequate time for stakeholder  
15 participation during that process.

16 The Riverside Petitioners submit that the State Board intended that regional water boards  
17 include within the alternative compliance path that interim period when permittees are developing the  
18 plans, goals, schedules and strategies necessary for the alternative compliance path. These plans,  
19 goals, etc. are referred to as "Water Quality Implementation Plans" (WQIP) in the Permit. The San  
20 Diego Water Board denied the requests of the Riverside Petitioners, and other permittees, for such  
21 interim compliance status. This Petition requests the State Board either to incorporate interim  
22 compliance language into the Permit or order the San Diego Water Board to do so.

23 In a related request, the Petition also asks that the deadline for permittees to submit a final  
24 WQIP for consideration by the San Diego Water Board, along with one interim deadline, be extended.  
25 This request is not made because the Riverside Petitioners doubt they can meet these deadlines. The  
26 Riverside Petitioners ask for this additional time so that the various stakeholders, including non-

1 governmental environmental organizations, the development community, municipal entities and  
2 members of the public, can more fully and meaningfully participate in the extensive public process set  
3 forth in the Permit for the development of the WQIP. The Riverside Petitioners realize that to be  
4 successful, any WQIP must have general support among the stakeholders.

5 A copy of Order No. R9-2015-0100 is attached as Exhibit A. Petitioners have not submitted  
6 a copy of the Permit, but will do so if requested by the State Board.

7 This Petition supplements a petition filed by the District, the County of Riverside and the Cities  
8 of Murrieta, Temecula and Wildomar on June 7, 2013 (the "2013 Petition"). The 2013 Petition, which  
9 has been assigned number A-2554(j), was filed following the original adoption of the Permit (Order  
10 No. R9-2013-0001) in May 2013. The 2013 Petition raises several issues, some of which still are  
11 applicable to the Permit. The Riverside Petitioners have requested that petition A-2554(j) be placed  
12 into abeyance, a request that has been granted by the Office of Chief Counsel. To the extent that issues  
13 raised in the 2013 Petition may be taken up by the State Board in considering this or other petitions,  
14 the Riverside Petitioners respectfully request that corresponding issues raised in the 2013 Petition also  
15 be considered by the State Board. Of those issues, the Riverside Petitioners note in particular the  
16 objection to the San Diego Water Board's authority to issue a single regional permit covering multiple  
17 MS4 owners/operators in three different counties and in multiple watersheds.

### 18 **III. DATE OF SAN DIEGO WATER BOARD ACTION**

19 The San Diego Water Board adopted Order No. R9-2015-0100 on November 18, 2015.

### 20 **IV. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE OR** 21 **IMPROPER**

#### 22 **A. Failure to Include Provision Allowing Interim Compliance With Permit** 23 **Receiving Water Limits and Discharge Prohibition Provisions**

24 The State Board has held that each Phase I MS4 permit adopted by a regional water board  
25 should, among other things, "incorporate an ambitious, rigorous, and transparent alternative  
26 compliance path that allows permittees appropriate time to come into compliance with receiving water  
27 limitations without being in violation of the [limitations] during full implementation of the compliance  
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1 alternative.” (LA Order at p. 52.) In adopting Order R9-2015-0100, the San Diego water board  
2 stopped short of this requirement by failing to provide permittees with any protection from liability  
3 for receiving water limitations or discharge prohibition violations while they are involved in the multi-  
4 year process of preparing a WQIP to qualify them for the alternative compliance path.

5 At present, the MS4 owners and operators under the Permit, including the Riverside  
6 Petitioners, are subject to prohibitions on discharges from MS4s “in a manner causing, or threatening  
7 to cause, a condition of pollution, contamination, or nuisance in receiving waters of the state”  
8 (Provision II.A.1.a.), the requirement that MS4 discharges “are subject to all waste discharge  
9 prohibitions in the Basin Plan, included in Attachment A to this Order” (Provision II.A.1.c.) and the  
10 requirement that discharges from MS4s “must not cause or contribute to the violation of water quality  
11 standards in any receiving waters” (Provision II.A.2.a.).

12 As a result, permittees in three counties, including the Riverside Petitioners, are exposed to  
13 liability absent the grant of an alternative compliance pathway. The so-called “iterative process”  
14 discussed in the LA Order (pages 11-13) does not protect the permittees, including the Riverside  
15 Petitioners, from enforcement actions or third-party citizen suits brought under Section 505 of the  
16 Clean Water Act for discharges from their MS4s which cause or contribute to exceedances of water  
17 quality standards in violation of receiving water limitations and discharge prohibitions. (*See* LA Order  
18 at p. 12 (iterative process provides no “safe harbor” to MS4 dischargers.))

19 The Riverside Petitioners submit that the LA Order requires that all water boards, when they  
20 adopt an alternative compliance path, must include some means of interim compliance while  
21 watershed planning documents are being prepared. None of the other three MS4 permits that include  
22 alternative compliance paths, two adopted by the Los Angeles board and one by the San Francisco  
23 board, has the same “compliance gap” that exists in the Permit.

24 The Riverside Petitioners strongly support the paradigm shift toward alternative compliance  
25 paths endorsed in the LA Order and provided in Provision II.B.3.c. of the Permit. The alternative  
26 compliance path in the Permit is fundamentally that – it is a “path” that sets forth distinct and rigorous  
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1 steps designed and intended to achieve water quality goals. It is not the mere cycle of violations,  
2 reporting and repeated violations, the hallmark of the discredited iterative process.

3 In adopting Order No. R9-2015-0100, the San Diego Water Board and its staff did not  
4 articulate any legal or policy objections to interim compliance that, in light of governing law and the  
5 Permit's provisions, justify their refusal. None of the rationales offered by the San Diego Water Board  
6 and its staff concerning why the board chose not to afford interim compliance status rose to the  
7 "specific showing that application of a given principle is not appropriate for region-specific or permit-  
8 specific reasons." (LA Order at p. 51.)

9 The Riverside Petitioners believe that the State Board, in the LA Order, required that interim  
10 compliance be afforded. Even if the State Board decided that the LA Order did not explicitly direct  
11 the regional water boards to afford interim compliance, the Riverside Petitioners respectfully suggest  
12 that it is time for the Board to do so, adding such conditions as are appropriate in light of the LA Order.  
13 Further elaboration of the issues raised by the San Diego Water Board's failure to incorporate interim  
14 compliance into the Permit is set forth in the Statement of Points and Authorities ("Statement") filed  
15 herewith.

16 **B. Need for Additional Time For Meaningful Stakeholder Involvement in**  
17 **Development of Alternative Compliance Path WQIPs**

18 The Riverside Petitioners' commitment to the alternative compliance path process in  
19 development of the WQIP, including devising, priorities, strategies and best management practices  
20 ("BMPs") to attain water quality goals, includes a commitment to ensure that stakeholders are not only  
21 participants in the WQIP development process but are *meaningful* participants. Unfortunately, as  
22 currently drafted, the Permit includes time deadlines for WQIP development that make such  
23 meaningful and robust participation impossible and does not afford the permittees sufficient time to  
24 fully analyze and consider stakeholder/public input.

25 As stated in testimony before the San Diego Water Board, the District, as the principal  
26 permittee in the Santa Margarita watershed, was already aggressively planning for WQIP development  
27 *before* the Santa Margarita permittees were even subject to the Permit, including devising scope of  
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1 works for consultants, identifying members of the Water Quality Improvement Consultation Panel,  
2 developing implementation agreements, discussing with consultants projected tasks, budgeting costs  
3 and performing MS4 outfall field screening. Petitioners are prepared to work quickly to develop, draft  
4 and ultimately submit the WQIP. The issue is not the time it will take Petitioners to submit the WQIP  
5 – the issue is to what extent stakeholders can participate in that process.

6 The Permit provides that upon the commencement of coverage under the Permit, the permittees  
7 have only 24 months to submit a final WQIP for approval by the Executive Officer or the San Diego  
8 Water Board. Provision II.F.1.b.(1). Prior to that time, the permittees must, among other tasks:

- 9 ■ Develop a public schedule of the opportunities for public participation and comment during  
10 development of the WQIP;
- 11 ■ Form a Water Quality Improvement Consultation Panel;
- 12 ■ Develop priority water quality conditions and potential improvement strategies, with input  
13 from the public and the Consultation Panel;
- 14 ■ Submit the portion of the WQIP relating to Priority Water Quality Conditions to the San  
15 Diego Water Board for review and public comment between 6 and 12 months after Permit  
16 coverage commences;
- 17 ■ Consider revisions to the conditions and strategies based on public input;
- 18 ■ Solicit from the public recommendations on potential numeric goals for the highest priority  
19 water quality conditions and consult with the Consultation Panel (and consider revisions  
20 based on the Panel’s recommendations) regarding numeric goals and schedules and water  
21 quality improvement strategies;
- 22 ■ Submit the portion of the WQIP relating to water quality improvement goals and strategies  
23 to the San Diego Water Board for review and public comment between 9 and 18 months  
24 after Permit coverage; and
- 25 ■ Consider revisions to the goals, strategies and schedules identified in public comments.

26 Permit, Provision F.1.a.



1 In addition to these tasks, the permittees must also, in developing the analysis of whether the  
2 water quality improvement strategies will achieve the final numeric goals within the proposed  
3 schedules, allow the public to review and provide comments on the analysis methodology utilized and  
4 the assumptions included in the analysis. Public comments and responses must be “included as part  
5 of the analysis documentation included in the [WQIP].” Permit Provision II.B.3.c.(1)(b)(ii).

6 Thus, the aggressive schedule for WQIP development requires extensive consultation with the  
7 public and the Consultation Panel. As noted, the Riverside Petitioners welcome such consultation, but  
8 are concerned that the limited time frames set forth in the Permit to obtain, digest and incorporate the  
9 fruits of this consultation will be insufficient. Unfortunately, the San Diego Water Board did not  
10 provide the permittees with any additional time for such consultation, a result which may ultimately  
11 cause final WQIP approval to be delayed (and, if interim compliance status is not granted, lengthen  
12 the time during which the permittees are exposed to enforcement actions for alleged violations of  
13 receiving water limitations and discharge prohibitions).

14 The San Diego Water Board itself has been frustrated by the lack of the inclusion of publicly  
15 identified conditions and strategies in WQIPs it has reviewed from the San Diego County permittees.  
16 Moreover, the timeline for submittal of final watershed documents comparable to the WQIP, such as  
17 the Enhanced Watershed Management Program set forth in the Los Angeles County MS4 permit, is  
18 37 months, substantially longer than the 24 months provided in the Permit.

19 The Riverside Petitioners request the State Board to extend the final deadline to submit the  
20 Water Quality Improvement Goals and Strategies portion of the WQIP (Provision F.1.a.(3)(c)) from  
21 18 to 24 months and to extend the date of final submittal of the WQIP (Provision F.1.b.(1)) from 24  
22 to 40 months after commencement of coverage under the Permit. The Petitioners also support the  
23 State Board’s modification of the Los Angeles County MS4 permit to allow for extensions for good  
24 reason, subject to the potential limitation of “deemed compliant” status.

25 These expanded time periods will allow for the meaningful consultation contemplated by the  
26 Permit, yet still require the permittees to act aggressively to develop and finalize the WQIP for  
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1 acceptance, so that the important work of implementing the WQIP can begin. Further discussion of  
2 these issues is provided in the Statement filed herewith.

3 **V. HOW PETITIONERS ARE AGGRIEVED**

4 With the adoption of Order No. R9-2015-0100, the Riverside Petitioners are subject to the  
5 requirements of the Permit. Failure to comply with the Permit's terms exposes Petitioners to liability  
6 under the Clean Water Act and the Porter-Cologne Water Quality Control Act, and subjects them to  
7 potential lawsuits or administrative enforcement by the State Board or the San Diego Water Board and  
8 to potential lawsuits filed by third parties pursuant to Section 505 of the Clean Water Act. The State  
9 Board has interpreted the Permit's discharge prohibition and receiving water limitation provisions to  
10 provide for liability in the event that discharges from MS4s, including those owned or operated by the  
11 Riverside Petitioners, cause or contribute to some violation of those provisions. (LA Order at p. 12.)  
12 Because the Permit does not provide that the permittees are deemed compliant with discharge  
13 prohibition and receiving water limitations during the development of their WQIP, permittees  
14 currently are at risk to such liability.

15 Moreover, the Riverside Petitioners are aggrieved because the lack of sufficient time to involve  
16 stakeholders in the development and review of the alternative compliance pathway WQIP may result  
17 potential delay in WQIP implementation due to public opposition and increased costs, as well as the  
18 potential development of inferior WQIPs.

19 **VI. ACTION PETITIONERS REQUEST THE STATE BOARD TO TAKE**

20 The Riverside Petitioners respectfully request the State Board to take the following actions:

21 A. Either amend the Permit to include a provision allowing those Copermittees who wish  
22 to adopt a WQIP in accordance with the alternative compliance path set forth in Provision II.B.3.c to  
23 be deemed in compliance with those provisions pending final adoption of the WQIP or to remand the  
24 Permit to the San Diego Water Board with instructions to afford such interim compliance status; and

25 B. Either amend the Permit to extend the final deadline to submit the Water Quality  
26 Improvement Goals and Strategies portion of the WQIP (Provision F.1.a.(3)(c)) from 18 to 24 months  
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1 and to extend the date of final submittal of the WQIP (Provision F.1.b.(1)) from 24 to 40 months after  
2 commencement of coverage under the Permit, and consider allowing short extensions for good reason,  
3 as provided in the LA Order, or to remand the Permit to the San Diego Water Board to amend the  
4 Permit in accordance with such instructions.

5 **VII. STATEMENT OF POINTS AND AUTHORITIES**

6 A Statement of Points and Authorities has been submitted under separate cover addressing the  
7 issues in this Petition. Once we have obtained a full transcript of the hearings to adopt Order No. R9-  
8 2015-0100, the Riverside Petitioners reserve the right to supplement the Statement as appropriate.  
9 Petitioners also have submitted a Request for Official Notice and exhibits (“Request”) in support of  
10 the Statement.

11 **VIII. NOTICE TO SAN DIEGO WATER BOARD**

12 An electronic copy of this Petition, the Statement, the Request and exhibits has been sent this  
13 date to the Executive Officer of the San Diego Water Board.

14 **IX. ISSUES PREVIOUSLY RAISED**

15 The issues raised in this Petition were presented to the San Diego Water Board at or before  
16 the time the San Diego Water Board acted to adopt Order No. R9-2015-0100 on November 18,  
17 2015.

18 **X. CONCLUSION**


19 For the reasons set forth herein, and to be set forth in supplemental pleadings, as appropriate,  
20 and at any public hearing afforded the Riverside Petitioners, Petitioners request that the State Board  
21 address and correct, either on its own or through direction to the San Diego Water Board, the  
22 deficiencies identified in this Petition.

23 DATED: December 18, 2015

Respectfully submitted,

24 GREGORY P. PRIAMOS, County Counsel  
25 KARIN-WATTS BAZAN, Principal Deputy  
County Counsel  
26 AARON C. GETTIS, Deputy County Counsel  
27 COUNTY OF RIVERSIDE  
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By:   
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MURRIETA, TEMECULA, and WILDOMAR

# Exhibit A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

2375 Northside Drive, Suite 100, San Diego, CA 92108  
Phone (619) 516-1990 Fax (619) 516-1994  
<http://www.waterboards.ca.gov/sandiego>

**ORDER NO. R9-2015-0100**

**AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266,  
AS AMENDED BY ORDER NO. R9-2015-0001  
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**

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The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

*ENROLLMENT OF RIVERSIDE COUNTY COPERMITTEES*

- 1. Enrollment Process.** On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS019266, *National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Order No. R9-2013-0001, or Regional MS4 Permit). Provision F.5 of that Order (as amended by Order No. R9-2015-0001) outlines a process to designate (enroll) the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees under Order No. R9-2013-0001, responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Provision F.5 provides that prior to such enrollment, the San Diego Water Board must first review and consider a Report of Waste Discharge (ROWD) submitted by the Riverside County Copermittees under their current MS4 Permit, Order No. R9-2010-0016, to determine whether the Copermittees should be enrolled under Order No. R9-2013-0001, and what changes to Order No. R9-2013-0001 proposed in the ROWD are appropriate.
- 2. Report of Waste Discharge.** By letter dated May 8, 2015, the Riverside County Copermittees jointly submitted a ROWD in application for the reissuance of waste discharge requirements, pursuant to the requirements of section K.2.c of Order No. R9-2010-0016. The San Diego Water Board reviewed the ROWD and determined it is complete.

3. **Riverside County Copermittees Enrollment.** After consideration of the Riverside County Copermittees' ROWD and changes needed to Order No. R9-2013-0001, the San Diego Water Board determined that the County of Riverside, the Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District should be enrolled as Copermittees under Order No. R9-2013-0001 and be responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Enrolling the Riverside County Copermittees into Order No. R9-2013-0001 will provide regulatory consistency in the implementation of MS4 permit requirements throughout the San Diego Region, improve communication and coordination among Copermittees within watersheds crossing multiple jurisdictions, and maximize efficiency and economy of resources for the San Diego Water Board achieved through the redirection of staff permitting resources to better advance the storm water program. Enrollment of the Cities of Murrieta and Wildomar is subject to a California Water Code section 13228 agreement as set forth in the findings of this Order.

#### *DESIGNATION OF A REGIONAL WATER BOARD*

4. **Regional Water Board Designation.** The Cities of Menifee, Murrieta, and Wildomar are located partially within the jurisdictions of both the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) and the San Diego Water Board. California Water Code section 13228 provides a way to streamline the regulation of entities whose jurisdictions straddle the border of two or more Regional Water Boards.

As allowed by California Water Code section 13228, during the proceedings for Order No. R9-2010-0016, the Fourth Term Riverside County MS4 Permit, written requests for designation of a single Regional Water Board to regulate matters pertaining to Phase I MS4 discharges were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by letter dated July 20, 2010, the City of Wildomar by letter dated July 21, 2010, and the City of Menifee by letter dated July 22, 2010. The Cities of Murrieta and Wildomar requested designation of the San Diego Water Board, and the City of Menifee requested designation of the Santa Ana Water Board.

As authorized by California Water Code section 13228 and pursuant to written agreements dated September 28, 2010 between the San Diego Water Board and the Santa Ana Water Board, the San Diego Water Board is designated under Order No. R9-2010-0016 to regulate Phase I MS4s within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Water Board's geographic jurisdiction. The Santa Ana Water Board is designated under Order No. R8-2010-0033 to regulate the Phase I MS4s within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Water Board's geographic jurisdiction. Written requests to continue these Regional Water Board designations were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by

letter dated June 22, 2015, the City of Wildomar by letter dated June 23, 2015, and the City of Menifee by letter dated June 25, 2015.

5. **Factual Considerations.** The Santa Ana Water Board and San Diego Water Board establish generally consistent requirements for MS4 discharges to meet the technology-based standard of reducing pollutants in the discharge to the maximum extent practicable (MEP), a related iterative process to ensure MS4 discharges meet receiving water quality standards, and for non-storm water discharges to be effectively prohibited from entering the MS4. However due to the unique nature of watersheds and water quality issues in the San Diego Region and Santa Ana Region, MS4 permit requirements between the two Regional Water Boards may also vary to address region specific pollutant discharges and watershed conditions. The Cities of Menifee, Murrieta, and Wildomar report that management and implementation of municipal programs to comply with two different MS4 permits creates a significant administrative and financial burden that is not contributing to greater overall water quality improvements in either region.
6. **Regional Water Board Agreement.** The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated October 26, 2015 to:
  - a. Continue designation of the San Diego Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Region upon the effective date of Order R9-2015-0100, *and*
  - b. Continue designation of the San Ana Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Region, under Order No. R8-2010-0033 (NPDES No. CAS618030) as it may be amended or reissued upon the effective date of Order No. R9-2015-0100.
7. **Periodic Review of Regional Water Board Agreement.** The basis supporting the Cities of Menifee, Murrieta, and Wildomar requests to designate a specific Regional Water Board for regulatory oversight of MS4 discharges may change under future conditions and circumstances. Therefore the San Diego Water Board and Santa Ana Water Board will periodically review the effectiveness of the agreement during each MS4 permit reissuance. Based on this periodic review the San Diego Water Board may terminate the agreement with the Santa Ana Water Board or otherwise modify the agreement subject to the approval of the Santa Ana Water Board.

*AMENDMENTS TO ORDER NO. R9-2013-0001*

8. **Effect of this Order.** Order No. R9-2013-0001 is not being reopened for any other purpose than the amendments contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all of the previous findings and directives of Order No. R9-2013-0001 (as amended by Order No. R9-2015-0001) shall remain in full force and effect.



9. **Enroll Riverside County Copermittees.** This Order amends Order No. R9-2013-0001 to incorporate the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees responsible for compliance with the terms and the conditions of Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 and this Order.
10. **Alternative Compliance Pathway for Prohibitions and Limitations.** The San Diego County, Orange County, and Riverside County Copermittees have asserted that the prohibitions and limitations under Provision A of Order No. R9-2013-0001 may result in many years of noncompliance because years of technical efforts may ultimately be required to achieve compliance with the prohibitions and limitations, especially for wet weather discharges.

The San Diego Water Board considered the incorporation of an alternative pathway to compliance during the adoption proceedings for Order No. R9-2013-0001 in May 2013, but chose not to include it at that time. During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees and as reflected in Order No. R9-2015-0001, the San Diego Water Board committed to considering the incorporation of a well-defined, transparent, and finite alternative pathway to compliance in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermittees.

On June 16, 2015, the State Water Resources Control Board (State Water Board) adopted Order WQ 2015-0075, *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4*, which directs all Regional Water Boards to consider a watershed-based planning and implementation approach to compliance with receiving water limitations when issuing Phase I MS4 permits going forward. Consistent with the principles set forth in Order WQ 2015-0075, this Order amends Order No. R9-2013-0001 to incorporate an alternative compliance pathway that allows a Copermittee to utilize the watershed-based Water Quality Improvement Plan to be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b which are included in the prohibitions and limitations under Provision A of the Regional MS4 Permit.

This Order amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Antidegradation Policy, to provide an expanded analysis consistent with the principles set forth in State Water Board Order WQ 2015-0075, demonstrating why the incorporation of an alternative compliance pathway for prohibitions and limitations in Order No. R9-2013-0001 complies with federal and state antidegradation policies. This Order also amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Anti-Backsliding Requirements, with an expanded analysis consistent with State Water Board Order WQ 2015-0075 demonstrating that the anti-backsliding requirements of the Clean Water Act and the

federal regulations do not foreclose the incorporation of an alternative compliance pathway into Order No. R9-2013-0001.

- 11. Update to Non-Storm Water Discharges.** Since Order No. R9-2013-0001 was adopted, the State Water Board adopted Order 2014-0194-DWQ (*Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water System Discharges to Waters of the United States*) and the San Diego Water Board adopted Order No. R9-2015-0013 (*General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region*). These orders are NPDES permits regulating non-storm water discharges that may be discharged to the Copermitees' MS4s. This Order amends Order No. R9-2013-0001 to incorporate State Water Board Order 2014-0194-DWQ and San Diego Water Board Order No. R9-2015-0013 into the requirements for addressing non-storm water discharges.
- 12. Priority Development Project Definition Consistency.** The Fact Sheet of the Regional MS4 Permit as modified by Order No. R9-2015-0001, describes on Page F-98 the San Diego Water Board's intent that the Priority Development Project categories in Provision E.3.b.(1) be consistent with the categories in the Riverside County MS4 Permit (Order No. R9-2010-0016) and the Orange County MS4 Permit (Order No. R9-2009-0002). The San Diego Water Board's intention reflected in the Fact Sheet was not explicitly incorporated in some of the Priority Development Project categories described in Provision E.3.b.(1) and this Order amends the provision with clarifying language to better describe these categories consistent with the Fact Sheet. The Order also has been amended to include the requirements for updating the BMP Design Manual as a result of the corrections to the Priority Development Project categories in Provision E.3.b.(1).
- 13. Definition of Prior Lawful Approval.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermitees, the land development community asserted that the lack of a definition for the term "prior lawful approval" in the Regional MS4 Permit had created significant uncertainty for the San Diego County Copermitees, the land development community, and the general public about when the development planning requirements are applicable. The San Diego Water Board committed to considering the incorporation of additional guidance for prior lawful approval in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermitees. This Order amends Order No. R9-2013-0001 to incorporate additional clarification describing when the structural BMP performance requirements are applicable to Priority Development Projects.
- 14. Los Peñasquitos Lagoon Sediment TMDL.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermitees, the San Diego County Copermitees responsible for implementing the TMDLs for Sediment in Los Peñasquitos Lagoon requested several minor revisions to make the TMDL requirements consistent with the Basin Plan amendment adopted by the San Diego

Water Board. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Los Peñasquitos Lagoon Sediment TMDL to make the requirements consistent with the adopted Basin Plan amendment.

**15. Compliance Dates for TMDLs Beaches and Creeks Indicator Bacteria TMDLs.**

A review of the interim and final compliance dates for the Revised TMDLs for Indicator Bacteria, Project I – Beaches and Creeks (Beaches and Creeks Indicator Bacteria TMDLs) in the San Diego Region in Attachment E to the Order revealed an inconsistency with the adopted Basin Plan amendment. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Beaches and Creeks Indicator Bacteria TMDLs to make the requirements consistent with the adopted Basin Plan amendment.

**16. Removal of Application for Early Coverage Provisions.** Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 included several provisions that allowed the Riverside County Copermittees to apply for early coverage under the Regional MS4 Permit prior to the expiration of Order No. R9-2010-0016. These provisions are no longer necessary once the Riverside County Copermittees are covered by the requirements of the Regional MS4 Permit with the adoption of this Order. This Order amends Order No. R9-2013-0001 to remove provisions related to applying for early coverage under the Regional MS4 Permit.

*ADMINISTRATIVE FINDINGS*

**17. California Environmental Quality Act.** This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act [Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.] in accordance with California Water Code section 13389.

**18. Public Notice.** In accordance with State and federal laws and regulations, the San Diego Water Board has notified San Diego County, Orange County and Riverside County Copermittees, and all known interested agencies and persons of its intent to adopt this Order and has provided them with an opportunity to submit their written comments.

**19. Public Hearing.** The San Diego Water Board held a public hearing on November 18, 2015 and heard and considered all comments pertaining to the adoption of this Order.

**20. Notification.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the adoption date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED,**

1. This Order amends Order No. R9-2013-0001 and Fact Sheet as amended by Order No. R9-2015-0001 (Regional MS4 Permit and Fact Sheet). The revisions to the Regional MS4 Permit and Fact Sheet are shown Attachments 1 and 2 to this Order. Added text to the Regional MS4 Permit and Fact Sheet is displayed in blue-underline text and deleted text is displayed as red-strikeout text.
2. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall become effective on January 7, 2016.
3. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall supersede Order No. R9-2010-0016 for the Riverside County Copermittees except for enforcement purposes.
4. San Diego Water Board staff is directed to prepare and post a conformed copy of the Regional MS4 Permit and Fact Sheet, as amended by this Order, incorporating the revisions made by this Order.

*I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on November 18, 2015.*



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David W. Gibson  
Executive Officer

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25 and CITIES OF MURRIETA,  
26 TEMECULA and WILDOMAR

27 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

28 In the Matter of the Petition of: ) No. \_\_\_\_\_  
29 )  
30 RIVERSIDE COUNTY FLOOD CONTROL ) **STATEMENT OF POINTS**  
31 AND WATER CONSERVATION DISTRICT, ) **AND AUTHORITIES**  
32 *et al.*, FOR REVIEW OF ACTION BY THE )  
33 CALIFORNIA REGIONAL WATER QUALITY )  
34 CONTROL BOARD, SAN DIEGO REGION, IN )  
35 ADOPTING ORDER No. R9-2015-0100 AND )  
36 ORDER No. R9-2013-0001, AS AMENDED )  
37 )

38  
39 Petitioners Riverside County Flood Control and Water Conservation District, the County of  
40 Riverside and the Cities of Murrieta, Temecula and Wildomar (“Riverside Petitioners”) hereby submit  
41 this Statement of Points and Authorities in support of the Petitioners’ Petition for Review (“Petition”)  
42

1 submitted, pursuant to California Water Code § 13320 and 23 California Code of Regulations § 2050,  
2 for review of Order No. R9-2015-0100, NPDES Permit No. CAS0109266, adopted by the California  
3 Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”) on November  
4 18, 2015, as well as provisions of Order No. R9-2013-0001, as amended by Order No. R9-2015-0001  
5 and Order No. R9-2015-0100 (the “Permit”). The Riverside Petitioners became subject to the Permit  
6 by the San Diego Water Board’s adoption of Order No. R9-2015-0100.

7 Petitioners have not yet received a copy of the transcript covering testimony at the hearing at  
8 which Order No. R9-2015-0100 was considered by the San Diego Water Board and therefore reserve  
9 the right to supplement this Statement when they obtain such transcript.

10 **I. INTRODUCTION**

11 The Riverside Petitioners request the State Water Resources Control Board (“State Board” or  
12 “Board”) to review two issues related to the alternative compliance path contained in Provision II.B.3.c  
13 of the Permit, which was added by Order No. R9-2015-0100. The Petitioners strongly support this  
14 alternative compliance path, and believe that it is fully consonant with the direction of this Board in  
15 Order WQ 2015-0075 (“LA Order”), which upheld an alternative compliance provision in the Los  
16 Angeles County MS4 permit. The State Board made clear in the LA Order that all regional water  
17 boards should be guided by seven principles in fashioning alternative compliance provisions in  
18 stormwater permits.

19 The Riverside Petitioners believe that the processes set forth in an alternative compliance path  
20 represent the best way to make real progress in addressing the water quality impacts of MS4  
21 discharges. The complexity and variability of stormwater and urban runoff discharges, both in  
22 pollutant loadings and flows, demands a carefully thought out and stakeholder-reviewed set of goals,  
23 strategies and schedules. Watershed-based planning documents encompassing these goals, strategies  
24 and schedules are essential features of alternative compliance paths. In the Permit, such documents  
25 are referred to as “Water Quality Improvement Plans” (WQIP).

26 Given the steps that are required to develop and review the WQIP, which necessarily must be  
27 comprehensive enough to address the stringent requirements of the Permit, the San Diego Water  
28

1 Board's approval of the final WQIP is not immediate. The Permit requires submittal of a final WQIP  
2 qualifying for the alternative compliance path within 24 months, with no fixed deadline for San Diego  
3 Water Board approval. There are also significant intermediate WQIP requirements which must be  
4 fulfilled prior to that time.

5         Regrettably, in contrast with three other MS4 permits containing alternative compliance paths  
6 (adopted by the Los Angeles and San Francisco Bay water boards), the Permit does not deem those  
7 permittees which elect to follow the alternative compliance pathway in compliance with receiving  
8 water limitations and discharge prohibition provisions while they develop their WQIP (a period which  
9 we refer to hereafter as "interim compliance"). Despite the request of multiple permittees, including  
10 the Riverside Petitioners, for such a provision, the San Diego Water Board expressly declined to  
11 include any provision for interim compliance during the planning phase for the WQIP.

12         This is an issue which is of critical importance to the Riverside Petitioners, in that as the last  
13 of the three counties included within the Permit, they are the last to commence the WQIP development  
14 process and thus would face the longest potential exposure to liability pending acceptance of their  
15 WQIP.

16         The Riverside Petitioners submit that the State Board intended that regional water boards  
17 include interim compliance when it adopted the LA Order. Failure to do so renders the preferred  
18 alternative compliance pathway potentially unavailable due to the risk of courts ordering alternative  
19 relief in a Clean Water Act citizen's suit. Alternatively, if this Board determines that the LA Order  
20 did not resolve this issue, the Riverside Petitioners believe that it is time for the State Board to do so.  
21 Section III.A below addresses this issue.

22         The Petition raises another related issue, which also seeks to improve the alternative  
23 compliance path process. As noted, the Permit requires submittal of the final WQIP within 24 months  
24 after permit coverage. The Petition requests that this period, and one of the two interim submission  
25 deadline, be extended. Petitioners ask for this additional time so that various stakeholders, including  
26 non-governmental environmental organizations, the development community, water districts,  
27 municipal representatives and members of the public, can more fully and meaningfully participate in  
28

1 the extensive public process required for WQIP development. The Petitioners realize that to be  
2 successful, any WQIP must have general support among the stakeholders. Section III.B discusses why  
3 such relief is appropriate.<sup>1</sup>

4 The Riverside Petitioners agree with San Diego Water Board staff that there has been a  
5 “statewide paradigm shift with respect to stormwater management.” ((Revised) Responses to  
6 Comments received on Tentative Order No. R9-2015-0100, November 10, 2015 (“RTC”) at 39.) This  
7 paradigm shift is a move away from the former, discredited “iterative process” to one which addresses  
8 in a systematic way priority pollutants and priority watershed conditions. Petitioners have raised these  
9 issues to support of the efforts of the San Diego Water Board and its staff in furthering that paradigm  
10 shift. Petitioners ask the State Board to enhance and reinforce those efforts by affording interim  
11 compliance as well as an adequate time for stakeholder participation in WQIP development.

## 12 **II. STANDARD OF REVIEW**

13 The State Board, in reviewing a petition brought from an action by a San Diego Water Board,  
14 must exercise its independent judgment to determine whether the San Diego Water Board’s action was  
15 reasonable. *Stinnes-Western Chemical Corp.*, WQ Order No. 86-16. The State Board’s review is  
16 equivalent to that exercised by a reviewing court under Code Civ. Proc. § 1094.5, which provides that  
17 “[a]buse of discretion is established if the respondent has not proceeded in the manner required by  
18 law, the order or decision is not supported by the findings, or the findings are not supported by the  
19 evidence.” Code Civ. Proc. § 1094.5(b). Like any administrative decision, the permit must be  
20 accompanied by findings that allow the reviewing body to “bridge the analytic gap between the raw  
21 evidence and ultimate decision or order.” *Topanga Ass’n for a Scenic County v. County of Los Angeles*  
22 (1974) 11 Cal.3d 506, 515.

23  
24  
25 <sup>1</sup> The Riverside Petitioners also raised issues with other aspects of the Permit in a Petition for Review  
26 filed on June 7, 2013 (the “2013 Petition”). Petitioners have placed the 2013 Petition into abeyance.  
27 If this Board determines that it will address other issues also raised in that petition, the Riverside  
28 Petitioners request that such issues be activated in the 2013 Petition. In particular, the Riverside  
Petitioners note the objection to the San Diego Water Board’s authority to issue a single regional  
permit covering multiple MS4 owner/operators in three different counties and in multiple watersheds.



1 **III. ARGUMENT**

2 **A. The San Diego Water Board Should Have Afforded Permittees the Ability to Be Deemed**  
3 **Compliant With Prohibitory Permit Provisions While They Are Developing Their**  
4 **WQIPs**

5 The Permit adopted by the San Diego Water Board sets forth an alternative compliance path  
6 in Provision II.B.3.c. The Riverside Petitioners agree with the San Diego Water Board (*see* Permit  
7 Fact Sheet at F-61 to F-63) that this provision meets the seven principles elucidated by this Board in  
8 the LA Order, with one exception: the San Diego Water Board provided no opportunity for permittees,  
9 including Petitioners, to be deemed in compliance with prohibitory permit provisions while they are  
10 embarking on the complex process of developing their WQIP.

11 **1. Absent Interim Compliance, Permittees Are Subject to Enforcement and**  
12 **Potential Clean Water Act Citizen Suits Before Ultimate Approval of Their**  
13 **WQIP**

14 As this Board mandated in the LA Order, the Permit contains several requirements in  
15 Provision II.A., “Prohibitions and Limitations,” that reflect State Board Order WQ 99-05. These  
16 include prohibitions on discharges from MS4s “in a manner causing, or threatening to cause, a  
17 condition of pollution, contamination, or nuisance in receiving waters of the state” (Provision  
18 II.A.1.a.), the requirement that MS4 discharges “are subject to all waste discharge prohibitions in the  
19 Basin Plan, included in Attachment A to this Order” (Provision II.A.1.c.) and the requirement that  
20 discharges from MS4s “must not cause or contribute to the violation of water quality standards in any  
21 receiving waters” (Provision II.A.2.a.).<sup>2</sup>

22 Permit Provision II.B.3.c. provides that a permittee “that voluntarily completes the  
23 requirements of Provision B.3.c.(1) is deemed in compliance [with the applicable sections of Provision  
24 A.1 and A.2] for the pollutants and conditions for which numeric goals are developed when the  
25 [WQIP] “is accepted by the San Diego Water Board pursuant to Provision F.1.b. or F.2.c.”

26 <sup>2</sup> Additional requirements in Provision II.A. address discharges to Areas of Special Biological  
27 Significance and WQBELs set forth in Total Maximum Daily Loads, but these requirements are not  
28 relevant to the Riverside Petitioners and will not be further discussed.

1 The Permit is thus clear that “deemed compliant” status, which the Permit offers as the quid  
2 pro quo for permittees embarking on the alternative compliance path, does not commence until the  
3 WQIP is accepted. Provision II.F.1.b.(1) requires that the final WQIP, incorporating two rounds of  
4 interim submittals and several rounds of stakeholder review, be submitted within 24 months of permit  
5 coverage. This WQIP must be circulated for a 30-day public comment period, with comments required  
6 to be considered by the permittee, with a revised WQIP to be submitted within 60 days of the end of  
7 the comment period. Provision II.F.1.b.(3). If there is no controversy regarding the WQIP, it can be  
8 accepted by the board’s Executive Officer (Provision II.F.1.b.(4)); otherwise, approval of the WQIP  
9 must be addressed by the San Diego Water Board at a noticed public hearing. *Id.* The Permit contains  
10 no deadline for either the Executive Officer or the board to finally accept the WQIP.<sup>3</sup>

11 **2. Permittees Face Continued Jeopardy For Violation of Provision II.A. of the**  
12 **Permit While They Develop Their WQIPs**

13 In the LA Order, the State Board made clear that compliance with the prohibitions set forth in  
14 the precedential Order WQ 99-05 is absolute, despite adherence to the so-called “iterative process”:  
15 “When a discharger is shown to be causing or contributing to an exceedance of water quality standards,  
16 that discharger is in violation of the permit’s receiving water limitations and potentially subject to  
17 enforcement by the water boards or through a citizen suit, regardless of whether or not the discharger  
18 is actively engaged in the iterative process.” (LA Order at p. 12.)

19 While the Riverside Petitioners have made substantial progress in addressing pollutants  
20 discharged from their MS4s, it is undisputed that the permittees, including the Riverside Petitioners,  
21 have not been in compliance at all times with all applicable receiving water limitations requirements.  
22 *See* Report of Waste Discharge (ROWD) for the Santa Margarita River watershed, May 10, 2015, at  
23 Section 3.0. The San Diego Water Board’s Executive Officer, David Gibson, testified at the first  
24

25 <sup>3</sup> As discussed in Section III.B, the Riverside Petitioners believe that, based on the size of the Santa  
26 Margarita watershed and past experience with similar planning tasks, this time frame is too short to  
27 allow for truly meaningful and robust stakeholder involvement in WQIP development, including  
28 review of proposals, investigation and discussion, which is a key and overriding consideration in the  
Permit.

1 hearing held to adopt the Permit that “[t]he receiving water quality objectives are already being  
2 exceeded.” Transcript of May 8, 2013 adoption hearing, at 75, lines 22-24.

3 Mr. Gibson’s testimony was no doubt based on his and his staff’s review of monitoring  
4 information submitted by the permittees and from the ROWDs, as well as the fact that multiple  
5 waterbodies within the Permit area are listed as impaired under Section 303(d) of the Clean Water Act  
6 (CWA), 33 U.S.C. § 1313(d). See Permit Fact Sheet at F-27. The reality that discharges from MS4  
7 systems across the state do not meet water quality standards was also recognized by the State Board  
8 in the LA Order, where it was stated that “[a]s the storm water management programs of municipalities  
9 have matured, an increasing body of monitoring data indicates that many water quality standards are  
10 in fact not being met by many MS4s.” (LA Order at p. 14.)

11 These facts, and the state of the governing law,<sup>4</sup> lead to the inescapable conclusion that the  
12 permittees, including the Riverside Petitioners, are in jeopardy for enforcement of the Permit’s II.A.  
13 provisions. Petitioners acknowledge that such enforcement is unlikely to come from the San Diego  
14 Water Board, which is working with the permittees to implement their WQIPs. Nothing in the Permit,  
15 however, prevents a citizen suit being brought under Section 505 of the CWA, 33 U.S.C. § 1365. Such  
16 a lawsuit not only brings with it the threat of civil penalties of up to \$37,500 per day but also the risk  
17 that a federal judge might impose injunctive relief under Section 505(a) of the Act, 33 U.S.C. §  
18 1365(a).

19 While the threat of civil penalties (and the expenses of federal court litigation, including  
20 liability for plaintiffs’ attorneys fees, see 33 U.S.C. § 1365(d)) are of concern to the Riverside  
21 Petitioners, the greater concern is that a federal court could, in the exercise of her or his injunctive  
22 powers, order a remedy that would conflict with, or even contradict, the programs being developed by  
23 the permittees in their WQIP. In that case, the substantial funds and time expended by not only the  
24

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25 <sup>4</sup> As expressed in *Natural Resources Defense Council v. County of Los Angeles*, 673 F.3d 880 (9<sup>th</sup> Cir.  
26 2011), rev’d on other grounds sub nom. *Los Angeles County Flood Control Dist. v. Natural Resources*  
27 *Defense Council*, 133 S.Ct. 710 (2013), mod. *Natural Resources Defense Council v. County of Los*  
28 *Angeles*, 725 F.3d 1194 (9<sup>th</sup> Cir. 2013), cert. den. *Los Angeles County Flood Control Dist. v. Natural*  
*Resources Defense Council* 134 S.Ct. 2135 (2014).

1 permittees, but also stakeholders, the Water Quality Improvement Consultation Panels (“Consultation  
2 Panels”) charged with providing significant input into WQIP development and San Diego Water Board  
3 staff would be wasted.

4 The regulatory chaos resulting from such litigation would do nothing to further progress toward  
5 achieving water quality standards. This was recognized by a San Diego Water Board member who,  
6 expressing concern with the litigation risk during the hearing to adopt Order R9-2015-0100, asked  
7 what could be done. In response, Water Board staff indicated that the Permit could be reopened for  
8 reconsideration. While this is always an option, it does not afford the permittees the same protection  
9 already provided in other MS4 permits nor would it preempt an existing citizen’s suit under the Clean  
10 Water Act.

11 **3. Other Regional Water Boards Have Afforded Interim Compliance Status During**  
12 **the Planning Phase**

13 Two other water boards, those in Los Angeles and San Francisco Bay, have adopted three MS4  
14 permits with alternative compliance path provisions. In all cases, permittees were afforded interim  
15 compliance during the preparation of watershed planning documents.

16 The State Board is familiar with the first of these permits, the 2012 Los Angeles County MS4  
17 permit, as it was the subject of the Board’s precedential LA Order. The Los Angeles Water Board  
18 specifically included interim compliance in the 2012 permit. In the LA Order, this Board expressly  
19 approved this provision. (LA Order at p. 49.) In fact, this Board ordered a revision to the strict  
20 deadlines in the original permit for interim compliance (violation of which would shift permittees back  
21 to the “iterative process”), finding that permittees who were working in good faith to develop a  
22 watershed planning document should be able to seek extensions of those deadlines. The Board’s action  
23 reflected fundamental support of the alternative compliance path, and a desire to avoid having the  
24 watershed management plans rejected due to a failure to meet some deadline.

25 The Los Angeles Water Board has since also adopted a MS4 permit for the City of Long Beach  
26 (Order No. R4-2014-0024) which, like the Los Angeles County permit, includes provisions whereby  
27 the city is deemed compliant with receiving water limitations while it develops watershed planning  
28

1 documents. *See* excerpts of Order No. R4-2014-0024, Exhibit A to Request for Official Notice  
2 (“Request”) filed concurrently herewith.

3 The San Francisco Bay Water Board approved a renewed MS4 permit on November 19, 2015,  
4 Order No. R2-2015-0049. A copy of relevant portions of that permit is attached as Exhibit B to the  
5 Request. Section C.1 of that permit provides that permittees are deemed in compliance with the  
6 receiving water limitations provisions for several pollutants so long as they are implementing the  
7 control strategies for those pollutants set forth in Sections C.2 through C. 15. Like the Los Angeles  
8 County and Long Beach permits, the San Francisco Bay permit contains no “compliance gap” while  
9 the permittees are developing and implementing those control strategies. The Permit adopted by San  
10 Diego Water Board is thus the only MS4 permit in the state featuring alternative compliance which  
11 has no program for interim compliance during the planning phase.

12 **4. The Objections to Interim Compliance Raised by the San Diego Water**  
13 **Board Do Not Justify the San Diego Water Board’s Refusal To Afford Interim**  
14 **Compliance**

15 The RTC issued by the San Diego Water Board raised three principal responses to comments  
16 calling for interim compliance. With respect, none justifies the Water Board’s stance on interim  
17 compliance.

18 The Water Board first argued that providing interim compliance “would remove the motivation  
19 or incentive for Copermittees to develop a credible, rigorous, ambitious, and transparent plan.” RTC  
20 at 30. The Water Board contended that before it can determine that such a plan exists, the Water Board  
21 “must first have an opportunity to review the proposed plan.”

22 This argument ignores the fact that the Permit, through a rigorous development schedule  
23 established in Provision F.1, itself sets aggressive time schedules not only for the submission of the  
24 final WQIP but also for submission of two key WQIP elements to the San Diego Water Board prior  
25 to submission of the final plan. The permittees are thus under an aggressive schedule to develop a  
26 WQIP, or face losing the opportunity to participate in the alternative compliance path. Providing  
27 interim compliance would in no way remove the motivation or incentive, since the failure to obtain  
28 ultimate Executive Officer or Water Board acceptance of the WQIP would nullify alternative

1 compliance and the substantial work done by the permittees. Additionally, as to the argument that the  
2 San Diego Water Board must first review the final plan before affording compliance, neither the Los  
3 Angeles nor San Francisco Bay water boards believed this to be essential nor, importantly, did this  
4 Board in approving the Los Angeles County permit.

5         The Water Board next argued that nothing in the LA Order “encourages or mandates alternative  
6 compliance pathways to include compliance during development of the Water Quality Implementation  
7 Plan” and that there was nothing within the [LA Order] that “explicitly requires the inclusion of an  
8 alternative compliance pathway in Phase I MS4 Permit . . . .” The RTC concluded that “the San Diego  
9 Water Board has chosen to incorporate an alternative compliance pathway, but without compliance  
10 during the development of the [WQIP].” *Id.* at 30-31.

11         In response, the Riverside Petitioners note that the LA Order makes clear, in the seven  
12 principles outlined on pages 51-52, that each water board must incorporate within Phase I permits “an  
13 ambitious, rigorous, and transparent alternative compliance path that allows permittees appropriate  
14 time to come into compliance with receiving water limitations without being in violation of the  
15 receiving water limitations during full implementation of the compliance alternative.” (LA Order at  
16 p. 52 (principle 3).) At the hearing before the San Diego Water Board, staff stated that the decision  
17 not to include interim compliance was a conscious decision that the San Diego Water Board would  
18 “lead” and not follow the examples of other water boards. This comment has also been made by a  
19 Board member at a previous hearing on the Permit. Such bare conclusions fail to articulate a “specific  
20 showing that application of a given principle is not appropriate for region-specific or permit-specific  
21 reasons.” (LA Order at p. 51.)

22         In any event, the Riverside Petitioners submit that the issue of interim compliance is a legal  
23 concept, and not a technical feature that might depend on “region-specific or permit-specific reasons.”  
24 While there may be hydrologic or geographic reasons to depart from the seven principles in the LA  
25 Order (for example, if the watershed cannot support multi-benefit solutions due to limited groundwater  
26 infiltration options), this does not apply to a legal concept like interim compliance.

1 The RTC last references four comment letters of U.S. EPA Region 9 staff as supporting the  
2 San Diego Water Board's<sup>5</sup> approach to alternative compliance, including the failure to provide for  
3 interim compliance. RTC at 31. In response, we note that these Region 9 letters nowhere cite any  
4 legal or regulatory support for the position that interim compliance should not be afforded. The letters  
5 expressed Region 9 staff's preference that there be no interim compliance, but that is simply a  
6 preference, one which does not bind the San Diego Water Board or this Board.<sup>6</sup> In fact, both the Los  
7 Angeles Water Board, in adopting the Long Beach MS4 permit, and this Board, in adopting the LA  
8 Order, chose to disregard the Region 9 comment letters on the issue of interim compliance.

9 The Los Angeles Water Board squarely addressed Region 9's objection to interim compliance  
10 in the Response to Comments on the Long Beach MS4 permit, excerpts of which are attached as  
11 Exhibit C to the Request. That response captured both the complexity of the alternative compliance  
12 pathway (there, expressed as watershed management programs (WMPs) and enhanced watershed  
13 management programs (EWMPs)) and the need for interim compliance status:

14 In order for Long Beach to be able to commit necessary resources [for WMPs/EWMPs], it  
15 must have the certainty of clear permit compliance mechanisms during both the planning and  
16 implementation phases of the WMPs/EWMPs. The Regional Board does not believe that  
reserving the compliance mechanism until the WMPs/EWMPs are approved will provide this  
certainty.

17 Response to Comments, page 17.

18 The expression of Region 9 staff's preference does not bind the San Diego Water Board. This  
19 Board's precedential orders, such as the LA Order, do.

#### 20 **5. The LA Order Supports the Grant of Interim Compliance Status**

21 This Board, in adopting the LA Order, expressed support for inclusion in Phase I MS4 permits  
22 of provisions allowing permittees to be deemed in compliance with receiving water limitations

23 \_\_\_\_\_  
24 <sup>5</sup> Only three of the four letters cited actually mention the San Diego Water Board's approach, since  
the earliest letter, from 2012, was written prior to the adoption of Order No. R9-2013-0001.

25 <sup>6</sup> Notably, the Region 9 comment letters on the Long Beach and Orange County MS4 permits still  
26 expressed the agency's preference for the discredited "iterative process" language. See Region 9  
27 comment letter on draft Long Beach MS4 permit, January 15, 2014, at 2; letter on draft Orange County  
Ms4 permit, June 20, 2014, at 5. These letters demonstrate that, at least as of their writing, Region 9  
staff's support for alternative compliance pathways was lukewarm at best.

1 provisions while they were devising and completing watershed planning documents. This is evident  
2 by the Board's approval of the Los Angeles permit's provision affording such status, and also from  
3 principal 3 in the LA Order's Conclusion (Section II.B.7), which states that water boards were to  
4 include an alternative compliance pathway "during full implementation of the compliance alternative."  
5 (LA Order at p. 52.) "Full implementation" by definition includes those steps required to identify,  
6 develop, circulate for comment and submit the watershed planning documents necessary for the  
7 alternative compliance pathway to come into being.

8 As previously discussed, we do not believe that this Board would allow water boards to provide  
9 only partial protection from strict receiving water limitations liability to permittees that were working,  
10 diligently, under strict time schedules, to develop planning documents. The importance of such  
11 protection was recognized by the Los Angeles Water Board in its response to Region 9's comments  
12 on the Long Beach MS4 permit, cited above. Because citizen suit litigation necessarily would interfere  
13 with that process, the lack of interim compliance reflects a failure by the San Diego Water Board to  
14 take seriously this Board's injunction. And, as previously noted, the San Diego Water Board has not  
15 articulated an adequate rationale to distinguish its failure to afford interim compliance, especially  
16 when other water boards reviewing the same issue have concluded that it is required. Because the San  
17 Diego Water Board has not included interim compliance, their action represents a failure to comply  
18 with the requirements of law or is arbitrary and capricious and thus not in compliance with law.

19 **6. The State Board Should Act To Provide Interim Compliance to the San Diego**  
20 **Water Board Permittees**

21 Even were the State Board to conclude that the LA Order did not specifically address whether  
22 water boards should afford interim compliance for permittees who choose to proceed on the alternative  
23 compliance path while they develop watershed planning documents, this Board should take that  
24 opportunity in taking up the Riverside Petitioners' Petition. As previously set forth, such status  
25 encourages permittees to choose alternative compliance, a step which this Board already has held will  
26 lead to results superior to the existing, discredited "iterative process."  
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1 The Riverside Petitioners are not asking this Board to adopt, or to require the San Diego Water  
2 Board to adopt, a simple statement that permittees are eligible for interim compliance as long as they  
3 are working to complete their WQIPs. In the LA Order, this Board held that the “safe harbor” in the  
4 planning phase is appropriate only if it is “clearly constrained in a manner that sustains incentives to  
5 move on to approval and implementation and is structured with clear enforceable provisions.” (LA  
6 Order at p. 49.)

7 At the hearing to adopt Order No. R9-2015-0100, the Riverside Petitioners suggested one  
8 alternative, which would be to set dates certain for the completion of certain requirements in the  
9 development of the WQIPs. For example, these dates could cover the date of notice to the San Diego  
10 Water Board of the permittee’s intent to follow the alternative compliance pathway; the date of  
11 initiation of the public data solicitation process and completion of the review of the watershed  
12 management area’s priority water quality conditions with the Consultation Panel. Other conditions  
13 could be added, along with a provision similar to that added by the State Board to the Los Angeles  
14 County permit in the LA Order (Section II.B.6), allowing extensions under certain conditions. .

15 Finally, the Riverside Petitioners pledge to work with the State Board and/or the San Diego  
16 Water Board staff on mutually acceptable conditions that will rigorously structure any interim  
17 compliance period to produce accountability, and address any concern that granting interim  
18 compliance status would remove the incentive for the permittees to move promptly to achieve final  
19 WQIP acceptance and commence implementation of their WQIPs.

20 **B. While the Schedule For Development and Submittal of the WQIPs Should Be**  
21 **Aggressive, More Time is Required to Make Stakeholder Involvement a Meaningful**  
22 **and Robust Feature of the WQIP Development Process**

23 While the Riverside Petitioners concur with both the State Board and the San Diego Water  
24 Board that watershed planning documents required for implementation of the alternative compliance  
25 pathway must be developed on the shortest possible timeframe, commensurate with the requirements  
26 for rigor, ambition and transparency set forth in the LA Order, the WQIP development process must  
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1 also be accountable to not only the San Diego Water Board and its staff but also to the stakeholders  
2 within the watershed.

3 The Permit's WQIP process is notable for its emphasis on public review and comment,  
4 including through the formal participation in the WQIP development process represented by the  
5 Consultation Panels, which are to be composed of representatives of San Diego Water Board staff,  
6 environmental organizations, the development community and other interested persons. The  
7 Consultation Panels are charged with reviewing every aspect of WQIP development. Additionally,  
8 submittals of both interim and final WQIP elements are subject to public comment periods.

9 Unfortunately, the Riverside Petitioners submit that the time frame allocated in the Permit for  
10 WQIP development and submittal necessarily shortchanges not only the public review process but the  
11 quality of the WQIP itself. It is for that reason that the Riverside Petitioners propose that some  
12 additional time should be added to the WQIP development time schedule set forth in Provision II.F.1.  
13 The Petitioners are not seeking more time to commence the WQIP process (a process which they  
14 already have embarked upon), but believe that having additional time between the second interim  
15 submittal of WQIP provisions and the final submission will allow for more productive use of the  
16 Consultation Panel's expertise, as well as more time to review and if appropriate, incorporate public  
17 comments and to further educate the public regarding the benefits of the WQIP approach.

#### 18 **1. The Permit's WQIP Development Timeline**

19 Permit Provision II.F.1 contains the time schedule for submission of elements of draft WQIPs,  
20 as well as the final WQIP for acceptance by the Executive Officer or the San Diego Water Board. This  
21 schedule requires:

- 22 ■ Within the first 6-12 months after coverage under the Permit, the permittees must "implement  
23 a public participation process to solicit data, information, and recommendations to be utilized  
24 in the development of the [WQIP]," as required by Provision II.F.1.a.(1), including the  
25 following.

- 26 ○ Develop a "publicly available and noticed schedule of the opportunities for the public  
27 to participate and provide comments during the development of the [WQIP];

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- Form a Consultation Panel, including at minimum representatives from the San Diego Water Board, the environmental community and the development community, to “provide recommendations during the development of the [WQIP]”; and
  - Coordinate the schedules for public participation among Watershed Management Areas to provide the public time and opportunity to participate during the development of the [WQIPs].
- Also within the first 6-12 months after Permit coverage, the permittees must, pursuant to Permit Provision II.F.1.a.(2):
- Solicit data, information and recommendations from the public to be utilized in the development and identification of the “priority water quality conditions and potential water quality improvement strategies” for the watershed management area;
  - Review those conditions with the Consultation Panel, receive recommendations and/or concurrence and consider revisions to the priority conditions based on Consultation Panel recommendations;
  - Include all potential water quality improvement strategies identified by the public and the Consultation Panel with the submittal of priority water quality conditions to the San Diego Water Board;
  - Submit those elements of the WQIP required by Provision II.B.2 (relating to priority water quality conditions and potential water quality improvement strategies) to the San Diego Water Board, which will release the document for a minimum of 30 days of public review and comment; and
  - Consider revisions to the priority water quality conditions and potential strategies based on public comments received by the close of the comment period.
- Within the first 9-18 months after coverage under the Permit, the permittees must, pursuant to Permit Provision II.F.1.a.(3):

- 1           ○ Solicit from the public recommendations on potential numeric goals “for the highest  
2           priority water quality conditions identified for the Watershed Management Area” and  
3           on recommendations that should be implemented to achieve the numeric goals;  
4           ○ Consult with the Consultation Panel and consider revisions based on the Panel’s  
5           recommendations on  
6                 ▪ The numeric goals and schedules proposed to be included in the WQIP;  
7                 ▪ The water quality improvement strategies and schedules proposed to be  
8                 implemented in the Watershed Management Area and included in the WQIP;  
9                 and  
10                ▪ The results of any Watershed Management Area Analysis conducted pursuant  
11                to Permit Provision II.B.3.b.(4) and proposed to be incorporated into the WQIP.  
12           ○ Submit a draft of the WQIP include those elements required by Provision II.B.3.  
13           (relating to proposed water quality improvement goals, strategies and schedules) to the  
14           San Diego Water Board, which will circulate the document for public review and  
15           comment for a minimum of 30 days; and  
16           ○ Consider revisions to the water quality improvement goals, strategies and schedules  
17           development pursuant to Provision II.B.3 based on public comments received by the  
18           close of the comment period.  
19           ■ Within 24 months after commencement of coverage under the Permit, the permittees must  
20           submit to the San Diego Water Board a complete WQIP (Provision II.F.1.b.(1)). This  
21           document also will be released for a minimum of 30 days of public review and comment, and  
22           the permittees must consider revisions to the WQIP based on timely written comments, and  
23           resubmit to the water board, within 60 days after the close of the comment period, any revisions  
24           to the WQIP (Provision II.F.1.b.(2)-(3)).

25           In addition to these tasks, the permittees must also, in developing the analysis of whether the  
26           water quality improvement strategies will achieve the final numeric goals within the proposed  
27           schedules, allow the public to review and provide comments on the analysis methodology utilized and  
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1 on the assumptions included in the analysis. Public comments and responses must be “included as  
2 part of the analysis documentation included in the [WQIP].” Permit Provision II.B.3.c.(1)(b)(ii).

3 **2. The Permit Emphasizes Public Participation In WQIP Development**

4 As demonstrated by the previous section, the approach followed by the San Diego Water Board  
5 for WQIP development emphasizes the constant and recurring solicitation and consideration of public  
6 comments, including those made by the Consultation Panel, and the potential revision of the WQIP  
7 and its required elements to incorporate those comments. Thus, the public review element of the  
8 alternative compliance pathway set forth in the Permit is more aggressive than, for example,  
9 corresponding provisions in the Los Angeles County MS4 permit.

10 The Riverside Petitioners support this approach, which is fully consonant with the State  
11 Board’s requirement in the LA Order that the alternative compliance pathway be “transparent.”  
12 Without substantial public input into the very complex requirements of Provision II.B.3.c., there is a  
13 significant risk of ultimate public opposition and potential delays in the implementation of the  
14 programs called for in the WQIP. This risk is heightened by the very short period of time that is  
15 available under the Permit for the effective solicitation and consideration of public and Consultation  
16 Panel comments, and the possibility of meaningful dialogue on such comments.

17 **3. The San Diego Water Board Has Itself Complained Regarding the Lack of**  
18 **Consideration of Public Input in Submitted WQIPs**

19 The need for inclusion of public comment on elements of the WQIPs has been identified by  
20 the San Diego Water Board itself. In an August 5, 2015 letter from Water Board staff to San Diego  
21 County Principal Watershed Copermittees (Exhibit D to the Request), a repeated comment was that in  
22 certain plans, there was a lack of evidence of public input on water quality conditions and strategies.  
23 For example, regarding noncompliant priority water quality conditions, the letter noted that:

24 In a few Plans, there was also a notable absence of pollutants or conditions of concern  
25 identified by the public at workshops or Water Quality Improvement Plan Consultation Panel  
26 meetings, and in written comments from stakeholders and the public.

27 August 5, 2015 letter, page 3.  
28

1 A similar concern was raised concerning the identification of potential water quality  
2 improvement strategies:

3 a) In at least one Plan, the San Diego Water Board was not able to locate the list of potential  
4 water quality improvement strategies developed during the public participation process in the  
Plan.

5 b) In at least one Plan, the San Diego Water Board could not find all the potential water quality  
6 improvement strategies suggested or recommended in public comments.

7 August 5 letter at 6. The letter concluded: "Plans that did not consider all the potential water quality  
8 improvement strategies submitted in public comments are also not in compliance with the  
9 requirements of Provision B.2.e." *Id.*

10 The August 5 letter highlights the importance that San Diego Water Board staff places on  
11 public input into the WQIP process, and reinforces the need for additional time to ensure that such  
12 public input is not only solicited but investigated and actively considered during the development of  
13 the plan. On the present schedule, careful consideration of public input will simply not be possible.

14 **4. Development Time Frames for the WQIP Are Less Than For Similar  
Watershed Planning Documents**

15 The Riverside Petitioners acknowledge that the watershed planning documents required by  
16 other water boards are not identical to those required under the Permit. There are, however, substantial  
17 similarities between the WQIP and the EWMPs required under the 2012 Los Angeles County MS4  
18 permit. Provision B.3.b. of the Permit requires the permittees to develop both structural and non-  
19 structural solutions that will address the highest priority pollutant/waterbody combination. This will  
20 essentially require development of a watershed master plan, which, if properly devised, will require  
21 extensive collaboration with watershed stakeholders (including water districts if, as we testified to the  
22 San Diego Water Board, significant stormwater infiltration projects must be accomplished). Multi-  
23 benefit projects (the need for which this Board emphasized in principle 6 in the LA Order (L.A. Order  
24 at p. 52), requires significant additional stakeholder involvement.

25 In this way, the process is similar to the EWMP process, which also calls for the significant  
26 infiltration of stormwater and its beneficial reuse. In the Los Angeles County permit, permittees are  
27 given 37 months to submit a final EWMP. The Riverside Petitioners submit that a comparable time  
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1 frame is appropriate for WQIP submittal, especially given the size of the Santa Margarita watershed  
2 and the more robust public input requirements of the Permit. The Riverside Petitioners respectfully  
3 submit that the San Diego Water Board's refusal to include such a time period is not "reasonable"  
4 within the meaning of *Stinnes-Western Chemical Corp.*, WQ Order No. 86-16.

5 **5. Proposal for Short Extensions of Time for WQIP Submittals**

6 In light of the previously expressed concerns, the Riverside Petitioners have, in their Petition,  
7 requested extensions for two deadlines. The Petitioners request an extension of the final deadline to  
8 submit the Water Quality Improvement Goals and Strategies portion of the WQIP (Provision  
9 F.1.a.(3)(c)) from 18 to 24 months and to extend the date of final submittal of the WQIP (Provision  
10 F.1.b.(1)) from 24 to 40 months after commencement of coverage under the Permit.

11 As noted in Section III.A. above, the Riverside Petitioners support a provision similar to how  
12 this Board modified the Los Angeles County MS4 permit to allow for extensions subject to conditions.  
13 The Riverside Petitioners believe that these changes are still consistent with the Permit's emphasis  
14 that the permittees move to implementation of the WQIP as quickly as possible, and this Board's  
15 admonition that the "planning phase" should "be only so long as necessary for a well-planned program  
16 with carefully analyzed controls to be developed." (LA Order at p. 49.)

17 The Riverside Petitioners believe that the short extensions requested in the Petition will result  
18 in a planning phase, necessary for the "well-planned program with carefully analyzed controls." This  
19 issue is not financial – an inadequate period for public review and comment cannot be fixed through  
20 additional funding. As was reflected in our testimony to the San Diego Water Board, the issue is not  
21 simply "throwing money" at the problem but of meeting with stakeholders, hearing their comments  
22 and incorporating those comments in the planning documents. The key is achieving stakeholder  
23 understanding of, and buy-in for, the WQIP process.

24 The Riverside Petitioners have not stood by, waiting until the Permit was made applicable to  
25 them, before starting the WQIP development process. Prior to adoption of Order No. R9-2015-0100,  
26 the Petitioners already have started to develop the WQIP in line with the Permit's requirements,  
27 including preparing a scope of work for a prospective consultant, surveying MS4 outfalls to determine  
28

1 which may reflect persistent discharges, identifying potential members of the Consultation Panel,  
2 developing implementation agreements, discussing with consultants projected tasks and budgeting  
3 costs. The Riverside Petitioners submit that these proactive steps demonstrate the Petitioners'  
4 commitment to aggressively pursue development of the WQIP.

5 For all of these reasons, the Riverside Petitioners respectfully request this Board to modify the  
6 time schedule set forth in Permit Provision II.F.1.a and b. so as to extend the date for final submittal  
7 of or to remand the Permit to the San Diego Water Board to make such changes.

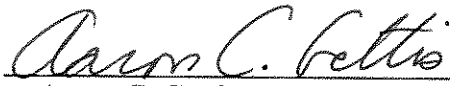
8 **V. CONCLUSION**

9 For all the foregoing reasons, the relief set forth in the Petition should be granted.

10 DATED: December 18, 2015

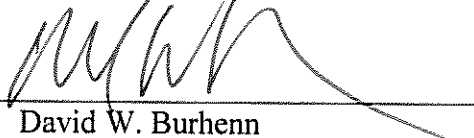
Respectfully submitted,

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27 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

28 In the Matter of the Petition of: ) No. \_\_\_\_\_  
29 )  
30 RIVERSIDE COUNTY FLOOD CONTROL ) **REQUEST FOR OFFICIAL**  
31 AND WATER CONSERVATION DISTRICT, ) **NOTICE**  
32 et al., FOR REVIEW OF ACTION BY THE )  
33 CALIFORNIA REGIONAL WATER QUALITY )  
34 CONTROL BOARD, SAN DIEGO REGION, IN )  
35 ADOPTING ORDER NO. R9-2015-0100, AND )  
36 ORDER NO. R9-2013-0001, AS AMENDED )  
37 \_\_\_\_\_ )

38  
39 Petitioners Riverside County Flood Control and Water Conservation District, County of  
40 Riverside and the Cities of Murrieta, Temecula and Wildomar (“Riverside Petitioners”) hereby submit  
41 this Request for Official Notice in support of the Petitioners’ Petition for Review (“Petition”)  
42

1 submitted pursuant to California Water Code § 13320 and 23 California Code of Regulations § 2050  
2 for review of Order No. R9-2015-0100, adopted by the California Regional Water Quality Control  
3 Board, San Diego Region (“San Diego Water Board”) on November 18, 2015, as well as provisions  
4 of Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100  
5 (the “Permit”).

6 Petitioners request the State Water Resources Control Board (“State Board”) to take official  
7 notice of the following documents, pursuant to 23 Cal. Code Reg. § 648.2 and Evidence Code §  
8 452(c). Evidence Code § 452(c) allows the State Board to take notice of “[o]fficial acts of the  
9 legislative, executive, and judicial departments of the United States and of any state of the United  
10 States.” “Official acts” under Evidence Code § 452(c) include “records, reports and orders of  
11 administrative agencies.” *Rodin v. Spiegel* (2001) 87 Cal.App.4<sup>th</sup> 513, 518.

12 Pursuant to 23 Cal. Code Reg. § 648.2, the Riverside Petitioners herewith respectfully request  
13 that the State Board take notice of the following documents:

14 1. Relevant portions of a municipal separate storm sewer system (“MS4”) permit adopted  
15 by the California Regional Water Quality Control Board, Los Angeles Region (“Los Angeles Water  
16 Board”), on February 6, 2014 for the City of Long Beach. This document demonstrates that the Los  
17 Angeles Water Board, in providing an alternative compliance path, has included a provision deeming  
18 the permittee to be in compliance with receiving water limitations requirements while it is preparing  
19 watershed planning documents. By contrast, as set forth in the Petition, the San Diego Water Board  
20 has refused to provide permittees with interim compliance status while they are preparing their  
21 watershed planning documents, thus exposing permittees to potential liability for discharges that  
22 violate receiving prohibitory provisions in the Permit until their Water Quality Improvement Plan  
23 (“WQIP”) is approved, some years into the Permit’s term.

24 The excerpt of the Long Beach MS4 permit further demonstrates that other water boards are  
25 taking a position contrary to that of the San Diego Water Board.

26 A true and correct copy of this document, which was obtained from the Los Angeles Water  
27 Board’s website, is attached hereto as Exhibit A.

1           2.       Relevant portions of a MS4 permit adopted by the California Regional Water Quality  
2 Control Board, San Francisco Bay Region (“San Francisco Bay Water Board”), on November 19,  
3 2015. This document demonstrates that the San Francisco Bay Water Board has provided an  
4 alternative compliance path, providing permittees with protection from violation of various receiving  
5 water limitations concerning several pollutants while they are implementing provisions in the permit  
6 to address such pollutants. The San Francisco Bay MS4 permit provides such protection without any  
7 gap period from adoption of the permit. By contrast, as set forth in the Petition, the San Diego Water  
8 Board has expressly refused to provide permittees with interim compliance status while they are  
9 preparing their watershed planning documents, thus exposing permittees to potential liability for  
10 discharges that violate prohibitory provisions in the Permit until their WQIP is approved, some years  
11 into the Permit’s term.

12           The excerpt of the San Francisco Bay MS4 permit further demonstrates that other water boards  
13 are taking a position contrary to that of the San Diego Water Board.

14           A true and correct copy of this document, which was obtained from the San Francisco Bay  
15 Water Board’s website, is attached as Exhibit B.

16           3.       Relevant portions of the Los Angeles Water Board’s responses to comments on the  
17 Tentative Order for the City of Long Beach MS4 permit, responding to a comment from U.S. EPA  
18 Region 9 which opposed the permit’s affording compliance status prior to approval of the permittee’s  
19 watershed planning documents. The document sets forth the Los Angeles Water Board’s staff’s  
20 response to this comment, and demonstrates further the rationale behind affording permittees with  
21 interim compliance status during the preparation of watershed planning documents.

22           A true and correct copy of this document, which was obtained from the Los Angeles Water  
23 Board’s website, is attached as Exhibit C.

24           4.       Excerpts of a letter from the San Diego Water Board staff to San Diego County  
25 Principal Watershed Copermittees, August 5, 2015, regarding “General Comments on Final Water  
26 Quality Improvement Plans and Notice of Noncompliance.” This document demonstrates the San  
27 Diego Water Board’s concern with the inclusion of public and Water Quality Improvement  
28

1 Consultation Panel input into aspects of the WQIP, and is submitted in support of the Riverside  
2 Petitioners' request for additional time in which to submit the second element of the draft WQIP and  
3 the final WQIP.

4 A true and correct copy of this document, which was obtained from the San Diego Water  
5 Board's website, is attached as Exhibit D.

6  
7 DATED: December 18, 2015

Respectfully submitted,

8 GREGORY P.; PRIAMOS, County Counsel  
9 KARIN-WATTS BAZAN, Principal Deputy  
10 County Counsel  
11 AARON C. GETTIS, Deputy County Counsel  
12 COUNTY OF RIVERSIDE

13 Attorneys for Petitioners RIVERSIDE COUNTY  
14 FLOOD CONTROL AND WATER  
15 CONSERVATION DISTRICT and COUNTY  
16 OF RIVERSIDE

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18 Aaron C. Gettis

19 HOWARD GEST  
20 DAVID W. BURHENN  
21 BURHENN & GEST LLP

22 By:   
23 David W. Burhenn

24 Attorneys for Petitioners RIVERSIDE COUNTY  
25 FLOOD CONTROL AND WATER  
26 CONSERVATION DISTRICT and CITIES OF  
27 MURRIETTA, TEMECULA AND WILDOMAR  
28

# Exhibit A

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013  
Phone (213) 576-6600 - Fax (213) 576-6686  
<http://www.waterboards.ca.gov/losangeles>

ORDER NO. R4-2014-0024  
NPDES PERMIT NO. CAS004003

**WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER  
SYSTEM DISCHARGES FROM THE CITY OF LONG BEACH**

The City of Long Beach is subject to waste discharge requirements for its municipal separate storm sewer system (MS4) discharges originating within its jurisdictional boundaries composed of storm water and non-storm water as set forth in this Order:

**I. FACILITY INFORMATION**

**Table 1. Discharge Information**

<b>Discharger</b>	City of Long Beach
<b>Facility Name</b>	Municipal Separate Storm Sewer System owned and operated by the City of Long Beach
The U.S. Environmental Protection Agency (US EPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) have classified the City of Long Beach MS4 as part of the Greater Los Angeles County MS4 and as a large MS4 pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR Section 122.2.	

**Table 2. Facility Information**

<b>Permittee (WDID)</b>	<b>Contact Information</b>
City of Long Beach (4B190105032)	Mailing Address 333 West Ocean Blvd. 9 <sup>th</sup> Floor Long Beach, CA 90802
	Facility Contact Storm Water/ Environmental Compliance Officer

**Table 3. MS4 Discharge Locations<sup>1</sup>**

Major Outfall Locations	Outfall Size	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
Alamitos Bay / Basin No. 3	39" Discharge	33.753	-118.109	Alamitos Bay
Alamitos Bay /Basin No. 3	36" Discharge	33.756	-118.112	Alamitos Bay
36th Pl/Ocean Blvd	54" Discharge	33.76	-118.151	Beach
39th Pl / Allin St	39" Discharge	33.759	-118.148	Beach
9th Pl / Ocean Blvd	36" Discharge	33.764	-118.174	Beach

<sup>1</sup> Table 3 identifies the major outfall locations based on the best available information at the time of permit adoption and may not be an complete inventory of all the major outfalls.

- e. The City of Long Beach's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute its compliance with the receiving water limitations provisions in Part VI.A of this Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or EWMP.
  - f. If the City of Long Beach fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the City of Long Beach shall be subject to the provisions of Part VI.A for the waterbody-pollutant combination(s) that were to be addressed by the requirement.
  - g. Upon notification of the City of Long Beach's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, the City of Long Beach's full compliance with all of the following requirements shall constitute the City of Long Beach's compliance with the receiving water limitations provisions in Part VI.A not otherwise addressed by a TMDL, if all the following requirements are met:
    - i. Provides timely notice of its intent to develop a WMP or EWMP,
    - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
    - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
    - iv. Receives final approval of its WMP or EWMP within the applicable timeframe in Table 8.
- 3. Compliance with Receiving Water Limitations Addressed by a TMDL through a WMP or EWMP**
- a. The City of Long Beach's full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute the City of Long Beach's compliance with provisions pertaining to applicable interim water quality based effluent limitations and interim receiving water limitations in Part VIII for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.
  - b. Upon notification of the City of Long Beach's intent to develop a WMP or EWMP and prior to approval of its WMP or EWMP, the City of Long Beach's full compliance with all of the following requirements shall constitute the City of Long Beach's compliance with the receiving water limitations provisions in Part VI.A if all the following requirements are met:
    - i. Provides timely notice of its intent to develop a WMP or EWMP,
    - ii. Meets all interim and final deadlines for development of a WMP or EWMP,
    - iii. For the area to be covered by the WMP or EWMP, targets implementation of watershed control measures in its existing storm water management program, including watershed control measures to eliminate non-storm water discharges of pollutants through the MS4 to receiving waters, to address known contributions of pollutants from MS4 discharges that cause or contribute to exceedances of receiving water limitations, and
    - iv. Receives final approval of its WMP or EWMP within the applicable timeframe in Table 8.

## Exhibit B



# California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit

Order No. R2-2015-0049  
NPDES Permit No. CAS612008  
November 19, 2015

FIND EFFECTIVE, ECO-FRIENDLY PRODUCTS

**For Healthy Gardens,  
People, and Pets**

Look for this tag

Eco-friendly  
Less-toxic Product!

OUR WATER  
OUR WORLD

[www.ourwaterourworld.org](http://www.ourwaterourworld.org)

NO DUMPING! CALL 415-435-2800  
FLOWS TO ALAMITOS CREEK

The advertisement features a dark background with white text. At the top, it says 'FIND EFFECTIVE, ECO-FRIENDLY PRODUCTS'. Below that, in a larger font, is 'For Healthy Gardens, People, and Pets'. A curved line points to the text 'Look for this tag'. Underneath is a graphic of a white rectangular tag with a circular logo to its right. The logo contains the text 'OUR WATER OUR WORLD'. Below the tag graphic, it says 'Eco-friendly Less-toxic Product!'. At the bottom of the text area is the website 'www.ourwaterourworld.org'. The background of the advertisement is a black and white photograph of a stormwater drain. A sign above the drain reads 'NO DUMPING! CALL 415-435-2800 FLOWS TO ALAMITOS CREEK'. The drain is a concrete channel with a grate, and it is surrounded by a concrete curb and a sidewalk. In the background, there are trees and a street with a car.

### **C.1. Compliance with Discharge Prohibitions and Receiving Waters Limitations**

The Permittees shall comply with Discharge Prohibitions A.1 and A.2 and Receiving Water Limitations B.1 and B.2 through the timely implementation of control measures and other actions as specified in Provisions C.2 through C.15. Compliance with Provisions C.9 through C.12 and C.14 of this Order, which prescribe requirements and schedules for Permittees identified therein to manage their discharges that may cause or contribute to violations of water quality standards (WQS) for pesticides, trash, mercury, polychlorinated biphenyls (PCBs), and bacteria, shall constitute compliance during the term of this Order with Receiving Water Limitations B.1 and B.2 for the pollutants and the receiving waters identified in the provisions. Compliance with Provision C.10, which prescribes requirements and schedules for Permittees to manage their discharges of trash, shall also constitute compliance with Discharge Prohibitions A.1 and A.2 during the term of this Order for discharges of trash. If exceedance(s) of (WQS), except for exceedances of water quality standards for pesticides, trash, mercury, PCBs, and bacteria that are managed pursuant to Provisions C.9 through C.12 and C.14, persist in receiving waters notwithstanding the implementation of the required controls and actions, the Permittees shall comply with the following procedure:

- a. Upon a determination by either the Permittee(s) or the Water Board that discharges are causing or contributing to an exceedance of an applicable (WQS), the Permittee(s) shall notify, within no more than 30 days, and thereafter submit a report to the Water Board that describes controls or best management practices (BMPs) that are currently being implemented, and the current level of implementation, and additional controls or BMPs that will be implemented, and/or an increased level of implementation, to prevent or reduce the discharge of pollutants that are causing or contributing to the exceedance of water quality standards. The report may be submitted in conjunction with the Annual Report, unless the Water Board directs an earlier submittal, and shall constitute a request to the Water Board for amendment of this NPDES Permit. The report and application for amendment shall include an implementation schedule. The Water Board may require modifications to the report and application for amendment; and
- b. Submit any modifications to the report required by the Water Board within 30 days of notification.

As long as Permittees have complied with the procedures set forth above, they do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Water Board to develop additional control measures and BMPs and reinstate the Permit amendment process.

## Exhibit C

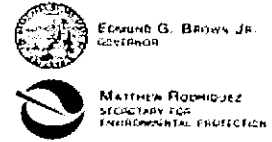
**California Regional Water Quality Control Board, Los Angeles Region  
City of Long Beach MS4 Permit  
Response to Comments on the Tentative Order**

Commenter/Comment Summary	Response
<p><b>Heal the Bay, NRDC, Los Angeles Water Keeper</b></p> <p>1. We believe that the Draft Permit in many aspects either appropriately preserves requirements or improves upon requirements contained in the predecessor Long Beach MS4 Permit.</p> <p>2. We are concerned that in other critical aspects the Draft Permit fails to meet the requirements of the federal Clean Water Act and California Porter Cologne Act, and is otherwise inconsistent with both state and federal law. We urge the Regional Board to revise the Draft Permit in accordance with the legal requirements outlined in the comments we present below. Specifically, many of our concerns with the Los Angeles County MS4 NPDES Permit, which are articulated in a petition submitted to the State Water Resources Control Board are applicable to the Draft Long Beach MS4 Permit. Thus, our petition for review of the Regional Board's adoption of Order No. R4-2012-0175 is hereby incorporated and attached as Exhibit A.</p>	<p>Comment noted.</p> <p>Comment noted. Responses to the commenter's specific comments are provided below.</p> <p>Comments concerning the Los Angeles County MS4 Permit are outside the scope of the Regional Board's action to renew the Long Beach MS4 Permit and therefore will not be responded to. To the extent the commenter has incorporated its petition on the Los Angeles County MS4 Permit to make specific comments on the Long Beach MS4 Permit, the Regional Board hereby incorporates by reference Part IV, Sections G.1, G.2, G.3 G.4, I.13, and I.14 of its consolidated response to the petitions on the Los Angeles County MS4 Permit, which responds to the specific contentions raised in the commenter's petition. The Regional Board's consolidated response is available on the Board's website.</p>
<p>3. We are concerned that the Draft Permit in several aspects fails to meet the requirements of federal and state law, and is inadequate to control pollution and protect the region's waters.</p>	<p>The Regional Board disagrees. The draft permit meets the requirements of federal and state law, and is designed to control pollution from MS4 discharges in order to protect the region's waters. The permit advances regulation of MS4 discharges by: including rigorous requirements such as the incorporation of waste load allocations from 9 TMDLs; requirements for on-site retention of storm water runoff from new development and significant re-development; incentives for watershed collaboration to achieve cost effective solutions; and provisions to foster implementation of multi-benefit regional projects. To accomplish this, the draft permit provides clear compliance metrics and timeframes that are authorized under federal and state law.</p>
<p>4. The Draft Permit includes illegal safe harbors that attempt to excuse compliance with the Receiving Water Limitations provisions in some circumstances, in violation of federal anti-backsliding and antidegradation requirements.</p>	<p>The Regional Board disagrees that the draft permit includes illegal safe harbors that attempt to excuse compliance with the receiving water limitations provisions. The draft permit contains watershed management program (WMP) and enhanced watershed management program (EWMP) provisions that create a compliance mechanism for the City of Long</p>

Commenter/Comment Summary	Response
<p>3. Pursuant to section VII.C.1.d of the draft permit, a permittee is deemed to be in compliance with RWLs upon notification of the Regional Board that the permittee intends to develop and implement a watershed management plan (WMP) or EWMP. We would prefer retaining the RWLs language consistent with State Board WQ Order 99-05. However, we could accept an alternative in which a permittee would be deemed in compliance with RWLs after approval of a WMP or EWMP by the Regional Board. Such a provision was drafted and considered by the San Diego Regional Board for the San Diego Regional MS4 Permit (NPDES permit No. CAS0109266), but was ultimately not included in the final San Diego permit adopted in May 2013. We recommend that such a provision be included in the City of Long Beach permit (if the Regional Board deviates from the requirements of WQ Order 99-05). A permittee would be deemed in compliance with RWLs only after approval of a WMP or EWMP, since a much clearer picture of the path to ultimate compliance would be available at that time.</p>	<p>benefit retention projects. <del>Further, there is significant history associated with the development of this alternative. As stated earlier, the Regional Board has included additional information supporting this compliance mechanism in the Fact Sheet for the draft Long Beach MS4 Permit.</del></p> <p>First, it is important to note that the draft permit includes RWLs language consistent with State Board WQ Order 99-05. The WMP/EWMP provisions simply create a separate compliance mechanism for the permittee to implement the RWLs provisions with a higher likelihood of success in a concrete period of time that is as short as possible, and builds on information obtained over the last ten plus years.</p> <p>Second, WMPs/EWMPs are comprehensive planning processes that are intended to address all the water quality issues in a given watershed in timeframes consistent with those adopted by the Board in TMDLs and that are as short as possible. In order for Long Beach to be able to commit the necessary resources to these programs, it must have the certainty of clear permit compliance mechanisms during both the planning and implementation phases of the WMPs/EWMPs. The Regional Board does not believe that reserving the compliance mechanism until the WMPs/EWMPs are approved will provide this certainty. Due to the extensive permit requirements, the draft permit includes a reasonable assurance approach for meeting water quality based effluent limitations (WQBELs) and a short, but reasonable, period of time to plan for comprehensive efforts under a WMP or EWMP. The WMP/EWMP provisions resolve the uncertainty that previously existed regarding compliance with water quality based requirements, while retaining the fundamental requirement to control MS4 discharges such that they will not cause or contribute to exceedances of water quality standards.</p> <p>This process is similar to but more robust and specific than the so-called “iterative process” for addressing exceedances of receiving water limitations. Further, the schedule to develop and receive approval for a WMP/EWMP that is included in the draft permit is significantly shorter than the one included in the recently adopted Los Angeles County MS4 Permit. This is because the City of Long Beach has already been collaborating with the ongoing WMP/EWMP process under the Los Angeles County MS4 Permit; therefore, many of Long Beach’s draft</p>

Commenter/Comment Summary	Response
<p>4. The provisions in section VII.D.1 of the draft permit concern the timing for implementation of MCMs. If the City of Long Beach chooses not to implement a WMP or EWMP, the permit requires implementation of the permit's updated MCMs within six months of the permit's effective date. However, if the City of Long Beach chooses to develop a WMP or EWMP, only the BMPs required by the previous 1999 permit would be required pending approval of the WMP or EWMP by the Regional Board. To avoid delays in the implementation of updated MCMs, it's our preference that section VII.D.1.ii of the draft permit be revised to require implementation of the updated MCMs within six months of the effective date of the permit regardless of whether the City of Long Beach elects to develop a WMP or EWMP. We recognize that the City of Long Beach's circumstances will lessen some delays in the implementation of updated MCMs. For example, the fact that the City of Long Beach adopted a protective Low Impact Development Ordinance in November, 2010 means that there will not be a significant impact if implementation of the new permit's Planning and Land Development Programs is delayed. Also, we understand that the City of Long Beach is currently participating in the preparation of WMPs with permittees under the LA County MS4 permit which will be completed relatively soon, and therefore there may not be lengthy delays in implementation of updated MCMs for drainages covered by these WMPs. We recommend seeking means for ensuring that the outdated 1999 MCMs can be replaced by updated provisions as soon as is practical.</p>	<p>WMPs will be submitted to the Board by June 28, 2014 – just three months after the anticipated effective date of the permit, instead of 12 to 18 months after the permit effective date as was provided in the Los Angeles County MS4 Permit. In sum, the draft permit provides clearer compliance metrics and timeframes and affords a very short, conditioned planning horizon to develop effective WMPs/EWMPs that will effectively address exceedances of RWLs. No change made.</p> <p>A significant part of the WMP/EWMP planning process involves evaluating and tailoring the minimum control measures (MCMs) to best address the water quality concerns within each watershed area. For this reason, full implementation of the MCMs in the new permit is aligned with the start of WMP/EWMP implementation. However, during the WMP/EWMP planning period, the City is required to continue to implement all of its existing MCMs and is also required to target its implementation of these MCMs to address known water quality concerns (e.g., exceedances of RWLs, TMDL implementation requirements/deadlines). Additionally, as noted by the commenter, this concern regarding the timing of MCM implementation is ameliorated by the fact the City already has in place and is implementing a protective LID ordinance that addresses many requirements related to the Planning and Land Development MCM. Furthermore, because the City is participating in many watershed groups formed under the Los Angeles County MS4 Permit, the timing of WMP approval and therefore MCM implementation will be shorter than that under the Los Angeles County MS4 Permit (i.e., draft WMPs for significant portions of the City's area will be submitted by June 28, 2014 and will be finalized by early 2015 – less than one year from the effective date of the permit). No change made.</p>
<p><b>City of Signal Hill</b></p> <p>1. The City has requested on numerous occasions that the Board issue an individual permit to the City of Signal Hill. The City would</p>	<p>This comment is outside the scope of the Board's action to renew the City of Long Beach MS4 Permit and therefore no response is required. The</p>

## Exhibit D



## San Diego Regional Water Quality Control Board

August 5, 2015

Via Email Only

San Diego County Principal Watershed Copermittees

In reply refer to / attn:  
PIN :786088:LWalsh

**Subject: General Comments on Final Water Quality Improvement Plans and Notice of Noncompliance**

San Diego County Principal Watershed Copermittees:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received the Water Quality Improvement Plans (Plans) from the San Diego County Copermittees (Copermittees) on or before June 26, 2015, as required pursuant to Provision F.1.b.(1) of Order No. R9-2013-0001, *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* (Order).

The Plans are the product of more than two years of concentrated Plan development efforts by the Copermittees. These Plans were prepared in phases and the Copermittees received regular input from the San Diego Water Board, industry professionals, non-governmental environmental organizations, and community members as part of feedback from the Water Quality Improvement Consultation Panel groups and the public at large during multiple public workshops. While the San Diego Water Board recognizes this is the first time the Copermittees have prepared such Plans and acknowledges their efforts to comply with the requirements of the Order, some of the Plans did a better job of meeting the requirements of the Order than others.

The San Diego Water Board is confident that once the Plans are in compliance with the requirements of the Order and accepted by the San Diego Water Board, the Copermittees' jurisdictional runoff management programs (JRMPs) will have the greatest potential to achieve significant reductions in pollutant loads in MS4 discharges and improvements in receiving water quality to the level supportive of beneficial uses within the shortest possible time.

In addition to reviewing the Plans for compliance with the requirements of the Order, the San Diego Water Board reviewed the acceptability of the Plans. The Order allows the Copermittees to develop Plans that prioritize the water quality conditions to address

HENRY ABARBANEL, Ph.D. CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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sooner rather than later, and to set numeric goals and schedules to address the highest priorities. However, not all proposed priorities, goals, and schedules will be determined acceptable, especially if the San Diego Water Board determines that a Plan will not achieve water quality improvements within a reasonable period of time. While the elements of a Plan may meet the requirements of the Order, those elements must also meet the intent of the Order which is instrumental to achieving the goals of the San Diego Water Board's Practical Vision.

The San Diego Water Board has not yet completed a detailed review of each Plan. At this time, the San Diego Water Board is providing general comments for all the Plans because there are several issues of concern already identified that make the Plans unacceptable, as well as noncompliant with the requirements of the Order. When the detailed reviews are completed the San Diego Water Board staff will schedule a time to meet with the Copermittees for each Watershed Management Area, as soon as practicable and anticipated to be before the end of August 2015, to discuss specific issues that need to be addressed in each Plan. At the meetings, the San Diego Water Board may have Plan-specific comments in addition to the issues identified below.

Until then, the issues identified below must be adequately addressed for the Plans to be considered acceptable by the San Diego Water Board, and to be in compliance with the requirements of Order. Not all of the following comments and areas of noncompliance are applicable to every Plan or to every Copermittee, so the San Diego County Copermittees should review the Plans to determine where the following issues are applicable to their watershed and their jurisdiction.

## **PRIORITY WATER QUALITY CONDITIONS**

### **1. Identification of Priority Water Quality Conditions**

**Requirements:** Provisions B.2.a through B.2.c of the Order require the Copermittees to identify the priority water quality conditions that will be evaluated to determine which of those conditions will be the highest priorities to be addressed by the Plan. Provisions B.2.a through B.2.c require the Copermittees to consider several sources of data and information to identify priority water quality conditions within the Watershed Management Area, and whether there is a potential that MS4 discharges may be causing or contributing to those conditions.

**Issues of Concern:** Each Plan includes a description of the process to review different sources of data and information, including input from the public, to identify priority water quality conditions. The San Diego Water Board, however, has found the following general issues of concern:

- a) In several Plans, the San Diego Water Board did not find a fully inclusive list of all priority water quality conditions (i.e. pollutants, stressors, receiving water conditions) that should have been identified in data and information that were required to be considered pursuant to Provisions B.2.a and B.2.b. Pursuant to

Provision B.2.c.(1), a fully inclusive list was required to be evaluated to identify which of those conditions were the highest threat to receiving water quality, or most adversely affect the quality of receiving waters.

- b) In at least one Plan, there was not enough description or information that allowed the San Diego Water Board to determine if all the factors under Provisions B.2.a and B.2.b were adequately considered or not.
- c) A few Plans have identified bacteria as a highest priority water quality condition based on the Revised Total Maximum Daily Loads (TMDLs) for Indicator Bacteria, Project I – Twenty Beaches and Creek in the San Diego Region (Beaches and Creeks Bacteria TMDLs), but the segment which the highest priority water quality condition is based on is no longer identified as impaired on the Clean Water Act Section 303(d) List (303(d) List).

**Noncompliant Priority Water Quality Conditions:** In several Plans, there was a notable absence of one or more pollutants or conditions of concern known to the San Diego Water Board (e.g. trash, hydromodification, benthic alteration, stream or riparian habitat degradation) that were also identified in reports, plans, and data cited and reviewed by the Copermittees (e.g. 2011 Long Term Effectiveness Assessment). In a few Plans, there was also a notable absence of pollutants or conditions of concern identified by the public at workshops or Water Quality Improvement Plan Consultation Panel meetings, and in written comments from stakeholders and the public. The lists developed pursuant to Provision B.2.c.(1) that do not acknowledge and include these notably absent pollutants and conditions of concern are not in compliance with the requirements of Provisions B.2.a-c.

**Unacceptable Priority Water Quality Conditions:** A few Plans have bacteria as a highest priority water quality condition only because of the Beaches and Creeks Bacteria TMDLs, but there is no longer an impairment identified on the 303(d) List. If there are no strategies proposed to be implemented other than the requirements of Provisions E.2 through E.7 to address bacteria, or there are no load reductions quantified for other pollutants in addition to bacteria, or both, the Plans are not acceptable to the San Diego Water Board.

## **WATER QUALITY IMPROVEMENT GOALS**

### **2. Final Numeric Goals**

**Requirements:** Provision B.3.a.(1)(a) of the Order requires the Copermittees to include final numeric goals in the Plan to address the highest priority water quality conditions. Each final numeric goal must either demonstrate the discharges from the Copermittees' MS4s will not cause or contribute to exceedances of water quality standards in receiving waters, or the receiving waters are protected from the Copermittees' MS4 discharges, or both (see Provisions B.3.a.(1)(a)(i)-(iii)).

- b) Final numeric goals with a metric that is unclear about how it will be measured, and lacks any description of, or reference to the data that will be collected to measure the metric.
- c) Final numeric goals that do not clearly demonstrate achievement of the final numeric goal will result in MS4 discharges that do not cause or contribute to exceedances of water quality standards in receiving waters, or the receiving waters are protected from the Copermitees' MS4 discharges, or both.
- d) Final numeric goals that do not have a metric that clearly demonstrates a link to addressing the highest priority water quality conditions.

### 3. Interim Numeric Goals

**Requirements:** Provision B.3.a.(1)(b) of the Order requires the Copermitees to include interim numeric goals in the Plan for each final numeric goal. The Copermitees are allowed to propose as many interim numeric goals for each final numeric goal as they determine appropriate (Provision B.3.a.(b)(i)), but must include at least one interim numeric goal that is expressed as a reasonable increment of the final numeric goal. This interim numeric goal is expected to be in the same or a similar metric as the final numeric goal (Provision B.3.a.(b)(ii)). At least one interim numeric goal is required to be established during each 5 year period between the acceptance of the Plan and the achievement of the final numeric goal (Provision B.3.a.(b)(iii)).

**Issues of Concern:** In at least one Plan, the San Diego Water Board has found proposed final numeric goals that do not have interim numeric goals that are expressed in the same or similar metric as the final numeric goals.

**Noncompliant Interim Numeric Goals:** Final numeric goals that do not have at least one interim numeric goal expressed as a reasonable increment in the same or similar metric as the final numeric goal are not in compliance with Provision B.3.a.(1)(b)(ii).

## WATER QUALITY IMPROVEMENT STRATEGIES

### 4. Identification of Potential Water Quality Improvement Strategies

**Requirements:** Provision B.2.e of the Order requires the Copermitees to identify potential strategies that can result in improvements to water quality. Provision F.1.a.(2)(f) requires the Copermitees consider revisions to potential water quality improvement strategies they propose in the Plan based on public comments.

**Issues of Concern:** Most Plans include lists of water quality improvement strategies that may be implemented by the Copermitees. The San Diego Water Board, however, has found the following general issues of concern:

a) In at least one Plan, the San Diego Water Board was not able to locate the list of potential water quality improvement strategies developed during the public participation process in the Plan.

b) In at least one Plan, the San Diego Water Board could not find all the potential water quality improvement strategies suggested or recommended in public comments.

**Noncompliant Potential Water Quality Improvement Strategies:** Plans that do not identify all potential strategies that were considered for implementation to improve water quality are not in compliance with the requirements of Provision B.2.e. Plans that did not consider all the potential water quality improvement strategies submitted in public comments are also not in compliance with the requirements of Provision B.2.e.

### 5 **Optional Jurisdictional Strategies**

**Requirements:** Provision B.3.b.(1)(b) of the Order requires each Copermittee to identify the optional jurisdictional strategies that will be implemented within its jurisdiction, as necessary, to achieve final numeric goals. Each Copermittee is required to identify water quality improvement strategies that are in addition to the best management practice (BMP) implementation, inspection, enforcement, and education activities that are already required by Provisions E.2 through E.7 (Provision B.3.b.(1)(b)(i)). Optional jurisdictional strategies to encourage or implement retrofit projects and channel and habitat rehabilitation projects are also required to be provided (Provisions B.3.b.(1)(b)(ii) and (iii)). For each optional jurisdictional strategy that a Copermittee includes in the Plan, descriptions of the funds and/or resources needed, and the circumstances needed to trigger implementation of the strategy are also required (Provisions B.3.b.(1)(b)(iv) and (v), respectively).

**Issues of Concern:** All the Plans lacked enough information for the San Diego Water Board to make a determination that all the requirements of Provision B.3.b.(1)(b) have been met. The San Diego Water Board has found the following general issues of concern:

a) Several Copermittees did not include any proposed optional jurisdictional strategies to be implemented within their jurisdictions, as necessary, to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP), protect beneficial uses of receiving waters from MS4 discharges, or achieve proposed interim and final numeric goals.

b) Most Copermittees did not include an incentive or program to encourage or implement projects to retrofit areas of existing development within its jurisdiction.