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CITY OF MISSION VIEJO

Exempt From Filing Fees Pursuant To Gov't Code § 6103

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of:	No. _____
CITY OF MISSION VIEJO FOR REVIEW OF ACTION BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, IN ADOPTING ORDER NO. R9-2009-0002, NPDES PERMIT NO. CAS0108740	**PETITION FOR REVIEW** (California Water Code § 13320(a)) **REQUEST TO HOLD PETITION IN ABEYANCE** (27 CCR § 2050.5)

This Petition for Review is submitted on behalf of the City of Mission Viejo ("Petitioner") pursuant to California Water Code Section 13320 and California Code of Regulations ("CCR") Title 23, Section 2050, for review of Order No. R9-2009-0002, NPDES

Permit No. CAS0108740, which was adopted by the California Regional Water Quality Control Board, San Diego Region (the "Regional Board") on December 16, 2009.

I. NAME, ADDRESS AND TELEPHONE NUMBERS OF PETITIONER

Petitioner is the City of Mission Viejo (the "City"). All written correspondence and other communications regarding this matter should be addressed as follows:

1) Richard Schlesinger, City Engineer
City of Mission Viejo
200 Civic Center
Mission Viejo, California 92691

Telephone: 949-470-3079
E-mail: rschlesinger@cityofmissionviejo.org

With a copy to Petitioner's counsel:

2) William P. Curley III, City Attorney
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1 Civic Center Circle
P.O. Box 1059
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3) Candice K. Lee
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Los Angeles, California 90071

Telephone: 213-626-8484
E-mail: clee@rwglaw.com

II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH REVIEW IS SOUGHT

Petitioners request the State Water Resources Control Board ("State Board") to review the Regional Board's Order No. R9-2009-0002, revising and reissuing NPDES Permit No. CAS0108740 (hereafter, the "Permit.") As of January 14, 2010, the Regional Board has not made available a complete and final copy of the adopted Permit. Based upon inquiries made earlier to the Regional Board staff, no firm deadline was given by Regional Board staff for the posting of the final copy of the adopted Permit. Petitioner will supplement this petition with the final Permit when available from the Regional Board.

III. DATE OF REGIONAL BOARD'S ACTION

The Regional Board adopted the Permit on December 16, 2009.

IV. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER

Petitioner believes the Permit adopted by the Regional Board generally embodies an appropriate approach to improving water quality in South Orange County while reflecting the work the Permittees[1] have initiated during the prior permit terms and the work they have committed to perform in the future. However, several of the Permit provisions are inappropriate or improper. These provisions include the removal of categories of formerly "exempt" non-stormwater discharges, the imposition of retrofitting requirements, the standards applicable to low impact development ("LID") and hydromodification, and implementation of Total Maximum Daily Loads ("TMDLs"). The State Board should review and revise these provisions to conform with federal and state law.

Petitioner also objects to the Permit's action levels for storm water and non-stormwater discharges. While Petitioner believes action levels may be appropriate to assist the Permittees in reducing the discharge of pollutants from the MS4 to the maximum extent practicable and to effectively prohibit the discharge of non-stormwater into the MS4, Petitioner has concerns that the manner in which the action levels are implemented and enforced may be inappropriate or improper. Action levels are not required by federal law. Insofar as action levels are imposed pursuant to state law, then the cost to implement them (which are likely to be significant) has not been adequately evaluated in light of the perceived benefits to water quality.

Moreover, Petitioner is concerned that the Permit inappropriately assigns responsibilities for sanitary sewer spills to Petitioner, when this responsibility has been clearly assigned to local

[1] The Permittees are the City of Aliso Viejo, the City of Dana Point, the City of Laguna Beach, the City of Laguna Hills, the City of Laguna Niguel, the City of Laguna Woods, the City of Lake Forest, the City of Mission Viejo, the City of Rancho Santa Margarita, the City of San Clemente, the City of San Juan Capistrano, the County of Orange and the Orange County Flood Control District.

water districts[2] in other Board Orders/NPDES Permits. Requiring Petitioner to duplicate the water districts' response or responsibility for sewer spills could lead to an increase in sewage spills. In Petitioner's experience, conflicting jurisdictional directives for two different agencies can often result in both agencies ignoring routine maintenance under the assumption that the other agency will conduct the necessary maintenance. Thus, the Permit's directive requiring that Petitioner take "management initiatives" that duplicate the same requirements under a separate NPDES permit issued to different permittees could lead to more sanitary sewer overflows rather than fewer. Assigning the same responsibility to two different agencies could also lead to a delayed response to sanitary sewer overflows as well as delayed implementation of required corrective actions to prevent spills in the future.

All of these provisions impose obligations on Petitioner that are not mandated or supported by the Clean Water Act ("CWA") and/or Porter-Cologne Water Quality Control Act ("Porter-Cologne" or "Water Code") and violate provisions of Porter-Cologne. A more detailed discussion of these issues is provided in Section VI below.[3] Petitioner has previously raised these and other issues, verbally and in writing, to the Regional Board.[4] Copies of all of Petitioner's written comments on drafts of the Permit are attached hereto as Exhibit A.

V. HOW THE PETITIONER IS AGGRIEVED

Petitioner is a Permittee under the Permit. It, along with the other Permittees, is responsible for compliance with the Permit. Failure to comply with the Permit exposes Petitioner to liability under the CWA and Porter-Cologne, and subjects it to potential lawsuits by

[2] These local water districts are the Santa Margarita Water District, the Moulton-Niguel Water District, the El Toro Water District, and the Trabuco Canyon Water District.

[3] Petitioner may provide the State Board with additional reasons why the Permit is inappropriate and/or improper. Any such additional reasons will be submitted to the State Board as an amendment to this Petition. Petitioner also may dispute certain findings that form the basis of the Permit, which similarly will be detailed in any amendment to this Petition.

[4] Petitioner submitted written comments on drafts of the Permit in correspondence dated May 15, 2009, September 28, 2009 and December 2, 2009, copies of which are attached hereto as Exhibit A.

the Regional Board and/or third parties. To the extent that certain provisions in the Permit are improper or inappropriate, Petitioner should not be subject to such actions.[5]

VI. ACTION PETITIONER REQUESTS THE STATE WATER BOARD TO TAKE

The issues raised in this Petition may be resolved or rendered moot by actions to be taken by the Permittees, Regional Board staff actions, amendment of the Permit, and/or developments in other jurisdictions. Accordingly, Petitioner requests the State Board hold this Petition in abeyance at this time. Depending on the outcome of these actions, Petitioner will, if necessary, request the State Board to act on all or some of the issues raised in the Petition and schedule a hearing.

VII. POINTS AND AUTHORITIES

The following is a brief discussion of the issues Petitioner raises in this Petition. In addition to the issues discussed below, to the extent not addressed by the Regional Board, Petitioner also seeks review of the Permit on the grounds raised in Petitioner's previous written comments, copies of which are attached hereto as Exhibit B. Petitioner will submit to the State Board a complete statement of points and authorities in support of this Petition, as necessary, if and when Petitioner requests the State Board to consider the Petition.

A. The Permit Improperly Deletes Categories of Exempt Non-Stormwater Discharges

Federal law requires that MS4 permits include a requirement that the Permittees effectively prohibit the discharge of non-stormwater into the MS4. 33 U.S.C. 1342(p)(3)(B)(ii). Federal regulations exempt certain discharge categories from this effective prohibition requirement. 40 C.F.R. 122.26(d)(2)(iv)(B)(1). A Permittee must address a discharge in one of these exempt categories only when a Permittee identifies the discharge as a source of pollutants to waters of the United States. *Id.*

[5] Petitioner may provide the State Board with additional information concerning the manner in which they have been aggrieved by the Regional Board's action in adopting the Permit. Any such additional information will be submitted to the State Board as an amendment to this Petition.

The Permit impermissibly deletes three of the non-stormwater discharge categories – landscape irrigation, irrigation water, and lawn watering (collectively, "irrigation"). (*See* Permit Directive B.) The federal regulations require that permittees address discharges within an exempt category when they identify a discharge as a source of pollutants to waters of the United States. Neither the regulations nor EPA's guidance allow the Regional Board to delete entire categories of exempt non-stormwater discharges when the Permittees identify a discharge within one of the categories as a source of pollutants.

Accordingly, the State Board should direct the Regional Board to restore the irrigation categories of exempt non-stormwater discharges.

B. The Permit's Retrofitting Requirement Imposes Potentially Significant Costs Without Any Corresponding Gains in Water Quality

The Permit requires the Permittees to develop and implement a program to retrofit existing development with additional measures to control runoff. (Permit Directive F.3.d.) Petitioner agrees that retrofitting existing development could improve water quality. However, because the Permittees have a limited ability under existing statutes and under the California and the United States Constitutions to force private landowners to retrofit existing developments, the expense entailed in developing and implementing a retrofitting program will not be matched by any gains in water quality. Because federal law does not require retrofitting of existing development (and in fact EPA's regulations acknowledge that MS4 regulation would have to be limited largely to undeveloped sites and sites being developed/redeveloped), Petitioner requests that the State Board direct the Regional Board to strike the Permit's retrofitting provision.

C. The Permit as Adopted by the Regional Board Lacks Flexibility in Implementing Low Impact Development and Hydromodification Requirements

The Permit requires that certain development projects include prescriptive Low Impact Development ("LID") requirements. (*See, e.g.*, Permit Directive F.1.) The Permit also requires the Permittees to develop and implement a Hydromodification Management Plan ("HMP") for the same development projects. (Permit Directive F.1.h.) Petitioner agrees that the concepts of LID and HMPs have the potential to improve water quality by reducing the discharge of

pollutants from the MS4. However, the LID and HMP provisions are not required by federal law and violate state law in that, among other things, they prescribe how the Permittees are to comply with the MEP standard. *See* Water Code § 13360(a). Moreover, the LID and HMP provisions in this Permit are overbroad and will not necessarily result in improved water quality. For example, the HMP requirement for hardened channels will not have any water quality benefits. Finally, to the extent the LID requirements would interfere with downstream or upstream water rights holders, compliance with the requirements potentially expose the Permittees to common law liability.

In addition, the imposition by the Regional Board's imposition of a highly prescriptive Low Impact Development strategy may have many benefits, but also may also have an unintended consequence—potential lawsuits from downstream users of the surface water that Petitioner is now purportedly "diverting." As one attorney expert in the field of water law has put it:

> "First, to the extent that one can obtain a right to capture diffuse surface waters . . . any capture of diffuse surface waters without a permit from the State Water Resources Control Board could well be a trespass against the State of California. Second, even if one cannot obtain a 'right' to diffuse surface waters, though, the capture of such waters in a manner that interferes with the diversion of the same water once it reaches a watercourse constitutes injury to legal users of water that rely on such diffuse surface water contributing to the water that they are able to divert."

D. Aladjem, "Who Owns the Water? The Looming Conflict Between Low Impact Development and the Water Rights System" at p.5 (Paper presented at American Bar Association 17th Environmental Law Fall Section Meeting, Sept. 24, 2009).

Petitioner believes that the law in this area, particularly with respect to ownership of diffuse surface waters, is quite uncertain. But, Petitioner also believes that to the extent that the Regional Board imposes additional obligations upon Petitioner pursuant to the Permit, then the Regional Board should insert sufficient findings and authorization for the capture of surface

water through LID systems to protect Petitioner against claims of either a trespass against the State or claims of unlawful diversion of stormwater that would otherwise flow into watercourses that might be the subject of claims of diversion rights by downstream users.

Because the LID and HMP provisions are not required by federal law and violate state law, Petitioner requests the State Board remand the Permit back to the Regional Board to revise the provisions, providing the Permittees with required flexibility in implementing the LID and HMP requirements.

D. The Permit Improperly Incorporates Total Maximum Daily Load Wasteload Allocations

The Permit includes limitations based on wasteload allocations ("WLAs") developed in fully approved and adopted Total Maximum Daily Loads ("TMDLs"). (Permit Directive I.) The Permit characterizes the limitations as Water Quality Based Effluent Limitations. However, the WLAs are to be achieved in the receiving water. Accordingly, Petitioner considers the limitations to be receiving water limitations. *See, e.g.*, State Board Order WQ 2009-0008. The Permittees are to comply with the limitations by implementing best management practices ("BMPs").

Federal and state policy provide that an iterative BMP approach is appropriate in MS4 permits for achieving receiving water limitations. *See, e.g.*, State Board Order WQ 99-05. Where existing BMPs are not sufficient to meet the receiving water limitations, permittees are to implement more effective BMPs. This approach is consistent with the MEP standard governing the discharge of all pollutants from the MS4. Petitioner submits that to be consistent with federal and state policy, the Permit must be clarified to provide for compliance with WLAs through an iterative BMP approach. To the extent the Regional Board can rely on state law to support the TMDL provisions, petitioners submit that the Regional Board has not complied with relevant requirements (*e.g.*, Water Code §§ 13000, 13263(a), 13241, etc.). Accordingly, the State Board should direct the Regional Board to revise the Permit's TMDL provisions consistent with federal and state law and policy.

E. The Cost to Implement the Stormwater and Non-Stormwater Action Levels, Which Are Not Required By Federal Law, and the Water Quality Benefits to be Achieved By Them Have Not Been Adequately Considered by the Regional Board

Federal law requires that permittees effectively prohibit the discharge of non-stormwater into the MS4 and to reduce the discharge of pollutants from the MS4 to the maximum extent practicable. To assist the Permittees in meeting these two standards, the Permit imposes action levels on the discharge of stormwater (SALs) and non-stormwater (NALs) from the MS4. (Permit Directives C and D.) Ideally, action levels would be a tool that would help Petitioner focus resources on more significant water quality problems. However, Petitioner is concerned that, depending on how the provisions are interpreted, the cost to implement the action levels may far outweigh any benefit to water quality. Moreover, rather than a tool to help the Permittees, the action levels may be used against the Permittees.

As an initial matter, Petitioner continues to object to the distinction made in the Permit between the discharge of stormwater from the MS4 and the discharge of non-stormwater from the MS4. Federal law does not support this distinction. Under federal law, permittees must control the discharge of ***pollutants*** from the MS4 to the maximum extent practicable, regardless of whether the pollutants are in ***stormwater*** or ***non-stormwater***. Permittee's obligation with respect to non-stormwater is to effectively prohibit the discharge of non-stormwater into the MS4. To the extent the Permit imposes separate requirements on the discharge of non-stormwater from the MS4, such requirements must be supported by state law.

Because neither the SALs or NALs are required by federal law, the Regional Board must comply with state law in imposing these requirements. For example, in issuing waste discharge requirements under State law, the Regional Board must consider certain factors, including the water quality conditions that could be reasonably achieved and economic considerations. Water Code §§ 13263(a) and 13241. A substantial body of evidence exists that suggests several of the proposed SALs and NALs may not be reasonably achievable in South Orange County. Petitioner is hopeful that the Permit's SAL and NAL provisions will provide the Permittees with flexibility to prioritize their response to any actual exceedances. However, if the Permittees are

required to respond to and address all exceedances without reasonable prioritization, the cost will be significant. Because some exceedances will not be indicative of impacts to water quality, the cost to implement the SALs and NALs may have little if any commensurate environmental benefit. There is nothing in the record that suggests that the Regional Board has considered these water quality and economic factors.

Accordingly, the State Board should remand the Permit to the Regional Board to conduct the analysis required under state law to ensure that economic factors are considered and that the water quality goals are reasonably achievable through implementation of the SALs and NALs.

F. The Permit Inappropriately Assigns Responsibilities to Prevent, Respond to, Contain and Clean Up All Sewage Spills to Permittees When this Responsibility Has Been Clearly Assigned to Local Water Districts in Other Board Orders/NPDES Permits

Petitioner does not own or operate its own sewage system. All of the sewer systems in the Petitioner's jurisdiction are owned, operated, and maintained by water districts.[6] These water districts have their own separate Board Orders/NPDES permits. Petitioner does not have the equipment or expertise to manage a sewage spill of any size, and its staff is not adequately trained to respond to potential spills. All of the water districts in Petitioner's jurisdiction already respond to sewer spills (including sewer spills from private laterals). Furthermore, this provision is duplicative because the Regional Board is seeking to make the Permittees responsible for a task already delegated to the water districts. By making Petitioner responsible for sewer spills, there is a high risk of creating confusion in determining who (one of the water districts or Petitioner) will respond to a spill and who is responsible for associated costs and reporting requirements.

The State Water Resources Control Board has previously issued a stay on this exact matter. After extensive hearings and briefing on the matter, the State Board issued Order WQO 2002-0014 on August 15, 2002, granting a stay as to this provision. In that Order, the State Board held:

[6] These water districts are the Santa Margarita Water District, the Moulton-Niguel Water District, the El Toro Water District, and the Trabuco Canyon Water District.

"The record shows that three separate water districts operate these sewers within Mission Viejo, and are regulated by a sanitary sewer NPDES permit issued by the Regional Board. Mission Viejo alleged that the duplication of effort that would ensue by having Mission Viejo also be responsible for preventing and responding to sanitary sewage spills could lead to delayed responses as agencies try to determine jurisdiction and primary responsibility. Orange County's cost table for the upcoming year estimated total copermittee costs at $56,512 to implement this requirement. While these costs, by themselves do not constitute substantial harm, we find that the duplicative nature of the costs, combined with potential response delay and confusion, do."

(State Board Order WQO 2002-0014, p. 6)

Accordingly, the State Board should direct the Regional Board to delete from the Permit the following language[7] requiring that the Permittees implement management measures and procedures to prevent, respond to, contain and clean up all sewage spills:

"h. Prevent and Respond to Sewage Spills (Including From Private Laterals and Failing Septic Systems) and Other Spills

(1) Each Copermittee must implement management measures and procedures to prevent, respond to, contain and clean up all sewage (see below) and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems). Copermittees must coordinate with spill response teams to prevent entry of spills into the MS4 and contamination of surface water, ground water and soil. Each Copermittee must coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies so that maximum water quality protection is available at all times.

(2) Each Copermittee must develop and implement a mechanism whereby

[7] The language Petitioner requests to be deleted from the Permit is subparagraphs (1) and (2) of paragraph h on page 73 of 92 of the August 12, 2009 Public Release Draft of the Permit.

it is notified of all sewage spills from private laterals and failing septic systems into its MS4. Each Copermittee must implement management measures and procedures to prevent, respond to, and coordinate a response to contain and clean up sewage from any such notification."

VIII. NOTICE TO REGIONAL BOARD AND DISCHARGERS

A copy of this Petition is being served upon the Executive Officer of the Regional Board, the California Regional Water Quality Board for the San Diego region and upon all other Permittees to the Permit.

IX. ISSUES PREVIOUSLY RAISED

As noted in Section IV above, the substantive issues raised in this Petition were presented to the Regional Board before the Regional Board acted on December 16, 2009.

X. CONCLUSION

For the reasons stated herein, Petitioner has been aggrieved by the Regional Board's action in adopting the Permit. However, issues raised in this Petition may be resolved or rendered moot by Regional Board actions and/or developments in other jurisdictions. Accordingly, until such time as Petitioner requests the State Board to consider this Petition, Petitioner requests the State Board hold this Petition in abeyance.

DATED: January 14, 2010

Respectfully submitted,

CITY OF MISSION VIEJO

By: _____

Candice K. Lee
Attorney for Petitioner,
CITY OF MISSION VIEJO

Exhibit A
to Petition to State Water Board
by City of Mission Viejo

Copies of Petitioner's Written Comments on Drafts of the Permit

City of Mission Viejo

Public Works Department

Frank Ury
Mayor
Lance R. MacLean
Mayor Pro Tem
Trish Kelley
Council Member
John Paul "J.P." Ledesma
Council Member
Cathy Schlicht
Council Member

December 8, 2009

Mr. David Gibson
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

Re: Tentative Order No. R9-2009-0002, NPDES CAS0108740
Comments on Draft Updates & Errata to August 12, 2009, Public Release Draft

Dear Mr. Gibson:

The City of Mission Viejo is writing in response to the request for comments contained in the December 2, 2009, Executive Officer's Summary Report.

We believe the Updates and Errata Document is a vast improvement over the approach to the regulation of non-stormwater dry weather discharges proposed at the November 18, 2009, Board Hearing. However, we are disappointed with the abnormally quick turnaround time given between Wednesday's e-mail from Mr. Neill notifying the City of the revisions to the Permit and the 5:00 p.m. deadline today for responses to the 30+-page Updates and Errata Document.

We are in agreement with the County of Orange's recommended errata sheet changes and cover letter, and respectfully ask for the opportunity to discuss the recommended changes with you prior to the December 16, 2009, Board Meeting because, as currently written, the City finds the Regional Board's Updates and Errata Document untenable. If your schedule does not allow for the Permittees to meet with you before the Board Meeting, we respectfully ask that the Regional Board delay the Permit Adoption Hearing until such time after we meet.

Specifically, we support the County's recommendation to engage an expert panel like the Southern California Coastal Water Research Project (SCCWRP) to develop scientifically-based numeric action levels and an implementation strategy. Under this proposal, the Permittees would submit to the Executive Officer the expert-developed NALs and implementation strategy within 18 months of permit adoption. If the Permittees failed to meet the 18-month deadline, the action

levels and the implementation approach provided in the Updates and Errata Document would become effective by default.

The basis for this request lies in the fact that NALs are not numeric effluent limitations (NELs); however, Regional Board staff left the derivation of NALs the same as the previously worded NELs. We believe the NALs should be derived based on an analysis of the constituents in dry weather non-stormwater discharges just as they are for the stormwater action levels (SALs). We also believe that, like the SALs, the Permittees should be able to take into account the "magnitude, frequency, and number of constituents exceeding the SAL(s)" when determining how to respond to the exceedances of NALs. As currently written in finding E.12 of the Regional Board's Updates and Errata Document, any one exceedance triggers the need for a complete investigation and elimination of the source; otherwise, the City will be found not to be in compliance with the Order. We find this particular statement to be untenable, and to be counter-productive to the intent of this section, which is to ensure that the Permittees take an escalating series of enforcement actions for those illicit discharges that are not a serious threat to public health or the environment.

We also agree with the County of Orange's concerns with proposed Directive C.2.a regarding the meaning of the phrase "natural in origin and conveyance." As currently written, we believe the exemption provided in Directive C.2.a for discharges that are natural in origin and conveyance may never apply because the MS4s themselves generally are not natural conveyances, a constituent that is natural in origin may not be considered to be natural in conveyance once discharged from the MS4. We believe the language as proposed by the County addresses this issue.

City staff is interested in a meaningful dialogue with you on these issues, and we hope that you and your staff members will accept our request to meet.

If you have any questions regarding our comments, please do not hesitate to contact me at (949) 470-3079 or Joe Ames at (949) 470-8419.

Sincerely,

Rich Schlesinger, P.E.
City Engineer
City of Mission Viejo

cc: Dennis Wilberg, City Manager
William P. Curley III, City Attorney
Mark Chagnon, Director of Public Works
Joe Ames, Associate Civil Engineer
South Orange County Permittees

City of Mission Viejo

Public Works Department

Frank Ury
Mayor
Lance R. MacLean
Mayor Pro Tem
Trish Kelley
Council Member
John Paul "J.P." Ledesma
Council Member
Cathy Schlicht
Council Member

September 28, 2009

By E-mail and U.S. Mail

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Subject: Comment Letter on Tentative Order No. R9-2009-0002 - NPDES No. CAS0108740

Dear Mr. Robertus:

The City of Mission Viejo is in receipt of the August 12, 2009 Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region, Tentative Order No. R9-2009-0002, NPDES No. CAS0108740.

The City of Mission Viejo fully supports the County of Orange's comments on this latest iteration of the Tentative Order.

We continue to list our objections to several key areas of the Tentative Order that we feel are inherently problematic, overly costly without evidence of future improvements to storm water quality, and will erode public credibility of the City's Storm Water Program and County's Storm Water Program.

GENERAL COMMENTS

I. Inconsistency with the North Orange County Draft MS4 Permit Especially with Regard to the Land Development Requirements

The City of Mission Viejo continues to express its concerns with the lack of permitting consistency with the North Orange County MS4 Permit (Order R8-2009-0030). We believe the lack of permitting consistency will lead to confusion by private developers, businesses, and residents over storm water regulatory requirements. Specifically, the land development standards for water quality protection should be uniform on a countywide basis to lend credibility to our efforts to manage urban runoff and to sustain the obvious cost effectiveness of a single and coordinated County-wide NPDES Program in Orange County. Therefore, we support the County's comments and suggested language improvements on the Tentative Order to ensure

that it is uniform with the North Orange County MS4 Permit.

II. Inclusion of Effluent Limits

The City of Mission Viejo continues to object to the inclusion of Numeric Effluent Limits (NELs) in the Tentative Order, but appreciates the Board staff's attempt to make the previously proposed Municipal Action Levels (MALs) more palpable by offering the use of Storm Water Action Levels (SWALs). Our main argument to the imposition of NELs are:

- The insertion of NELs is inconsistent with the State Water Board's Blue Ribbon panel report on the feasibility of numeric effluent limits.
- The finding by the Regional Board staff that non-stormwater discharges are not subject to the maximum extent practicable standard and therefore subject to water quality based effluent limits is not supported by law. Clean Water Act section 402(p) (3) (B) (ii) clearly states that discharges from municipal storm sewers shall include a requirement to *effectively* prohibit non-stormwater discharges into the storm sewer. We argue that the section does not require a full prohibition but rather an effective prohibition. The City agrees with the County in that the technology based standard for non-stormwater discharges is "effectively prohibit" just as "maximum extent practicable" is the technology based standard for stormwater discharges.
- The use of numeric limits for non-stormwater discharges is premature and bypasses the Bacteria I TMDL for San Diego Region Beaches and Creeks process. It is likely that some of our non-stormwater discharges will exceed the NEL but have no effect on the receiving water quality or beneficial uses. But under the proposed Order, the City may be obligated to expend considerable resources without a reciprocal water quality benefit. This is poor public policy and use of public funds.

III. Erosion of the Credibility of the Storm Water Program

The prescribed prohibition on irrigation runoff also needs to be very carefully considered. The City believes this outright prohibition would erode general public support for the City's and County's Storm Water Program. We believe implementation of the prohibition would risk eroding general public support for a Program that is successfully fostering a stewardship ethic in residential environments. For example, cities may be faced with issuing citations to a homeowner for irrigation runoff; whereas, the neighbor next door is free to wash his car in his driveway under the current Tentative Order exemption for residential car washing. There is also concern that the provision would force the expenditure of scarce resources on an issue that is already being addressed by water districts dealing with water conservation imperatives. We ask that Section B, Non-Storm Water Discharges, be modified to include landscape irrigation, irrigation water, and lawn watering in Section B.2.

IV. Requirement to Respond to Sanitary Sewer Overflows

Page 73, Part F.4.f., of the Tentative Order states:

> "Each Copermittee must implement management measures and procedures to prevent, respond to, contain and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems.) Copermittees must coordinate with spill response teams must prevent entry of spills into the MS4 and contamination of surface water, ground water and soil. Each Copermittee must coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies so that maximum water quality protection is available at all times."

We continue to object to the inclusion of this provision. The revision of "implement management measures and procedures" being introduced by the Tentative Order to preface the required actions the cities must undertake still leaves the cities responsible for responding to sewage spills. We suggested other language in our May 15, 2009 comment letter that is more appropriate.

As we have previously stated, the City does not own or operate its own sewage system. All of the sewer systems in Mission Viejo are owned, operated, and maintained by water districts. These agencies have their own separate NPDES Permit. The City does not have the equipment or expertise to manage a sewage spill of any size, and its staff is not adequately trained to respond to potential spills. All of the water districts in Mission Viejo already respond to sewer spills (including sewer spills from private laterals). Furthermore, this provision is duplicative in the sense that the Regional Board is seeking to make the Permittees responsible for a task already delegated to the water districts. By making the City responsible for sewer spills, there is a high risk of creating confusion in determining who will respond to a spill (water district or City), who is responsible for the associated cost and reporting, etc.

The "implement management measures and procedures" phase does not negate the previous State Water Resources Control Board Order issuing a stay on this same issue in the prior generation of the NPDES Permit.[1] After extensive hearings and briefing on the matter, the State Board issued Order WQO 2002-0014 on August 15, 2002, granting a stay as to this provision. In that Order, the State Board held:

> "The record shows that three separate water districts operate these sewers within Mission Viejo, and are regulated by a sanitary sewer NPDES permit issued by the Regional Board. Mission Viejo alleged that the duplication of effort that would ensue by having Mission Viejo also be responsible for preventing and responding to sanitary sewage spills could lead to delayed responses as agencies try to determine jurisdiction and primary responsibility. Orange County's cost table for the upcoming year estimated total copermittee costs of $56,512 to implement this requirement. While these costs, by themselves do not constitute substantial harm, we find that the duplicative nature of the costs, combined with potential response delay and confusion, do."
> (State Board Order WQO 2002-0014, p. 6.)

[1] The requirement for Permittees to regulate sanitary sewer discharges was initially adopted as provision F.5.f. in the prior NPDES Permit.

In deciding to grant a stay as to this provision, the State Board concluded:

> **"The regulation of sanitary sewer overflows by municipal storm water entities, while other public entities are already charged with that responsibility in separate NPDES permits, may result in significant confusion and unnecessary control activities.** For example, the Permit appears to assign primary spill prevention and response coordination authority to the copermittees. While the federal regulations clearly assign some spill prevention and response duties to the copermittees, we find that the extent of these duties is a substantial question of law and fact."
> [State Board Order WQO 2002-0014, p. 8. (emphasis added.)]

Given the previous findings of the State Board on this same issue, and given that none of the factual reasons supporting this decision have changed, the Regional Board should remove this provision so as to reduce duplicity of effort and the implementation of unnecessary control activities.

We once again, as an alternative, offer that the Regional Board consider adopting language similar to that contained in State Board Order No. 2006-0003 titled: "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems" ("Order"). This Order applies solely to municipalities and other public entities that own or operate sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater. Adopting this caveat would not only serve to accomplish the primary goals behind the provision, but would also ensure Statewide consistency among Water Board regulations.

***

In conclusion, the City appreciates the effort that Regional Board staff has devoted to the development of the fourth term permit for the Orange County Stormwater Program; however, we believe it is imperative that our concerns are addressed.

Thank you for your attention to our comments. Please contact Joe Ames at (949) 470-8419 or me at (949) 470-3079 with any questions on this letter.

Sincerely,

Rich Schlesinger, P.E.
City Engineer

cc: Dennis Wilberg, City Manager
William P. Curley, III, City Attorney
Mark Chagnon, Director of Public Works
Joe Ames, Associate Civil Engineer
Deborah Carson, Program Engineer

City of Mission Viejo

Public Works Department

Frank Ury
Mayor
Lance R. MacLean
Mayor Pro Tem
Trish Kelley
Council Member
John Paul "J.P." Ledesma
Council Member
Cathy Schlicht
Council Member

May 15, 2009

By E-mail and U.S. Mail

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Subject: Comment Letter on Tentative Order No. R9-2009-0002 - NPDES No. CAS0108740

Dear Mr. Robertus:

The City of Mission Viejo is in receipt of the March 13, 2009, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region, Tentative Order No. R9-2009-0002, NPDES No. CAS0108740.

The City of Mission Viejo fully supports the County of Orange's comments on the Tentative Order.

In addition, the City wishes to highlight a few keys areas of concern on the Tentative Order that we feel are inherently problematic and will erode public credibility of the City's Storm Water Program and County's Storm Water Program.

GENERAL COMMENTS

I. Inconsistency with the North Orange County Draft MS4 Permit

The City of Mission Viejo shares its concerns with the County of Orange over the lack of permitting consistency with the North Orange County draft MS4 permit (Tentative Order R8-2009-0030). We believe the lack of permitting consistency will lead to confusion by private developers, businesses, and residents over storm water regulatory requirements. While your staff has acknowledged that they will likely incorporate the North Orange County permit's land development provisions, they are reluctant to eliminate other areas of inconsistency. As the County points out, this disinclination will erode the credibility of the regulatory framework for stormwater in California and will confound the ability of local governments, including Mission Viejo, and the regulated community to effectively address a key environmental mandate at a time of unprecedented fiscal constraint. It is therefore necessary for us to continue to seek revisions to the Tentative Order supportive of a cohesive and cogent alignment of the North and South

County permits on the basis that consistency is important to the credibility of our respective efforts to manage urban runoff and is vital to sustaining the obvious cost effectiveness of a single and coordinated Countywide program in Orange County.

II. Inclusion of Effluent Limits

The City of Mission Viejo and as well the other Permittees' have presented our concerns with the imposition of Municipal Action levels (MALs) and Numeric Effluent Limits (NELs) on multiple occasions to Regional Board staff. Our main arguments are as follows:

- The insertion of MALs and NELs is inconsistent with the State Water Board's Blue Ribbon panel report on the feasibility of numeric effluent limits. And, this conclusion continues to be the published position of USEPA on this issue.
- The finding by the Regional Board staff that non-stormwater discharges are not subject to the maximum extent practicable standard and therefore subject to water quality based effluent limits is not supported by law. Clean Water Act section 402(p) (3) (B) (ii) clearly states that discharges from municipal storm sewers shall include a requirement to *effectively* prohibit non-stormwater discharges into the storm sewer. We argue that the section does not require a full prohibition but rather an effective prohibition. The City agrees with the County in that the technology based standard for non-stormwater discharges is "effectively prohibit" just as "maximum extent practicable" is the technology based standard for stormwater discharges.
- The City is concerned with exposure to significant risk in complying with the Tentative Order. The County of Orange has completed a comparison of existing dry weather discharges with the selected NELs noted below.

Constituent	Hydrologic Unit	Percentage of time > NELs
Total Dissolved Solids*	Group 1	74.5
Total Dissolved Solids*	Group 2	97.1
Total Phosphorus@	Group 1 and 2	93.0
Nitrate + Nitrite	Group 1 and 2	93.8
Fecal coliform	Group 1 and 2	90.0
Nickel (dissolved)	Group 1 and 2	0.3
Copper (dissolved)	Group 1 and 2	9.5
Cadmium (dissolved)	Group 1 and 2	18.1

*A factor of 0.6 was multiplied by the specific conductance measurements to estimate TDS @Proposed NEL was compared to measurements of reactive orthophosphate as P

As a result, the City of Mission Viejo could face enforcement action for not complying with all the NELs. Where there is exceedance, the City may be faced with mandatory minimum penalties (MMPs) under Water Code §§ 13385 and 13385.1. In addition, non-compliance with the NELs may subject the City to additional enforcement actions imposed by the Regional Water Board and through third party actions under the citizen suit provisions of the Clean Water Act.

- The use of numeric limits for non-stormwater discharges is premature. Extensive work has already been performed by the Stakeholders Advisory Group on the Bacteria I TMDL for San Diego Region Beaches and Creeks, which involved multiple parties – environmental groups and the regulated community alike. The TMDL program provides the safety net for ensuring that our water bodies are protected in the most reasonable and effective manner. The direct translation of water quality objectives into numeric effluent limits bypasses the TMDL process. It is likely that some of our non-stormwater discharges will exceed the NEL but have no effect on the receiving water quality or beneficial uses. But under the proposed Order, the City may be obligated to expend considerable resources without a reciprocal water quality benefit. This is poor public policy and use of public funds.

III. Erosion of the Credibility of the Storm Water Program

The prescribed prohibition on irrigation runoff also needs to be very carefully considered. The City believes this outright prohibition would erode general public support for the City's and County's Storm Water Program. We believe implementation of the prohibition would risk eroding general public support for a Program that is successfully fostering a stewardship ethic in residential environments. For example, cities may be faced with issuing citations to a homeowner for irrigation runoff; whereas, the neighbor next door is free to wash his car in his driveway under the current Tentative Order exemption for residential car washing. There is also concern that the provision would force the expenditure of scarce resources on an issue that is already being addressed by water districts dealing with water conservation imperatives.

IV. Requirement to Respond to Sanitary Sewer Overflows

Page 69, Part F.3.h., of the Tentative Order states:

> "Each Copermittee must prevent, respond to, contain and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems.) Spill response teams must prevent entry of spills into the MS4 and contamination of surface water, ground water and soil. Each Copermittee must coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies so that maximum water quality protection is available at all times."

For many cities (including the City of Mission Viejo), implementation of this provision is simply not feasible. For example, the City does not own or operate its own sewage system. All of the sewer systems in Mission Viejo are owned, operated, and maintained by water districts. These agencies have their own separate NPDES Permit. The City does not have the equipment or expertise to manage a sewage spill of any size, and its staff is not adequately trained to respond to potential spills. All of the water districts in Mission Viejo already respond to sewer spills (including sewer spills from private laterals). Furthermore, this provision is duplicative in the sense that the Regional Board is seeking to make the Permittees responsible for a task already delegated to the water districts. By making the City responsible for sewer spills, there is a high

risk of creating confusion in determining who will respond to a spill (water district or City), who is responsible for the associated cost and reporting, etc.

This issue is made even more troubling by the fact that the State Water Resources Control Board ("State Board") previously issued a stay of this very same issue in the prior generation of the NPDES Permit.[1] After extensive hearings and briefing on the matter, the State Board issued Order WQO 2002-0014 on August 15, 2002, granting a stay as to this provision. In that Order, the State Board held:

> "The record shows that three separate water districts operate these sewers within Mission Viejo, and are regulated by a sanitary sewer NPDES permit issued by the Regional Board. Mission Viejo alleged that the duplication of effort that would ensue by having Mission Viejo also be responsible for preventing and responding to sanitary sewage spills could lead to delayed responses as agencies try to determine jurisdiction and primary responsibility. Orange County's cost table for the upcoming year estimated total copermittee costs of $56,512 to implement this requirement. While these costs, by themselves do not constitute substantial harm, we find that the duplicative nature of the costs, combined with potential response delay and confusion, do."
> (State Board Order WQO 2002-0014, p. 6.)

In deciding to grant a stay as to this provision, the State Board concluded:

> **"The regulation of sanitary sewer overflows by municipal storm water entities, while other public entities are already charged with that responsibility in separate NPDES permits, may result in significant confusion and unnecessary control activities.** For example, the Permit appears to assign primary spill prevention and response coordination authority to the copermittees. While the federal regulations clearly assign some spill prevention and response duties to the copermittees, we find that the extent of these duties is a substantial question of law and fact."
> [State Board Order WQO 2002-0014, p. 8. (emphasis added.)]

Given the previous findings of the State Board on this same issue, and given that none of the factual reasons supporting this decision have changed, the Regional Board should remove or modify this provision so as to reduce duplicity of effort and the implementation of unnecessary control activities.

As an alternative, the City recommends that the Regional Board consider adopting language similar to that contained in State Board Order No. 2006-0003 titled: "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems" ("Order"). This Order applies solely to municipalities and other public entities that own or operate sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater. Adopting

[1] The requirement for Permittees to regulate sanitary sewer discharges was initially adopted as provision F.5.f. in the prior NPDES Permit.

this caveat would not only serve to accomplish the primary goals behind the provision, but would also ensure Statewide consistency among Water Board regulations.

If the Regional Board is concerned that the City will not work in cooperation with the water districts or provide notification to the water districts regarding spills that are initially reported to the City, the Regional Board could add additional language/requirements. For example, the following condition could be added, "For the Permittees that do not own or operate sanitary sewer systems and are exempt from the responsibility for spills, said Permittees shall develop a program to notify the Agency responsible for the sewage spill and shall provide assistance to the responsible Agency as necessary to prevent sewage from entering the MS4." Please note for the record that the City of Mission Viejo already has these procedures in place.

V. Land Development Requirements

In February 2008, at the permit adoption hearing held at the City of Mission Viejo, there was a considerable amount of discussion on the issue of a performance standard for low impact development (LID). Since that time, LID has become the defining issue of fourth term MS4 permits in California. Indeed, at the end of 2008 a stakeholder group convened to look specifically at this issue. Comprising regulatory agency, local government, environmental advocacy group and development industry representation, this group was initially able to identify a number of early general areas of agreement.

1. Performance standards for implementing LID BMPs other than an Effective Impervious Area (EIA) percentage (3-5%) are acceptable if a technically equivalent standard can be identified.

2. Sizing LID BMPs to capture the 85th percentile storm event (current DAMP criteria for water quality volume) is an acceptable alternative to EIA as a performance standard provided that technically-based, strict, and clear feasibility criteria are developed for any project that cannot meet the LID BMP requirements.

3. Prioritized LID/SUSMP BMPs for water quality volume capture are represented by: a) infiltration BMPs; b) harvesting and reuse BMPs; c) vegetated (or evapotranspiration) BMPs including bioretention and biofiltration. Water quality volume not captured by LID BMPs shall be treated consistent with DAMP requirements

The County on behalf of the Permittees endorsed these areas of agreement in a letter of February 13, 2009, to the Executive Officer of the Santa Ana RWQCB and the City supports the County's belief that they should represent the basis of a fourth term permit's land development provisions.

More recently the County provided the Santa Ana RWQCB with a more detailed conception of a framework for land development. It predicates permit compliance on management of the 85th percentile storm volume, presumes the application of LID BMPs based upon a prioritized consideration of infiltration, capture and re-use, evapo-transpiration, and bio-retention/bio-filtration, and requires treatment of residual runoff volumes for which the application of LID BMPs has been determined to be infeasible at site, sub-regional and regional scales. The

framework also integrates options for water quality credits and provides for alternate compliance approaches including participation in a watershed project and contributions to an "in-lieu" fund. It also explicitly recognizes bio-retention/bio-filtration BMPs as LID BMPs and the continued and entirely legitimate contribution of effective structural BMPs such as constructed wetlands and detention ponds to the practice of stormwater quality management.

The City agrees with the County and the other Permittees that it is imperative that there be a uniform countywide development standard for water quality protection. Consequently, the framework language that is currently being supported by both the North Orange County Permittees and staff of the Santa Ana Regional Board should be the starting point for discussion with respect to the subject Tentative Order.

***

In conclusion, the City appreciates the effort that Regional Board staff has devoted to the development of the fourth term permit for the Orange County Stormwater Program. The City looks forward to continuing to meet with your staff to try to resolve the City's concerns regarding the Tentative Order to ensure that it meets our mutual goals.

Thank you for your attention to our comments. Please contact Joe Ames at (949) 470-8419 or me at (949) 470-3079 with any questions on this letter.

Sincerely,

Rich Schlesinger, P.E.
City Engineer

cc: Dennis Wilberg, City Manager
William P. Curley, III, City Attorney
Mark Chagnon, Director of Public Works
Joe Ames, Associate Civil Engineer
Deborah Carson, Program Engineer
File: NPDES - 4th Term Permit

California Regional Water Quality Control Board
San Diego Region

Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region

Order No. R9-2009-0002
NPDES NO. CAS0108740

December 16, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
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http://www.waterboards.ca.gov/sandiego

To request copies of the Orange County Municipal Storm Water Permit, please contact Ben Neill, Water Resources Control Engineer at (858) 467 – 2983, bneill@waterboards.ca.gov

Documents also are available at: http://www.waterboards.ca.gov/sandiego

WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF RUNOFF FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE WATERSHED OF THE COUNTY OF ORANGE, THE INCORPORATED CITIES OF ORANGE COUNTY, AND THE ORANGE COUNTY FLOOD CONTROL DISTRICT WITHIN THE SAN DIEGO REGION

Adopted by the
California Regional Water Quality Control Board
San Diego Region
on December 16, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor
LINDA S. ADAMS, Agency Secretary, California Environmental Protection Agency

California Regional Water Quality Control Board
San Diego Region

David King *Vice Chair*	Recreation / Wildlife
Eric Anderson	Irrigated Agriculture
Wayne Rayfield	Water Quality
Grant Destache	Industrial Water Use
George Loveland	Water Supply
Marc Luker	Undesignated (Public)

David W. Gibson, *Executive Officer*
Michael P. McCann, *Assistant Executive Officer*

This permit was prepared under the direction of

David T. Barker P.E., *Chief, Water Resource Protection Branch*

by

Jimmy G. Smith, *Senior Environmental Scientist*
Ben Neill, *Water Resource Control Engineer*
Chad Loflen, *Environmental Scientist*

Table of Contents

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

A. BASIS FOR THE ORDER

1. This Order is based on the federal Clean Water Act (CWA), the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable State and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board), the Water Quality Control Plan for the San Diego Basin adopted by the Regional Board, the California Toxics Rule, and the California Toxics Rule Implementation Plan.

2. This Order reissues National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108740, which was first adopted by the Regional Board on July 16, 1990 (Order No. 90-38), and then reissued on August 8, 1996 (Order No. 96-03) and February 13, 2002 (Order No. R9-2002-01). On August 21, 2006, in accordance with Order No. R9-2002-01, the County of Orange, as the Principal Copermittee, submitted a Report of Waste Discharge (ROWD) for reissuance of the municipal separate storm sewer system (MS4) Permit.

3. This Order is consistent with the following precedential Orders adopted by the State Water Resources Control Board (State Board) addressing MS4 NPDES Permits: Order 99-05, Order WQ-2000-11, Order WQ 2001-15, Order WQO 2002-0014, and Order WQ-2009-0008 (*SWRCB/OCC FILE A-1780).*

4. The Fact Sheet / Technical Report for the Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District Within the San Diego Region includes cited regulatory and legal references and additional explanatory information and data in support of the requirements of this Permit. This information, including any supplements thereto, and any response to comments on the Tentative Orders, is hereby incorporated by reference into these findings.

B. REGULATED PARTIES

1. Each of the persons in Table 1 below, hereinafter called Copermittees or dischargers, owns or operates an MS4, through which it discharges runoff into waters of the United States within the San Diego Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a

violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the United States (waters of the U.S).

Table 1. Municipal Copermittees

1. City of Aliso Viejo	8. City of Mission Viejo
2. City of Dana Point	9. City of Rancho Santa Margarita
3. City of Laguna Beach	10. City of San Clemente
4. City of Laguna Hills	11. City of San Juan Capistrano
5. City of Laguna Niguel	12. County of Orange
6. City of Laguna Woods	13. Orange County Flood Control District
7. City of Lake Forest	

C. DISCHARGE CHARACTERISTICS

1. Runoff discharged from an MS4 contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA.

2. MS4 storm water and non-storm water discharges are likely to contain pollutants that cause or threaten to cause a violation of water quality standards, as outlined in the Regional Board's Water Quality Control Plan for the San Diego Basin (Basin Plan). Storm water and non-storm water discharges from the MS4 are subject to the conditions and requirements established in the San Diego Basin Plan for point source discharges. These surface water quality standards must be complied with at all times, irrespective of the source and manner of discharge.

3. The most common categories of pollutants in runoff include total suspended solids, sediment, pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers); oxygen-demanding substances (decaying vegetation, animal waste); detergents; and trash.

4. The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and/or impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.

5. Pollutants in runoff can threaten and adversely affect human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

6. Runoff discharges from MS4s often contain pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants impact the overall quality of aquatic systems and beneficial uses of receiving waters.

7. The Copermittees discharge runoff into lakes, drinking water reservoirs, rivers, streams, creeks, bays, estuaries, coastal lagoons, the Pacific Ocean, and tributaries thereto within one of the eleven hydrologic units (San Juan Hydrologic Unit) comprising the San Diego Region as shown in Tables 2a and 2b. Some of the receiving water bodies have been designated as impaired by the Regional Board and the United States Environmental Protection Agency (USEPA) in 2006 pursuant to CWA section 303(d). Also shown in the Tables are the watershed management areas (WMAs) as defined in the Regional Board report, Watershed Management Approach, January 2002.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	**Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit**	**Major Receiving Water Bodies**	**303(d) Pollutant(s)/stressor or Water Quality Effect[1]**
Laguna Coastal Streams	Laguna HA, excluding Aliso HSA and Dana Point HSA	Laguna Canyon Creek, Pacific Ocean	Bacterial indicators Sediment toxicity
Aliso Creek	Aliso HSA	Aliso Creek, English Canyon, Pacific Ocean	Toxicity Phosphorus Bacterial indicators Benzo[b]fluoranthene Dieldrin Sediment Toxicity
Dana Point Coastal Streams	Dana Point HSA	Dana Point Harbor, Salt Creek, Pacific Ocean	Bacterial indicators
San Juan Creek	Mission Viejo HA	San Juan Creek, Trabuco Creek, Oso Creek, Canada Gobernadora, Bell Canyon, Verdugo Canyon, Pacific Ocean	Bacterial indicators DDE Chloride Sulfates Total dissolved solids

[1] The listed 303(d) pollutant(s) do not necessarily reflect impairment of the entire corresponding WMA or all corresponding major surface water bodies. The specific impaired portions of each WMA are listed in the State Water Resources Control Board's 2006 Section 303(d) List of Water Quality Limited Segments.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit	Major Receiving Water Bodies	303(d) Pollutant(s)/stressor or Water Quality Effect[1]
San Clemente Coastal Streams	San Clemente HA	Prima Deshecha, Segunda Deshecha, Pacific Ocean	Bacterial indicators Phosphorus Turbidity
San Mateo Creek	San Mateo HA	San Mateo Creek, Christianitos Creek, Pacific Ocean	

Table 2b. Common Watersheds and Municipalities

Municipality	Laguna Coastal Streams	Aliso Creek	Dana Point Coastal Streams	San Juan Creek	San Clemente Coastal Streams	San Mateo Creek
Aliso Viejo	☑	☑				
Dana Point			☑	☑		
Laguna Beach	☑	☑				
Laguna Hills *		☑		☑		
Laguna Niguel		☑	☑	☑		
Laguna Woods *		☑				
Lake Forest *		☑				
Mission Viejo		☑		☑		
Rancho Santa Margarita				☑		
San Clemente					☑	☑
San Juan Capistrano				☑		
County of Orange *	☑	☑	☑	☑	☑	☑
Orange County Flood Control District *	☑	☑	☑	☑	☑	
* Municipality also includes areas within watersheds of the Santa Ana Regional Board that are outside the scope of this Order						

8. Trash is a persistent pollutant which can enter receiving waters from the MS4 resulting in accumulation and transport in receiving waters over time. Trash poses a serious threat to the Beneficial Uses of the receiving waters, including, but not limited to, human health, rare and endangered species, navigation and human recreation.

9. The Copermittees' water quality monitoring data submitted to date documents persistent violations of Basin Plan water quality objectives for various runoff-related pollutants (fecal coliform bacteria, total suspended solids, turbidity, metals, etc.) at

various watershed monitoring stations. Persistent toxicity has also been observed at some watershed monitoring stations. In addition, bioassessment data indicates that the majority of urbanized receiving waters have Poor to Very Poor Index of Biotic Integrity ratings. In sum, the above findings indicate that runoff discharges are causing or contributing to water quality impairments, and are a leading cause of such impairments in Orange County.

10. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area is significantly greater in runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. Runoff durations can also increase as a result of flood control and other efforts to control peak flow rates. Increased volume, velocity, rate, and duration of runoff, and decreased natural clean sediment loads, greatly accelerate the erosion of downstream natural channels. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as a 3-5 percent conversion from natural to impervious surfaces. The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

11. Development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc. which can either be washed or directly dumped into the MS4. As a result, the runoff leaving the developed urban area is significantly greater in pollutant load than the pre-development runoff from the same area. These increased pollutant loads must be controlled to protect downstream receiving water quality.

12. Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d)-impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in other areas. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. Therefore, additional control to reduce storm water pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA.

13. Although dependent on several factors, the risks typically associated with properly managed infiltration of runoff (especially from residential land use areas) are not significant. The risks associated with infiltration can be managed by many techniques, including (1) designing landscape drainage features that promote infiltration of runoff, but do not "inject" runoff (injection bypasses the natural processes of filtering and transformation that occur in the soil); (2) taking reasonable

steps to prevent the illegal disposal of wastes; (3) protecting footings and foundations; (4) ensuring that each drainage feature is adequately maintained in perpetuity; and (5) pretreatment.

14. Non-storm water (dry weather) discharge from the MS4 is not considered a storm water (wet weather) discharge and therefore is not subject to regulation under the Maximum Extent Practicable (MEP) standard from CWA 402(p)(3)(B)(iii), which is explicitly for "Municipal ... *Stormwater Discharges* (emphasis added)" from the MS4. Non-storm water discharges, per CWA 402(p)(3)(B)(ii), are to be effectively prohibited. Such dry weather non-storm water discharges have been shown to contribute significant levels of pollutants and flow in arid, developed Southern California watersheds and are to be effectively prohibited under the Clean Water Act.

15. Non-storm water discharges to the MS4 granted an influent exception [i.e., which are exempt from the effective prohibition requirement set forth in CWA section 402(p)(3)(B)(ii)] under 40 CFR 122. 26 are included within this Order. Any exempted discharges identified by Copermittees as a source of pollutants are subsequently required to be *addressed* (emphasis added) as illicit discharges through prohibition and incorporation into existing IC/ID programs. The Copermittees have identified landscape irrigation, irrigation water and lawn water, previously exempted discharges, as a source of pollutants and conveyance of pollutants to waters of the United States.

D. RUNOFF MANAGEMENT PROGRAMS

1. General

a. This Order specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in storm water runoff to the maximum extent practicable (MEP). However, since MEP is a dynamic performance standard, which evolves over time as runoff management knowledge increases, the Copermittees' runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. in order to achieve the evolving MEP standard. Absent evidence to the contrary, this continual assessment, revision, and improvement of runoff management program implementation is expected to ultimately achieve compliance with water quality standards in the Region.

b. The Copermittees have generally been implementing the jurisdictional runoff management programs required pursuant to Order No. 2002-01 since February 13, 2003. Prior to that, the Copermittees were regulated by Order No. 96-03 since August 8, 1996. Runoff discharges, however, continue to cause or contribute to violations of water quality standards as evidenced by the Copermittees monitoring results.

c. This Order contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in storm water runoff to the MEP and achieve water quality standards. Some of the new or modified requirements, such as the revised Watershed Runoff Management Program section, are designed to specifically address high priority water quality problems. Other new or modified requirements address program deficiencies that have been noted during audits, report reviews, and other Regional Board compliance assessment activities.

d. Updated Jurisdictional Runoff Management Plans (JRMPs) and Watershed Runoff Management Plans (WRMPs), which describe the Copermittees' runoff management programs in their entirety, are needed to guide the Copermittees' runoff management efforts and aid the Copermittees in tracking runoff management program implementation. It is practicable for the Copermittees to update the JRMPs and WRMPs within one year, since significant efforts to develop these programs have already occurred.

e. Pollutants can be effectively reduced in storm water runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first line of defense." Source control BMPs (both structural and non-structural) minimize the contact between pollutants and flows (e.g., rerouting run-on around pollutant sources or keeping pollutants on-site and out of receiving waters). Treatment control BMPs remove pollutants that have been mobilized by wet-weather or dry-weather flows.

f. Runoff needs to be addressed during the three major phases of urban development (planning, construction, and use) in order to reduce the discharge of pollutants from storm water to the MEP, effectively prohibit non-storm water discharges and protect receiving waters. Development which is not guided by water quality planning policies and principles can unnecessarily result in increased pollutant load discharges, flow rates, and flow durations which can negatively impact receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development generates substantial pollutant loads which are discharged in runoff to receiving waters.

g. Annual reporting requirements included in this Order are necessary to meet federal requirements and to evaluate the effectiveness and compliance of the Copermittees' programs.

h. This Order establishes Storm Water Action Levels (SALs) for selected pollutants based on USEPA Rain Zone 6 (arid southwest) Phase I MS4 monitoring data for pollutants in storm water. The SALs were computed as the 90th percentile of the data set, utilizing the statistical based population approach, one of three

approaches recommended by the California Water Board's Storm Water Panel in its report, 'The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 2006). SALs are identified in Section D of this Order. Copermittees shall implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water from the permitted areas so as not to exceed the SALs. Exceedance of SALs may indicate inadequacy of programmatic measures and BMPs required in this Order.

2. **Development Planning**

a. The Standard Storm Water Mitigation Plan (SSMP) requirements contained in this Order are consistent with Order WQ-2000-11 adopted by the State Water Resources Control Board (State Board) on October 5, 2000. In the precedential order, the State Board found that the design standards, which essentially require that runoff generated by 85 percent of storm events from specific development categories be infiltrated or treated, reflect the MEP standard. The order also found that the SSMP requirements are appropriately applied to the majority of the Priority Development Project categories contained in Section D.1 of this Order. The State Board also gave Regional Water Quality Control Boards the needed discretion to include additional categories and locations, such as retail gasoline outlets (RGOs), in SSMPs.

b. Controlling runoff pollution by using a combination of onsite source control and site design BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the pollutant source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources of pollution and their prevention.

c. Use of Low-Impact Development (LID) site design BMPs at new development, redevelopment and retrofit projects can be an effective means for minimizing the impact of storm water runoff discharges from the development projects on receiving waters. LID is a site design strategy with a goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques. LID site design BMPs help preserve and restore the natural hydrologic cycle of the site, allowing for filtration and infiltration which can greatly reduce the volume, peak flow rate, velocity, and pollutant loads of storm water runoff. Current runoff management, knowledge, practices and technology have

resulted in the use of LID BMPs as an acceptable means of meeting the storm water MEP standard.

d. Retail Gasoline Outlets (RGOs) are significant sources of pollutants in storm water runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other developed areas.

e. Industrial sites are significant sources of pollutants in runoff. Pollutant concentrations and loads in runoff from industrial sites are similar or exceed pollutant concentrations and loads in runoff from other land uses, such as commercial or residential land uses. As with other land uses, LID site design, source control, and treatment control BMPs are needed at industrial sites in order to meet the MEP standard. These BMPs are necessary where the industrial site is larger than 10,000 square feet. The 10,000 square feet threshold is appropriate, since it is consistent with requirements in other Phase I NPDES storm water regulations throughout California.

f. If not properly designed or maintained, certain BMPs implemented or required by municipalities for runoff management may create a habitat for vectors (e.g. mosquitoes and rodents). Proper BMP design and maintenance to avoid standing water, however, can prevent the creation of vector habitat. Nuisances and public health impacts resulting from vector breeding can be prevented with close collaboration and cooperative effort between municipalities, the Orange County Vector Control District, and the California Department of Public Health during the development and implementation of runoff management programs.

g. The increased volume, velocity, frequency and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion, impair stream habitat in natural drainages, and negatively impact beneficial uses. Development and urbanization increase pollutant loads in storm water runoff and the volume of storm water runoff. Impervious surfaces can neither absorb water nor remove pollutants and thus lose the purification and infiltration provided by natural vegetated soil. Hydromodification measures for discharges to hardened channels are needed for the future restoration of the hardened channels to their natural state, thereby restoring the chemical, physical, and biological integrity and Beneficial Uses of local receiving waters.

3. **Construction and Existing Development**

a. In accordance with federal NPDES regulations and to ensure the most effective oversight of industrial and construction site discharges, discharges of runoff from industrial and construction sites are subject to dual (State and local) storm water regulation. Under this dual system, each Copermittee is responsible for enforcing its local permits, plans, and ordinances, and the Regional Board is

responsible for enforcing the General Construction Activities Storm Water Permit, State Board Order 99-08 DWQ, NPDES No. CAS000002 (General Construction Permit) and the General Industrial Activities Storm Water Permit, State Board Order 97-03 DWQ, NPDES No. CAS000001 (General Industrial Permit) and any reissuance of these permits. NPDES municipal regulations require that municipalities develop and implement measures to address runoff from industrial and construction activities. Those measures may require the implementation of additional BMPs than are required under the statewide general permits for activities subject to both State and local regulation.

b. Identification of sources of pollutants in runoff (such as municipal areas and activities, industrial and commercial sites/sources, construction sites, and residential areas), development and implementation of BMPs to address those sources, and updating ordinances and approval processes are necessary for the Copermittees to ensure that discharges of pollutants from its MS4 in storm water are reduced to the MEP and that non-storm water discharges are not occurring. Inspections and other compliance verification methods are needed to ensure minimum BMPs are implemented. Inspections are especially important at high risk areas for pollutant discharges.

c. Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the urban stream is both an MS4 and receiving water.

d. As operators of the MS4s, the Copermittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or a violation of water quality standards.

e. Waste and pollutants which are deposited and accumulate in MS4 drainage structures will be discharged from these structures to waters of the U.S. unless they are removed. These discharges may cause or contribute to, or threaten to cause or contribute to, a condition of pollution in receiving waters. For this reason, pollutant discharges from storm water into MS4s must be reduced using a combination of management measures, including source control, and an effective MS4 maintenance program must be implemented by each Copermittee.

f. Enforcement of local runoff related ordinances, permits, and plans is an essential component of every runoff management program and is specifically required in the federal storm water regulations and this Order. Each Copermittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent

or reduce pollutants in storm water runoff, and for the allocation of funds for the capital, operation and maintenance, administrative, and enforcement expenditures necessary to implement and enforce such control measures/BMPs under its jurisdiction. Education is an important aspect of every effective runoff management program and the basis for changes in behavior at a societal level. Education of municipal planning, inspection, and maintenance department staffs is especially critical to ensure that in-house staffs understand how their activities impact water quality, how to accomplish their jobs while protecting water quality, and their specific roles and responsibilities for compliance with this Order. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.

g. Public participation during the development of runoff management programs is necessary to ensure that all stakeholder interests and a variety of creative solutions are considered.

h. Retrofitting existing development with storm water treatment controls, including LID, is necessary to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards. Although SSMP BMPs are required for redevelopment, the current rate of redevelopment will not address water quality problems in a timely manner. Cooperation with private landowners is necessary to effectively identify, implement and maintain retrofit projects for the preservation, restoration, and enhancement of water quality.

4. **Watershed Runoff Management**

a. Since runoff within a watershed can flow from and through multiple land uses and political jurisdictions, watershed-based runoff management can greatly enhance the protection of receiving waters. Such management provides a means to focus on the most important water quality problems in each watershed. By focusing on the most important water quality problems, watershed efforts can maximize protection of beneficial use in an efficient manner. Effective watershed-based runoff management actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems. Watershed-based runoff management that does not actively reduce pollutant discharges and abate pollutant sources causing or contributing to watershed water quality problems can necessitate implementation of the iterative process outlined in section A.3 of the Tentative Order. Watershed management of runoff does not require Copermittees to expend resources outside of their jurisdictions. Watershed management requires the Copermittees within a watershed to develop a watershed-based management strategy, which can then be implemented on a jurisdictional basis.

b. Some runoff issues, such as general education and training, can be effectively addressed on a regional basis. Regional approaches to runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs.

c. It is important for the Copermittees to coordinate their water quality protection and land use planning activities to achieve the greatest protection of receiving water bodies. Copermittee coordination with other watershed stakeholders, especially the State of California Department of Transportation, the United States Department of Defense, and water and sewer districts, is also important.

E. STATUTE AND REGULATORY CONSIDERATIONS

1. The Receiving Water Limitations (RWL) language specified in this Order is consistent with language recommended by the USEPA and established in State Board Water Quality Order 99-05, *Own Motion Review of the Petition of Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES Permit No. CAS0108740*, adopted by the State Board on June 17, 1999. The RWL in this Order require compliance with water quality standards, which for storm water discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored BMPs over time. Compliance with receiving water limits based on applicable water quality standards is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality standards and the creation of conditions of pollution.

2. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for surface waters in Orange County: Municipal and Domestic Supply (MUN)[2], Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional beneficial uses are identified for coastal waters of Orange County: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).

3. This Order is in conformance with State Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*, and the federal Antidegradation Policy described in 40 CFR 131.12.

[2] Subject to exceptions under the "Sources of Drinking Waters" Policy (Resolution No. 89-33)

4. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Copermittee from developing a non-point source plan, for the urban category, under CZARA. The Regional Board addresses septic systems through the administration of other programs.

5. Section 303(d)(1)(A) of the CWA requires that "Each state must identify those waters within its boundaries for which the effluent limitations...are not stringent enough to implement any water quality standard (WQS) applicable to such waters." The CWA also requires states to establish a priority ranking of impaired water bodies known as Water Quality Limited Segments and to establish Total Maximum Daily Loads (TMDLs) for such waters. This priority list of impaired water bodies is called the Section 303(d) List. The current Section 303(d) List was approved by the State Board on October 25, 2006. On June 28, 2007 the 2006 303(d) list for California was given final approval by the United States Environmental Protection Agency (USEPA).

6. This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402. (33 U.S.C. § 1342(p)(3)(B).) Second, the local agency Copermittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges. Third, the local agency Copermittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. Fourth, the Copermittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their storm water discharges. Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under State law predates the enactment of Article XIIIB, Section (6) of the California Constitution. Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. sec. 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. sec. 122.44(d)(1)(vii)(B).)

7. Runoff treatment and/or mitigation must occur prior to the discharge of runoff into receiving waters. Treatment BMPs must not be constructed in waters of the U.S. or State unless the runoff flows are sufficiently pretreated to protect the values and functions of the water body. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. Without federal authorization (e.g., pursuant to Clean Water Act Section 404), waters of the U.S. may not be converted into, or used as, waste treatment or conveyance facilities. Similarly, waste discharge requirements pursuant to California Water Code Section 13260 are required for the conversion or use of waters of the State as waste treatment or conveyance facilities. Diversion from waters of the U.S./State to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements.

8. The issuance of waste discharge requirements and an NPDES permit for the discharge of runoff from MS4s to waters of the U.S. is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with the CWC section 13389.

9. Multiple water bodies in Orange County have been identified as impaired and placed on the 303(d) list. In 2004, Bacteria Impaired Waters TMDL Project II included six bacteria impaired shorelines in Dana Point Harbor and San Diego Bay: Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park, B Street, G Street Pier, Tidelands Park, and Chula Vista Marina in San Diego Bay. Since then, only Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay can be confirmed as still impaired by indicator bacteria. On June 11, 2008 the Regional Board adopted a Basin Plan amendment to incorporate *Bacteria Impaired Waters TMDL Project II for San Diego Bay and Dana Point Harbor Shorelines.* On June 16, 2009, the State Board approved the Basin Plan amendment. This action meets requirements of section 303(d) of the Clean Water Act (CWA). The Basin Plan amendment process is authorized under section 13240 of the Water Code. The State's Office of Administrative Law (OAL) approved the TMDLs on September 15, 2009. The effective date of the TMDLs is the date of OAL approval. USEPA approved the TMDLs on October 26, 2009.

10. Storm water discharges from developed and developing areas in Orange County are significant sources of certain pollutants that cause, may be causing, threatening to cause or contributing to water quality impairment in the waters of Orange County.

Furthermore, as delineated in the CWA section 303(d) list in Table 3, the Regional Board has found that there is a reasonable potential that municipal storm water and non-storm water discharges from MS4s cause or may cause or contribute to an excursion above water quality standards for the following pollutants: Indicator Bacteria, Phosphorous, Toxicity and Turbidity. In accordance with CWA section 303(d), the Regional Board is required to establish Total Maximum Daily Loads (TMDLs) for these pollutants to these waters to eliminate impairment and attain water quality standards. Therefore, certain early pollutant control actions and further pollutant impact assessments by the Copermittees are warranted and required pursuant to this Order.

Table 3. 2006 Section 303(d) Listed Waterbodies in So. Orange County

Waterbody	**Pollutant**
Aliso Creek	Indicator Bacteria, Phosphorus, Toxicity
Aliso Creek Mouth	Indicator Bacteria
Dana Point Harbor	Indicator Bacteria
English Canyon Creek	Benzo[b]fluoranthene, Dieldrin, Sediment Toxicity
Laguna Canyon Channel	Sediment Toxicity
Oso Creek (at Mission Viejo Golf Course)	Chloride, Sulfates, Total Dissolved Solids
Pacific Ocean Shoreline, Aliso HSA	Indicator Bacteria
Pacific Ocean Shoreline, Dana Point HSA	Indicator Bacteria
Pacific Ocean Shoreline, Laguna Beach HSA	Indicator Bacteria
Pacific Ocean Shoreline, Lower San Juan HSA	Indicator Bacteria
Pacific Ocean Shoreline, San Clemente HA	Indicator Bacteria
Pacific Ocean Shoreline, San Joaquin Hills HSA	Indicator Bacteria
Prima Deshecha Creek	Phosphorus, Turbidity
San Juan Creek	DDE, Indicator Bacteria
San Juan Creek (mouth)	Indicator Bacteria
Segunda Deshecha Creek	Phosphorus, Turbidity

11. This Order incorporates only those MS4 Waste Load Allocations (WLAs) developed in TMDLs that have been adopted by the Regional Water Board and have been approved by the State Board, Office of Administrative Law and U.S. EPA. Approved TMDL WLAs are to be addressed using water quality-based effluent limitations (WQBELs) calculated as numeric limitations (either in the receiving waters and/or at the point of MS4 discharge) and/or as BMPs. In most cases, the numeric limitation must be achieved to ensure the adequacy of the BMP program. Waste load