



RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

January 14, 2010

Mr. Gerard J. Thibeault, Executive Officer
California Regional Water Quality Control Board
– Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Re: Comments on the Third Draft Order R8-2010-0033 for the Renewal of Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District (District), the County of Riverside and the incorporated Cities of Riverside County, Tentative Order R8-2010-0033, NPDES CAS618033, Area-wide Urban Runoff Management Program (Tentative Order)

Dear Mr. Thibeault:

The District serves as the Principal Permittee on the Riverside County Municipal Separate Storm Sewer System (MS4) Permit for the Santa Ana Region. The following comments on the Third Draft Tentative Order are submitted on behalf of all of the Permittees identified in the MS4 Permit (MS4 Permittees). The MS4 Permittees also would like to incorporate into these comments the comments made on the First and Second Draft Tentative Orders, to the extent still responsive to the provisions of the Third Draft.

The MS4 Permittees wish to thank the Santa Ana Regional Water Quality Control Board (Regional Board) staff for their cooperative attitude and willingness to work with the interested parties regarding the requirements proposed in the Tentative Order. This cooperation is particularly important, given the economic crisis which our State, and by extension, the MS4 Permittees and our citizens, must manage.

Recommended Editorial Revisions

The MS4 Permittees' comments are addressed via suggested revisions provided in redline and noted comments on the attached components of the Tentative Order. This redline was previously provided to staff on January 6, 2010. The recommended revisions are primarily editorial (i.e., typos, formatting, clarifications, and standardization and definition of technical terms), though there are some substantive requested clarifications to ensure that the Findings are consistent with the body of the Tentative Order. There are also some clarifications to timelines for Lake Elsinore TMDL related tasks. The recommended revisions are intended largely to enhance the clarity of the Tentative Order so as to promote administration of, and compliance with, the MS4 Permit. The attachments incorporating proposed revisions are:

- **Attachment 1** – Tentative Order
- **Attachment 2** – Monitoring and Reporting Program (Appendix 3)
- **Attachment 3** – Glossary (Appendix 4)
- **Attachment 4** – Construction NOI/NOT (Appendix 5)
- **Attachment 5** – Fact Sheet (Appendix 6)
- **Attachment 6** – De Minimus NOI/NOT (Appendix 7)

Fiscal Constraints

If adopted, the requirements proposed in the Tentative Order will result in significant operational and fiscal impacts to the MS4 Permittees during a period of economic distress. As described in previous communications and Attachment 1 of our comments on the First Draft Tentative Order, the MS4 Permittees are struggling to maintain their existing compliance programs. As discussed in our comments on the First and Second Tentative Orders, the MS4 Permittees' revenues and budgets were slashed across the board in Fiscal Year 2009-2010, and are projected to be reduced further in Fiscal Year 2010-2011. The Permittees' revenues and budgets are not projected to stop declining before Fiscal Year 2011-2012. Riverside County was recently identified as the 11th most distressed County in the United States by the Associated Press.¹

The MS4 Permittees do not have revenues adequate to support expanded compliance programs. Indeed, the Permittees are projecting further erosion of revenue sources, including reduced State aid and reduced property tax revenues as the result of property value reassessments. Increases in revenues to pre-recession levels are not anticipated during the term of the Tentative Order. As a matter of prudent public policy, it is incumbent upon both the Regional Board and the MS4 Permittees to recognize these fiscal limitations and take them into consideration in establishing compliance requirements and programs.

Further, the MS4 Permittees have allocated their remaining resources for Fiscal Year 2009-2010 and are unlikely to have available funds to begin significant program enhancements within the remaining six months of the current fiscal year. Additional reductions in revenues and budgets projected for Fiscal Year 2010-2011 will place the proposed expansions of the Permit compliance programs in direct competition with critical infrastructure maintenance, and health, safety and social services, all of which will be vying for the same limited resources.

Requested Extension of Compliance Schedule

In recognition of these fiscal constraints, the MS4 Permittees request that most of the Permit compliance program compliance schedules be extended an additional six months. Please note that the requested extensions are not noted in the attached redline, previously submitted to your staff. By extending compliance deadlines for most Permit requirements, the MS4 Permittees will be given the time necessary under known fiscal constraints to effectively manage Permit implementation and to:

¹ AP Analysis: Sun Belt Struggles to Begin Recovery, MIKE SCHNEIDER and MARTIN CRUTSINGER, Associated Press Writers
WASHINGTON January 11, 2010 (AP)

1. Educate staff and elected officials about expanded Permit requirements;
2. Hire consultants and commence reasonable process program development; and
3. Budget for the costs of compliance program development in 2010-2011 and if feasible, spread program development costs across up to three fiscal years.

The MS4 Permittees have estimated the costs to enhance the Regional Compliance Programs and regional documents associated with the new Permit at over \$1.5 million. Individual MS4 Permittees will also incur their own individual program development costs, estimated at \$1 million for each MS4 Permittee, including staff time and operating expenses. The total cumulative cost for the MS4 Permittees to enhance their local programs and develop regional compliance documents is, therefore, close to \$17.5 million.

The Permittees believe that the extension of the compliance schedule is reasonable given not only the current and predicted economic climate, but also the lack of any indication of deteriorating water quality conditions over the term of the current MS4 Permit.

Alternatively, the MS4 Permittees would request that the Regional Board commit to scheduling a workshop to discuss MS4 Permit implementation progress within 12 months of Permit adoption. The purpose of the workshop would be to provide the MS4 Permittees an opportunity to better characterize progress, fiscal limitations and questions regarding permit compliance programs. The Permittees may use the workshop as an opportunity to request that the Permit be reopened to address the fiscal realities facing the MS4 Permittees.

Low Impact Development (LID) Provision Requirements

The MS4 Permittees understand that Regional Board staff may be considering possibly revising Sections XII.E (specifically footnote 52) and XII.G of the Permit to require development projects that cannot feasibly capture the runoff design volume onsite to either:

1. Capture the runoff design volume offsite as part of a regional solution; or
2. Participate in a credit, in-lieu or other mechanism to mitigate the portion of the runoff design volume that is not captured onsite in addition to providing onsite treatment.

Amendment of the Permit at this juncture to revise the LID provisions would, we believe, require a new public comment period, at least for such changes, since they would not clarify existing requirements but impose new ones. The MS4 Permittees are concerned that such provisions also would impose additional administrative burdens on the Permittees that could not be immediately complied with, such as the requirement to establish offset mechanisms that currently do not exist. The Permittees are unable to make further comments, as they have not seen any proposed language.

Other Scheduling Adjustments

The Permittees request the following additional schedule adjustments which are also not included in the redline attachments:

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Effectiveness Evaluation (XVII.A) — Extend the deadline for program effectiveness evaluation updates from the first annual report completed after permit adoption to the third such annual report (2011-2012 Annual Report). The deadline proposed under the Draft Permit is premature as, the first two Annual Reports will be addressing programs developed under the prior Permit – not the new compliance programs envisioned under the new permit.

Further, the effectiveness evaluation is an important program assessment tool which should consider the LID, WQMP and LIP program elements that will be under development in 2010-2011. Extending the reporting schedule until the fall of 2012 provides the Permittees the opportunity to include these priority permit elements when proposing changes to the program effectiveness evaluation.

Pathogen Control Ordinance (VIII.C) — Extend completion schedule from 24 to 48 months. The proposed revisions would allow the Permittees 36 months to develop the ordinance and another 12 months to adopt the ordinance once language had been solidified. We note that this request also was made by San Bernardino County in their January 7, 2010 comments regarding the San Bernardino County Permit. At minimum, the Permittees request the same amount of time that is currently provided to San Bernardino County for this task – 36 months.

TMDL Provisions

The redline comments submitted by the MS4 Permittees on January 6, 2010 and attached to this letter include specific changes of the Findings, including Findings K.3 and K.4, to make those Findings consistent with the language in the Third Draft regarding the incorporation of TMDLs. We respectfully incorporate San Bernardino County's January 7, 2010 comment letter with respect to various legal issues associated with these changes, as the provisions of the San Bernardino County permit are essentially identical to those set forth in the Riverside County permit.

We believe that the TMDL provisions incorporated in the body of the Permit clearly set forth our mutual understanding that, with respect to the Middle Santa Ana River (MSAR), the MS4 Permittees are to develop a Comprehensive TMDL compliance plan that will, if approved by the Regional Board, constitute a BMP-based approach that will become the final water quality based effluent limitations (WQBELs) incorporating the MSAR Bacteria TMDL. If the plan is not approved prior to the compliance dates for the TMDL, the numeric waste load allocations in the TMDL would become the final WQBELs on the compliance date and would remain in effect until a comprehensive BMP plan is approved by the Regional Board. It is our further understanding that such an approach is intended by staff to avoid possible triggering of the anti-backsliding provisions of the Clean Water Act, which has been a major concern of the MS4 Permittees, as reflected in earlier comment letters.

Closing

The MS4 Permittees remain committed to effectively managing Urban Runoff to protect Receiving Water quality in a manner that balances this objective with the finite and diminishing resources available to meet the universe of needs and expectations of the citizens, and the responsibility and duties of local governments within the Riverside County portion of the Santa Ana River watershed. Given the revenue reductions impacting the Permittees (including those imposed by the State), it is especially important to ensure that the proposed requirements of the Permit (a) do not exceed those

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mandated by the Federal stormwater regulations (including the Maximum Extent Practicable requirements), (b) will be effective in addressing identified water quality impairments, and (c) will be technically and fiscally achievable.

If you have any questions regarding these comments, please contact Jason Uhley at 951.955.1273 or juhley@rcflood.org of the District's Regulatory Division.

Very truly yours,



FOR

WARREN D. WILLIAMS
General Manager-Chief Engineer

Enclosures: Attachments 1-6

c: Santa Ana River Region MS4 Permittees
Matt Yeager, San Bernardino County Flood Control
Robert Collacott, URS Corporation

AM:rlp