

From: [Uhley, Jason](#)
To: Chiu, Wayne@Waterboards
Cc: [Garcia, David](#); [Lomeli, Eric](#); [Horn, Steven](#); [Watts-Bazan, Karin](#)
Subject: Request for alternate hearing procedures for April 10/11 Hearing
Date: Thursday, March 21, 2013 5:38:47 PM
Attachments: [Hearing Procedures - Proposal Regional MS4 Permit.pdf](#)

Wayne,

At this time, and pursuant to March 18, 2013 Hearing Notice, please find enclosed a respectful request for alternative hearing procedures for the April 10/11 Regional Permit Hearing. The District may modify this request at a later date pending review of the revised tentative order and response to comments.

The original should arrive via fed-ex tomorrow.

Please feel free to call if you have any questions.

Regards,

Jason Uhley
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Riverside County Flood Control and Water Conservation District
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WARREN D. WILLIAMS
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RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

March 21, 2013

Emailed this date to:

wchiu@waterboards.ca.gov with e-mail

subject line: Hearing Procedures – Proposed Regional MS4 Permit

Wayne Chiu, P.E.
WRC Engineer
California Regional Water
Quality Control Board - San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Chiu:

Re: Hearing Procedures – Proposed Regional
MS4 Permit

I am writing on behalf of the Riverside County Flood Control and Water Conservation District (District) with regard to the Hearing Notice and Order of Proceedings (Hearing Notice) released on March 18, 2013 governing the proposed adoption of Tentative Order No. R9-2013-0001 (Tentative Order). The District, in consultation with the other Co-permittees within the Santa Margarita Region (the County of Riverside and the Cities of Murrieta, Temecula and Wildomar), is sending this letter in response to the requirement in the Hearing Notice for request for alternative procedures to those set forth in the Hearing Notice. The District notes that this letter does not waive the District's previously expressed objection to coverage under the proposed Tentative Order in the absence of a Report of Waste Discharge, or questions regarding the Water Board's jurisdiction to issue a regional permit.

Before addressing the specific items set forth in this letter, I draw your attention to the letter to Executive Officer David Gibson from Riverside County Supervisors Kevin Jeffries and Jeff Stone dated March 20, 2013, which requested a continuance of the April 10-11 hearing and also a 45-day opportunity for stakeholders to review and comment on changes to the revised Tentative Order (which has not been released). The comments and concerns expressed in this letter relate in large part to the very short time between the anticipated release dates of the Tentative Order and staff's responses to comments and the hearing dates.

Scope of Hearing

The District first notes that the adoption of an NPDES permit or waste discharge requirement is subject to the formal adjudicatory proceedings set forth in the California Administrative Procedure Act (APA) (Govt. Code Sections 11400 *et seq.*), Evidence Code Sections 801-805, Govt. Code Section 11513 and title 23 of the California Code of Regulations, Sections 648 *et seq.* At this time, the District requests that a formal adjudicatory process, in accordance with the requirements of those statutory and regulatory provisions, be conducted for the adoption of the Tentative Order, and respectfully objects to having the hearing conducted in the "generally informal manner" set forth in the Hearing Notice.

Wayne Chiu, P.E.
Re: Hearing Procedures – Proposed Regional
MS4 Permit

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March 21, 2013

The District also objects to the limitation in the Hearing Notice and in the earlier hearing notice dated March 6, 2013 regarding the scope of oral testimony or Powerpoint/computer displays at the hearing. Under the above-noted statutory and regulatory provisions, testimony and exhibits cannot be limited to summarizing earlier written comments, commenting on revisions to the Tentative Order and making policy statements. Any testimony will, of course, need to be relevant to the issues before the Board. Additionally, those provisions provide stakeholders with the opportunity to provide exhibits as part of their testimony, and to the extent that the Hearing Notice purports to limit that right, the District objects.

Hearing Process

With regard to the Hearing Process, the District requests that the order of proceedings follow the model set forth in Title 23 Cal. Code Reg. Section 648.5. This model provides an efficient and orderly process for the taking of testimony, and the District, therefore, requests that it be substituted for the order of proceedings set forth in the Hearing Notice.

Additionally, the District requests that the US Environmental Protection Agency's (USEPA) presentation be scheduled after that of the Water Board staff and prior to that of the stakeholders. Since the USEPA, like the Water Board, is a regulatory agency, its presentation should follow that of Water Board staff.

With regard to the amount of time required for the District's testimony, due to the current unavailability of the revised Tentative Order or staff's responses to comments, the District is now requesting at least two hours to make its presentation (including testimony, rebuttal, cross-examination, and opening and closing statements). This estimate is subject to revision following receipt of the revised Tentative Order and staff's responses to comments. The Riverside County Committees may also require additional time.

The Hearing Notice requests that participants within each of the major party groups (permittees, NGOs, building industry) to "consolidate their presentations to save hearing time and/or avoid duplication". While the District agrees that such consolidation would be preferable, the short time between the release of the revised Tentative Order, and response to comments and the hearing will make it impossible for such coordination to occur. If the Water Board continues the hearing dates, as requested by Supervisors Jeffries and Stone (and by other stakeholder representatives), we believe that such coordination can be done.

As a final comment, the District has no objection to the scheduling of elected official testimony for a time certain. However, given such officials' busy schedules, we request that the Board agree to hear elected officials outside of that time slot, as appropriate to accommodate those schedules.

Thank you for your consideration of these issues.

Very truly yours,



FOR WARREN D. WILLIAMS
General Manager–Chief Engineer

DB:JU:bjp:cw
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