



THE COUNTY COUNSEL
COUNTY OF ORANGE

333 W. SANTA ANA BLVD., SUITE 407
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 834-2359

Ryan M. F. Baron
Senior Deputy
(714) 834-5206

January 30, 2015

NICHOLAS S. CHRISOS
COUNTY COUNSEL

WANDA S. FLORENCE
JACK W. GOLDEN
MARIANNE VAN RIPER
SENIOR ASSISTANTS

KAREN L. CHRISTENSEN
ANN E. FLETCHER
JAMES C. HARMAN
JAMES C. HARVEY
ADRIENNE SAURO HECKMAN
MARK R. HOWE
GEOFFREY K. HUNT
THOMAS A. "MAT" MILLER
DANA J. STITS
SUPERVISING DEPUTIES

MARY CHIN
DIRECTOR OF ADMINISTRATION

KAREN R. PRATHER
CHRISTOPHER J. MILLER
JANELLE B. PRICE
MARGARET E. EASTMAN
LAURIE A. SHADE
DANIEL H. SHEPHERD
JOYCE RILEY
STEVEN C. MILLER
CAROLYN S. FROST
ROBERT N. ERVAIS
LAURA D. KNAPP
NICOLE A. SIMS
NIKHIL G. DAPTARY
JEANNIE SU
WENDY J. PHILLIPS
TERI L. MAKSOUDIAN
LEON J. PAGE
ANGELICA CASTILLO DAPTARY
MICHAEL A. HAUBERT
RYAN M. F. BARON
BRAD R. POSIN
SAUL REYES
AURELIO TORRE
MARK D. SERVINO
DEBBIE TORREZ
JACQUELINE GUZMAN
ANDREA COLLIER
PAUL M. ALBARIAN
D. KEVIN DUNN
LORI A. TORRISI
MASSOUD SHAMEL
SHARON VICTORIA DURBIN
REBECCA S. LEEDS
NICOLE M. WALSH
ELIZABETH A. PEJEAU
LAUREN C. KRAMER
GABRIEL J. BOWNE
JULIA C. WOO
LAUREL M. TIPPETT
MARK A. BATARSE
ADAM C. CLANTON
KRISTEN K. LECONG
ERIC A. DIVINE
JAMES D. P. STEINMANN
VANESSA D. ATKINS
SUZANNE E. SHOAI
DEBORAH B. MORSE
MATTHEW S. SPRISSELER
KAYLA N. WATSON
CAROLYN M. KHOUZAM
ANNIE J. LOO
RONALD T. MAGSAYSAY
JOHN P. CLEVELAND
SAMARA BELGARDE
CHRISTOPHER S. ANDERSON
DEPUTIES

David Gibson, Executive Officer
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700

Re: Orange County Request for Continuance

Dear Mr. Gibson:

On behalf of the County of Orange and the Orange County Flood Control District ("County"), our office is requesting a 30-day continuance of the February 11, 2015 adoption hearing for Tentative Order No. R9-2015-0001, which would enroll the Orange County permittees into the Regional Permit. A significantly revised Tentative Order, along with 133 pages of response to comments, was released on January 21, 2015 just 15 working days prior to the proposed adoption hearing. In order to properly review staff's detailed responses and timely prepare for a potentially lengthy adjudicatory proceeding, the County respectfully requests that more time be granted so that the County may properly prepare evidence and testimony. At the initial adoption of the Regional Permit, the permittees, stakeholders and the public participated in a lengthy formal adjudicatory proceeding where numerous witnesses provided testimony and presented evidence on the permit, a hearing that lasted for three full days (April 10 and 11, May 8, 2013). At that time, the County and other stakeholders requested a reasonable continuance that was ultimately denied. It is our opinion that a continuance in that case could have minimized some of the questions and controversy generated at that hearing so the permittees could have properly prepared and understood the revisions. We believe the same to be true here.

I will note that the County will also be filing comments on February 13, 2015 regarding its permit with the Santa Ana Regional Water Board, which has just been released for a second revision. For that permit, staff is allowing an additional comment period and a proposed adoption hearing at least two months after the Response to Comments were released. For the San Diego hearing, however, the County is only requesting a modest 30-day extension.

The County would also like to discuss with you the potential for an alternative compliance option in the Regional Permit and the reasoning behind why an option was not proposed in the Tentative Order. Both the Fact Sheet and your letter to the State Water Board regarding its Proposed Order on the Los Angeles MS4 permit upholding an alternative compliance option note that an option will be developed upon enrollment of the Riverside County permittees. We believe this issue should be discussed prior to Orange

David Gibson, Executive Officer
San Diego Regional Water Quality Control Board
January 30, 2015
Page 2

County enrolling into the permit, so as to avoid any confusion or unnecessary time spent at the February 11 hearing. It should be further noted that in proposed permit for the Santa Ana region, staff has just proposed an alternative compliance option similar to the one upheld by the State Board. It is our belief that an alternative compliance option for Orange County could be developed in due time without significantly delaying our enrollment.

In addition, the Hearing Notice for the February 11, 2015 hearing appears to limit the permittees' rights to provide oral testimony by limiting comments to summarizing prior written comments and comments on the revisions to the Tentative Order. Under Government Code sections 11400 *et seq.*, Evidence Code sections 801-805, Gov't Code section 11513 and title 23 of the California Code of Regulations, sections 648 *et seq.*, and applicable case law, the County has the right to request a formal proceeding and provide any oral comments relevant to the proceedings. Furthermore federal law allows the public comment process to be extended to the close of any hearing on an MS4 permit. 40 C.F.R. § 124.10. As such, we request that the permittees be allowed to right of cross-examination if needed as well as the ability to present on all issues relevant to the permit.

Lastly, the County requests that the Orange County permittees be collectively provided a two-hour time period by which to make presentations, provide testimony, submit evidence and cross-examine witnesses, as such right is provided by the aforementioned statutes. We also request that an order of proceedings be published establishing the time periods for presentations and testimony and recognizing parties that will be designated to participate in the proceedings.

Thank you for your consideration.

Very truly yours,

NICHOLAS S. CHRISOS
COUNTY COUNSEL

By /s/ Ryan Baron

Ryan M. F. Baron, Senior Deputy

RMFB:azs
Mary Anne Skorpanich, OC Public Works
Chris Crompton, OC Public Works
Richard Boon, OC Public Works
Catherine Hagen, San Diego Regional Water Board