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SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

December 9, 2013

Mary Anne Skorpanich
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 Orange County Public Works
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 Orange, California 92865-2773

In reply refer to:
PIN number CW-658018:lwalsch

**Subject: South Orange County Hydromodification Management Plan Exemptions
 and Early Enrollment Under Order No. R9-2013-0001**

Ms. Skorpanich:

This is a follow-up to my meetings with you in August and October 2013 as well as your recent letter dated November 22, 2013 regarding the South Orange County Copermittees (Copermittees) request to continue granting hydromodification management best management practice (BMP) requirement exemptions for Priority Development Projects discharging to "large river" reaches. The term "large rivers" refers to low gradient reaches with a very wide flood plain for which the contributing drainage area exceeds 100 square miles and with a 100-year design flow in excess of 20,000 cubic feet per second (cfs).

As you know, the requirements of the South Orange County Municipal Separate Storm Sewer System (MS4) Permit, Order No. 2009-0002 (Order), do not provide for large river exemptions. By letter dated July 31, 2013, the San Diego Water Board concluded that the proposed *Final South Orange County Hydromodification Management Plan* dated October 25, 2012 (Proposed Final HMP) was adequate and in compliance with section F.I.h of the MS4 Order, provided in part that the HMP be revised to remove the large river exemption and other exemptions not authorized under the Order no later than December 20, 2013.

In your November 22 letter you requested that the current MS4 Order be amended to allow the Copermittees to continue allowing appropriate hydromodification management BMP requirement exemptions after December 20. I cannot recommend that the San Diego Water Board expend the time and resources necessary to amend the current MS4 Order at this time in light of the considerable effort put into development of the newly adopted Regional MS4 permit, Order No. R9-2013-0001, over the past two years. Moreover, the HMP requirements of the current MS4 Order were adopted in December 2009 after a similar comprehensive two year development process involving workshops, meetings, presentations and extensive opportunities for the Copermittees to review various drafts of the Tentative MS4 Order and provide written comments. The Regional MS4 permit is the San Diego Water Board's vehicle for advancing the storm water program through comprehensive, creative, and effective storm water regulation and enrollment of the Copermittees in that permit is one of the Board's top

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priorities.

In my most recent meeting with you on October 21, 2013, I described an option for your consideration that could provide the flexibility for the continued granting of appropriate hydromodification management BMP requirement exemptions with only a relatively brief interruption after December 20, 2013. I encourage the Copermittees to submit a Report of Waste Discharge (ROWD) as soon as possible to begin the early enrollment process described in section II.F.6 of the Regional MS4 Permit. It would be necessary for the Copermittees to submit supporting technical justification for proposed exemptions from hydromodification management BMP requirements in the ROWD. If the San Diego Water Board concurs with the supporting justification, the proposed exemptions could be effective immediately upon enrollment. Please note that under section F.1.b.(1) of the Regional MS4 Permit, the Copermittees would have 24 months from date of enrollment to develop a Water Quality Improvement Plan. At that time, any exemptions allowed in the HMP upon enrollment would expire unless the Copermittees perform the optional Watershed Management Area Analysis, and include supporting rationale for the exemptions.

Under the early enrollment process, the Copermittees would have the opportunity for public comment and a hearing for the San Diego Water Board to consider modifications to the Regional MS4 Permit. During our October 21 meeting you indicated that the Copermittee comments and request for modifications to the Regional MS4 Permit may be limited to only a few topics regarding bacteria TMDLs and hydromodification management concerns. If that were the case, the comment period and hearing could follow submission of the ROWD in fairly short order. Alternatively the San Diego Water Board might also consider a request by the Copermittees to early enroll under the Regional MS4 Permit in a two-step process with a limited initial Board hearing to accomplish the enrollment, followed by a second hearing within six months to consider more substantive comments and requests for permit modification by the Copermittees. This two-step hearing process is not the preferred alternative due to the time and resources that would need to be invested by both the San Diego Water Board and the Copermittees. In addition, I cannot guarantee at this time that the San Diego Water Board members would agree to the two-step hearing process approach.

Please reconsider applying for early coverage under the Regional MS4 Permit. I do think it offers a number of real advantages for the Copermittees not only in terms of the potential for addressing your concerns on hydromodification management BMP exemptions but also in terms of the enhanced ability for the Copermittees to more flexibly deploy resources to achieve water quality improvement goals.

Ms. Mary Anne Skorpanich

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In the subject line of any response, please include the Primary Identification Number (PIN) CW-658018:lwalsh. If you would like to discuss this matter further please contact me at (619) 521-3007, email: David.Gibson@waterboards.ca.gov or Laurie Walsh at (619) 521-3373, email: Laurie.Walsh@waterboards.ca.gov.

Respectfully,



David W. Gibson
Executive Officer
California Regional Water Quality Control Board, San Diego Region

DWG:dtb:esb:cma

cc: Distribution list via email: Orange County Copermittees

Tech Staff Info & Use	
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