

Hagan, Catherine@Waterboards

From: Hagan, Catherine@Waterboards
Sent: Tuesday, February 10, 2015 3:34 PM
To: ryan.baron@coco.ocgov.com
Cc: Barker, David@Waterboards; Becker, Eric@Waterboards; Arias, Christina@Waterboards; Walsh, Laurie@Waterboards
Subject: Response to Procedural Points in January 30, 2015 Letter
Attachments: 013015 Baron Letter.pdf

Dear Mr. Baron:

David Gibson asked me to respond to the procedural requests in your letter to him dated January 30, 2015. In the interest of time, I am responding by e-mail rather than formal letter but will include this email along with your letter (attached) in the record for this proceeding.

Request for 30-day Continuance

The San Diego Regional Water Quality Control Board (San Diego Water Board) Chair has considered the County of Orange and Orange County Flood Control District's (Orange County) request for a 30 day continuance of the public hearing in the matter of Tentative Order No. R9-2015-0001, An Order Amending Order No. R9-2013-0001, NPDES No. CAS010266, National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Tentative Order). I understand Mr. Gibson already conveyed to you that the San Diego Water Board plans to proceed with the public hearing scheduled on February 11, 2015. There are relatively few new issues involved in this amendment proceeding, especially compared to the volume of contentious issues extensively considered during the public hearings to consider and adopt San Diego Water Board Order No. R9-2013-0001 (Regional MS4 Permit). The San Diego Water Board provided a 60-day rather than the legally required 30-day (see 40 CFR sec. 124.10(b)(2)) written public comment period and held a public workshop at its meeting in Orange County on October 2014. Revisions to the Tentative Order were released three weeks before the scheduled hearing and arise from comments submitted during the written comment period and the revisions are highlighted to facilitate focused review. While the written responses to comments report is lengthy, the vast majority of comments submitted on the Tentative Order largely incorporated or duplicated comments submitted during the 2013 Regional MS4 Permit proceeding and are therefore not new. The San Diego Water Board is not obligated to provide responses to comments to the public for their review in advance of the hearing. (See 40 CFR sec. 124.17(a) and (c).) The Chair determined it was not necessary to continue the hearing based on the reasons cited in your letter.

Scope of Comments and Testimony

The scope of oral comments at the public hearing was identified in the Notice of Public Hearing dated January 9, 2015. The San Diego Water Board is permitted to place reasonable controls on public comment and, as indicated above, already provided a 60-day written comment period and an additional 21-day opportunity for oral comment on revisions to the Tentative Order. Reliance on Title 40 CFR section 124.10 (as referenced in sections 124.12(c) and 124.13) as requiring the board to allow the identification of new issues at the public hearing is misplaced. Neither of these sections providing that the public comment period extend to the close of the public hearing is applicable to the San Diego Water Board as it considers this permit amendment. (See 40 CFR sec. 123.25(a).)

Request for Formal Hearing Procedures

You have requested a more formal hearing process than the board typically uses at its NPDES hearings but the Chair will allow questions of staff or parties subject to reasonable limitations at the discretion of the Chair. The Chair has considered your request for two hours for the Orange County Copermittees but given the relatively narrow scope of new issues in this proceeding, will grant 45 minutes, including time for questions and closing comments. As always, requests for more time based on good cause may be granted at the discretion of the Chair. To clarify, oral and written comments submitted during the 2013 Regional MS4 Permit proceeding are considered part of the record carried forward to this amendment proceeding. In written comments on the Tentative Order, most commenters incorporated by reference all of their earlier submitted comments and objections. The San Diego Water Board likewise incorporates its 2013 written and oral responses to comments in the responses to comments report prepared by staff.

Please let me know if you have further questions.

Sincerely,

-Catherine
Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Tel. 619-521-3012
Fax 619-516-1994
E-mail: catherine.hagan@waterboards.ca.gov

Please note my new mailing address and telephone/fax numbers.

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
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San Diego, CA 92108
Tel. 619-521-3012
Fax 619-516-1994
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