

Hagan, Catherine@Waterboards

From: James R O'Day <James.ODay@sdcounty.ca.gov>
Sent: Friday, August 17, 2012 3:52 PM
To: Hagan, Catherine@Waterboards
Subject: RE: Administrative Draft R9-2012-0011

Hi Catherine: I just wanted to send a note to keep in contact about these issues on behalf of our informal attorney group for copermittees. We have delayed sending our summary of legal comments to you, mostly due to pressing demands assisting our staff in the workshop process with RB staff (as well as the usual other distractions). We have not abandoned the idea of getting you something, and have of course through our client staff conveyed some of those concerns to Wayne and the team in the ongoing process. We are currently most concerned with the Receiving Water Limitations language and its potential impact in light of the *NRDC v. County of Los Angeles* Ninth Circuit opinion. We hope you might join with us in urging the State Board to hold its workshop on Receiving Water Limitations language as soon as possible and before the permit final approval process. We view the exposure to third party litigation from the RWL language, highlighted by the NRDC case, to be one of the biggest detriments to the otherwise collaborative effort to design a permit that captures the iterative approach to long term water quality improvement. As the workshop process draws to a close, and the Tentative Order is due to be issued, we will revisit getting you the written summary and perhaps meeting with you during the public review and comment period. Thanks.

From: Hagan, Catherine@Waterboards [mailto:CHagan@waterboards.ca.gov]
Sent: Tuesday, July 10, 2012 12:42 PM
To: O'Day, James R
Subject: RE: Administrative Draft R9-2012-0011

Hi Jim,

I am sorry for the delay in responding to your e-mail. Due to competing priorities, I have not yet had an opportunity to complete my legal opinion memo requested by both Orange and Riverside Counties regarding the Board's position on legal authority to issue an eventual "Regional" MS4 permit and regarding their concerns about the viability of the ROWD process for their respective counties. While discussion about technical issues in the focused workgroups can obviously proceed absent a legal opinion memo, I appreciate the counties' desire to have a legal memorandum to review so that they understand the Board's legal perspective on these issues. I am hopeful that I will have an opportunity to complete a legal memorandum within the next couple of weeks. With regard to additional legal issues, I think it would be most useful for the copermittees to provide their legal concerns in writing at their earliest convenience so that I can evaluate them and, if warranted, advise Regional Board staff about any revisions I think would be appropriate in light of the copermittees' concerns. Certainly if it appears that subsequent in-person meetings may be productive in terms of fleshing out misunderstandings or legal nuances, I remain open to such meetings but I do not think it would be useful to schedule such a meeting at this juncture.

Sincerely,

Catherine

Catherine George Hagan
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Office of Chief Counsel
State Water Resources Control Board
Tel. 858-467-2958

From: James R O'Day [<mailto:James.ODay@sdcounty.ca.gov>]
Sent: Friday, July 06, 2012 12:07 PM
To: Hagan, Catherine@Waterboards
Subject: Administrative Draft R9-2012-0011

Hi Catherine: I am writing on behalf of a co-permittee attorney group working on the new stormwater permit review process and the focused workshops with RWQCB staff. I think Shawn Hagerty discussed the possibility of legal counsel meeting with you about legal issues associated with the draft permit, which we think is important because of the specific directive in the workshops not to get into legal issues, but focus on technical matters.

We would like to set up a meeting at your convenience within the next two weeks, if possible. We propose to have about 5-6 attorneys participate representing Orange, Riverside, and San Diego co-permittees and can come to your offices. We know you requested a summary of issues for discussion in advance, and can certainly get that to you fairly quickly and in advance of the meeting. If you can confirm that you are still willing to meet with us, and that time frame is acceptable, I will circulate your available dates and try to coordinate setting the meeting. I suggest setting aside about 2 hours to be on the safe side with time. We see the proposed meeting as beneficial to the co-permittees' counsel and your legal team as you advise your clients on the eventual content of the formal draft permit.

I look forward to hearing back at your early convenience. As always, best regards.

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