

**Board of Supervisors
County of San Bernardino**



GARY C. OVITT
CHAIRMAN
SUPERVISOR, FOURTH DISTRICT

November 17, 2009

Ms. Carole H. Beswick and Members of the Board
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

**RE: DRAFT NPDES STORMWATER PERMIT FOR SAN BERNARDINO COUNTY,
TENTATIVE ORDER NO. R8-2009-0036**

Dear Chair Beswick and Board Members:

Please accept these comments regarding the renewal of our Municipal Stormwater NPDES Permit (Permit). The San Bernardino County Flood Control District (District) leads implementation of the Permit. Thus far, the District, with assistance from consultants, outside legal counsel, County Counsel, and City staff, has submitted extensive comments on outstanding technical and legal concerns regarding the June 26, 2009 and October 23, 2009 public release drafts of the proposed Permit, provided testimony at the August 3, 2009 Public Workshop, and discussed our concerns at several meetings with your staff and the Executive Officer. A lot has been accomplished so far and we appreciate the efforts of your staff. However, a few key issues that have far-reaching economic, technical, and legal implications for the District, the County, and the Cities remain unresolved. These outstanding issues are the manner by which TMDLs (Total Maximum Daily Loads) are incorporated into the proposed Permit, and the insertion of specific provisions for development projects into local land use decision processes.

Economic Concerns

We support the overall objectives to protect water quality, but the full list of requirements in the proposed Permit is a daunting challenge to undertake. Implementation of the proposed Permit is estimated to require, at least, a doubling of staff time and contract costs for each jurisdiction. This comes at a time of severe economic stress when local governments are reducing staff for other essential services, including police and public health. The County, the District and the Cities have proposed a risk-based approach to prioritize water quality problems and apply resources where they will achieve the maximum benefit.

Specific Remaining Concerns

The proposed Permit could be misinterpreted as imposing numeric effluent limits (NELs) that are potentially applicable to any runoff pursuant to the approved TMDLs (bacteria problems in the Middle Santa Ana River watershed, and nutrients in Big Bear Lake). Previous Permits required a Best Management Practice-based adaptive management process to protect receiving

waters. In contrast, any exceedance of NELs under the proposed Permit would be a potential Permit Violation, regardless of whether recreational uses are actually harmed. As presented in previous comments, the Regional Board has clear legal discretion to not impose these TMDLs as NELs, and we urge you to ensure that NELs are explicitly deleted from the proposed Permit. We note that the recently adopted "Regional MS4 Permit" for the San Francisco Bay area specifically states that the TMDLs are not incorporated as NELs.

Lack of clear technical solutions:

The MS4 Permit requires that the TMDL objectives be achieved as early as 2016. This presents a technical conundrum for us. While we have been actively implementing the TMDL programs, including monitoring, BMP evaluation, and research, we have not yet identified technical prevention or treatment solutions that would result in the required water quality. We have expressed these concerns during several years of TMDL meetings, yet the proposed Permit would commit us to achieving what has been determined by technical and scientific experts to be impossible with current technology. We stand by our commitment to look for solutions to the TMDLs, but it is unreasonable to impose requirements that we know are infeasible.

New/Redevelopment requirements:

The proposed Permit imposes Low Impact Development (LID) implementation on virtually all development projects. In fact, since 2005 the County has been leading a project that just completed a Technical Manual for implementation of LID, which will provide training on LID, and will evaluate the effectiveness of LID approaches with field monitoring. Yet, the proposed Permit actually goes beyond using LID, and requires that all runoff from development projects for the water quality design storm be captured, infiltrated, and/or reused, unless determined to be infeasible. While LID principles are generally accepted, we object to the across-the-board application of "full capture only" LID features, and specific related requirements to change local land use processes. Local jurisdictions bear the liability for their land use decisions and should be granted appropriate discretion to make these determinations.

Ongoing watershed efforts:

The County has not been on the sidelines waiting for water quality to improve. The San Bernardino "Green County" program encourages green technologies and building practices. The District and County have committed significant resources to comply with the TMDLs. Since 2002, the District has participated on behalf of the County and the Cities in several watershed efforts designed to improve water quality, and has provided well over \$1 million in funding. The District works within several Task Forces to address water quality, including the Big Bear Lake TMDL, the Middle Santa Ana River TMDLs, and the Stormwater Quality Standards Task Force. The District also works with SCCWRP (Southern California Coastal Water Research Project) to develop and fund stormwater research projects, including test methods for bacteria. Much has been made of water quality degradation that has been attributed to urban runoff. Yet, even though our region has experienced unprecedented growth in the past decade, water quality monitoring results do not indicate that problems are getting worse.

We look forward to continued collaboration with your staff to develop a Permit that improves water quality and maximizes the effectiveness of available resources.

Sincerely,



GARY C. OVITT, Chair, Board of Directors
San Bernardino County Flood Control District

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