

1 TERRY E. DIXON, City Attorney (SBN 059305)
2 27801 La Paz Road
3 Laguna Niguel, California 92677
4 Telephone: (949) 362-4300
5 Facsimile: (949) 362-4340



5 Attorney for Petitioner
6 CITY OF LAGUNA NIGUEL

7 *Exempt From Filing Fees Pursuant To Gov't Code § 6103*

8
9 STATE OF CALIFORNIA
10 STATE WATER RESOURCES CONTROL BOARD

11
12 In the Matter of the Petition of:)
13 CITY OF LAGUNA NIGUEL FOR REVIEW OF)
14 ACTION BY THE CALIFORNIA REGIONAL)
15 WATER QUALITY CONTROL BOARD, SAN)
16 DIEGO REGION, IN ADOPTING ORDER NO.)
17 R9-2009-0002, NPDES PERMIT NO.)
18 CAS0108740)

No. _____

PETITION FOR REVIEW

[Water Code § 13320(a)]

19
20
21 This Petition for Review is submitted on behalf of the City of Laguna Niguel ("Petitioner") pursuant
22 to California Water Code Section 13320 and California Code of Regulations ("CCR") Title 23, Section
23 2050, for review of Order No. R9-2009-0002, NPDES Permit No. CAS0108740, which was adopted by
24 the California Regional Water Quality Control Board, San Diego Region (the "Regional Board") on
25 December 16, 2009.
26
27
28

1 **I. NAME, ADDRESS AND TELEPHONE NUMBERS OF PETITIONER**

2 Petitioner is the City of Laguna Niguel (the "City"). All written correspondence and
3 other communications regarding this matter should be addressed as follows:

- 4 1) ~~Tim Casey, City Manager~~
5 City of Laguna Niguel
6 27801 La Paz Road
7 Laguna Niguel, California 92677
8 Telephone: (949) 362-4300
9 Email: tcasey@ci.laguna-niguel.ca.us
- 10 2) Dave Rogers, Director of Public Works
11 City of Laguna Niguel
12 27801 La Paz Road
13 Laguna Niguel, California 92677
14 Telephone: (949) 362-4300
15 Email: drogers@ci.laguna-niguel.ca.us
- 16 3) Dan Fox, Director of Community Development
17 City of Laguna Niguel
18 27801 La Paz Road
19 Laguna Niguel, California 92677
20 Telephone: (949) 362-4300
21 Email: dfox@ci.laguna-niguel.ca.us
- 22 4) Nancy Palmer, Senior Watershed Manager
23 City of Laguna Niguel
24 27801 La Paz Road
25 Laguna Niguel, California 92677
26 Telephone: (949) 362-4300
27 Email: npalmer@ci.laguna-niguel.ca.us

28 With a copy to Petitioner's counsel:

- 5) Terry E. Dixon, City Attorney
 City of Laguna Niguel
 27801 La Paz Road
 Laguna Niguel, California 92677
 Telephone: (949) 362-4300
 Email: tdixon@ci.laguna-niguel.ca.us

1 **II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH**
2 **REVIEW IS SOUGHT**

3 Petitioner requests the State Water Resources Control Board (“State Board”) to review the
4 Regional Board’s Order No. R9-2009-0002, reissuing NPDES Permit No. CAS0108740 (hereafter, the
5 “Permit.”) As of January 14, 2010, the Regional Board has not made available a complete and final
6 copy of the adopted Permit. Petitioners will supplement this petition with the final Permit when
7 available from the Regional Board.

8 **III. DATE OF REGIONAL BOARD’S ACTION**

9 The Regional Board adopted the Permit on December 16, 2009.

10 **IV. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE OR**
11 **IMPROPER**

12 Petitioner believes the Permit adopted by the Regional Board generally embodies an appropriate
13 approach to improving water quality in the County while reflecting the work the Permittees have
14 initiated during the prior permit terms and the work they have committed to perform in the future.
15 However, several of the Permit provisions are inappropriate or improper. These provisions include the
16 removal of categories of formerly “exempt” non-stormwater discharges, the imposition of retrofitting
17 requirements, the standards applicable to low impact development (“LID”) and hydromodification, and
18 implementation of Total Maximum Daily Loads (“TMDLs”). The State Board should review and revise
19 these provisions to conform with federal and state law.

20 Petitioner also has concerns regarding the Permit’s action levels for stormwater and non-
21 stormwater discharges. While Petitioner believes action levels may be appropriate to assist Permittees
22 in reducing the discharge of pollutants from the MS4 to the maximum extent practicable and to
23 effectively prohibit the discharge of non-stormwater into the MS4, Petitioner has concerns that the
24 manner in which the action levels are implemented and enforced may be inappropriate or improper.
25 Action levels are not required by federal law and the cost to implement them (which are likely to be
26 significant) has not been adequately evaluated in light of the perceived benefits to water quality.

27 All of these provisions impose obligations on Petitioner that are not mandated or supported by
28 the Clean Water Act (“CWA”) and/or Porter-Cologne Water Quality Control Act (“Porter-Cologne” or

1 “Water Code”) and violate provisions of Porter Cologne. A more detailed discussion of these issues is
2 provided in Section VII below.¹ Petitioner has previously raised these and other issues, verbally and in
3 writing, to the Regional Board. A copy of Petitioner’s written comments on drafts of the Permit are
4 attached hereto as Exhibit A.

5 **V. HOW THE PETITIONER IS AGGRIEVED**

6 Petitioner is a Permittee under the Permit. It, along with the other Permittees, is responsible for
7 compliance with the Permit. Failure to comply with the Permit exposes Petitioner to liability under the
8 CWA and Porter-Cologne, and subjects it to potential lawsuits by the Regional Board and/or third
9 parties. To the extent that certain provisions in the Permit are improper or inappropriate, Petitioner
10 should not be subject to such actions.²

11
12 **VI. ACTION PETITIONER REQUESTS THE STATE WATER BOARD TO TAKE**

13
14 The issues raised in this Petition may be resolved or rendered moot by actions to be taken by
15 Permittees, Regional Board staff actions, amendment of the Permit, and/or developments in other
16 jurisdictions. Accordingly, Petitioner requests the State Board hold this Petition in abeyance at this
17 time. Depending on the outcome of these actions, Petitioner will, if necessary, request the State Board
18 to act on all or some of the issues raised in the Petition and schedule a hearing.

19 **VII. POINTS AND AUTHORITIES**

20 The following is a brief discussion of the issues Petitioner raises in this Petition. In addition to
21 the issues discussed below, to the extent not addressed by the Regional Board, Petitioner also seeks
22 review of the Permit on the grounds raised in Petitioner’s previous written comments, a copy of which is
23 attached hereto as Exhibit A. Petitioner will submit to the State Board a complete statement of points
24

25 ¹ Petitioner may provide the State Board with additional reasons why the Permit is inappropriate and/or
26 improper. Any such additional reasons will be submitted to the State Board as an amendment to this
27 Petition. Petitioner also may dispute certain findings that form the basis of the Permit, which similarly
28 will be detailed in any amendment to this Petition.

² Petitioner may provide the State Board with additional information concerning the manner in which
they have been aggrieved by the Regional Board’s action in adopting the Permit. Any such additional
information will be submitted to the State Board as an amendment to this Petition.

1 and authorities in support of this Petition, as necessary, if and when Petitioner requests the State Board
2 to consider the Petition.

3 **A. The Permit Improperly Deletes Categories of Exempt Non-Stormwater Discharges.**

4 Federal law requires that MS4 permits include a requirement that Permittees effectively
5 prohibit the discharge of non-stormwater into the MS4. 33 U.S.C. 1342(p)(3)(B)(ii). Federal
6 regulations exempt certain discharge categories from this effective prohibition requirement. 40 C.F.R.
7 122.26(d)(2)(iv)(B)(1). A Permittee only must address a discharge in one of these categories when a
8 Permittee identifies the discharge as a source of pollutants to waters of the United States. *Id.*

9 The Permit impermissibly deletes three of the non-stormwater discharge categories –
10 landscape irrigation, irrigation water, and lawn watering (collectively, “irrigation”). (*See Permit*
11 *Directive B.*) The federal regulations require that permittees address discharges within an exempt
12 category when they identify a discharge as a source of pollutants to waters of the United States. Neither
13 the regulations nor EPA’s guidance allow the Regional Board to delete entire categories of exempt non-
14 stormwater discharges when Permittees identify a discharge within one of the categories as a source of
15 pollutants.

16 Accordingly, the State Board should direct the Regional Board to restore the irrigation
17 categories of exempt non-stormwater discharges.

18 **B. The Permit’s Retrofitting Requirement Imposes Potentially Significant Costs Without**
19 **Any Corresponding Gains in Water Quality.**

20 The Permit requires permittees to develop and implement a program to retrofit existing
21 development with additional measures to control runoff. (Permit Directive F.3.d.) Petitioner agrees that
22 retrofitting existing development could improve water quality. However, because permittees have a
23 limited ability under existing statutes and under the California and the United States Constitutions to
24 force private landowners to retrofit existing developments, the expense entailed in developing and
25 implementing a retrofitting program will not be matched by any gains in water quality. Because federal
26 law does not require retrofitting of existing development (and in fact EPA’s regulations acknowledge
27 that MS4 regulation would have to be limited largely to undeveloped sites and sites being
28

1 developed/redeveloped), Petitioner requests that the State Board direct the Regional Board to strike the
2 Permit's retrofitting provision.

3 **C. Permittees Must be Provided Flexibility in Implementing the Permit's Low Impact**
4 **Development and Hydromodification Requirements.**

5 The Permit requires that certain development projects include prescriptive low impact
6 development ("LID") requirements. (*See, e.g.*, Permit Directive F.1.) The Permit also requires
7 permittees to develop and implement a hydromodification management plan ("HMP") for the same
8 development projects. (Permit Directive F.1.h.) The City agrees that the concepts of LID and HMPs
9 have the potential to improve water quality by reducing the discharge of pollutants from the MS4.
10 However, the LID and HMP provisions are not required by federal law and violate state law in that,
11 among other things, they prescribe how permittees are to comply with the MEP standard. *See* Water
12 Code § 13360(a). Moreover, the LID and HMP provisions in this Permit are overbroad and will not
13 necessarily result in improved water quality. For example, the HMP requirement for hardened channels
14 will not have any water quality benefits. Finally, to the extent the LID requirements would interfere
15 with downstream or upstream water rights holders, compliance with the requirements potentially expose
16 permittees to common law liability.

17 Because the LID and HMP provisions are not required by federal law and violate state law,
18 Petitioner requests the State Board remand the Permit back to the Regional Board to revise the
19 provisions, providing permittees with required flexibility in implementing the LID and HMP
20 requirements.

21 **D. The Permit Improperly Incorporates Total Maximum Daily Load Wasteload**
22 **Allocations.**

23 The Permit includes limitations based on wasteload allocations ("WLAs") developed in fully
24 approved and adopted Total Maximum Daily Loads ("TMDLs"). (Permit Directive I.) The Permit
25 characterizes the limitations as Water Quality Based Effluent Limitations in discharges to Baby Beach.
26 However, the WLAs are defined in the TMDL to be achieved in the receiving water. Accordingly,
27 Petitioner considers the limitations to be receiving water limitations. *See, e.g.*, State Board Order WQ
28

1 2009-0008. Permittees are to comply with the limitations by implementing best management practices
2 (“BMPs”).

3 Federal and state policy provide that an iterative BMP approach is appropriate in MS4
4 permits for achieving receiving water limitations. *See, e.g.*, State Board Order WQ 99-05. Where
5 existing BMPs are not sufficient to meet the receiving water limitations, permittees are to implement
6 more effective BMPs. This approach is consistent with the MEP standard governing discharge of all
7 pollutants from MS4. Petitioner submits that to be consistent with federal and state policy, as well as
8 with the recent San Diego Region Basin Plan amendment defining implementation provisions utilizing
9 reference system and natural source exclusion approaches for bacteria TMDLs, the Permit must be
10 clarified to provide for compliance with WLAs through an iterative BMP approach. To the extent the
11 Regional Board can rely on state law to support the TMDL provisions, Petitioner submits that the
12 Regional Board has not complied with the relevant requirements (e.g., Water Code Sections 13000,
13 13263(a), 132241, etc.). Accordingly, the State Board should direct the Regional Board to revise the
14 permit’s TMDL provisions consistent with federal and state law and policy, and with its own Basin Plan.

15 **E. The Cost to Implement the Stormwater and Non-Stormwater Action**

16 **Levels, Which Are Not Required By Federal Law, And the Water Quality Benefits**
17 **to be Achieved by Them Have Not Been Adequately Considered by the Regional**
18 **Board.**

19 Federal law requires that Permittees effectively prohibit the discharge of non-stormwater
20 into the MS4 and to reduce the discharge of pollutants from the MS4 to the maximum extent practicable.
21 To assist Permittees in meeting these two standards, the Permit imposes action levels on the discharge of
22 stormwater (SALs) and non-stormwater (NALs) from the MS4. (Permit Directives C and D.) Ideally,
23 action levels would be a tool that would help Petitioner focus resources on more significant water
24 quality problems. However, Petitioner is concerned that, depending on how the provisions are
25 interpreted, the cost to implement the action levels may far outweigh any benefit to water quality.
26 Moreover, rather than a tool to help Permittees, the action levels may be used against Permittees.

27 As an initial matter, Petitioner continues to object to the distinction made in the Permit
28 between the discharge of stormwater from the MS4 and the discharge of non-stormwater from the MS4.

1 Federal law does not support this distinction. Under federal law, Permittees must control the discharge
2 of *pollutants* from the MS4 to the maximum extent practicable, regardless of whether the pollutants are
3 in *stormwater* or *non-stormwater*. Permittees' obligation with respect to non-stormwater is to
4 effectively prohibit the discharge of non-stormwater into the MS4. To the extent the Permit imposes
5 separate requirements on the discharge of non-stormwater from the MS4, such requirements must be
6 supported by state law.

7 Because neither the SALs nor NALs are required by federal law, the Regional Board
8 must comply with state law in imposing these requirements. For example, in issuing waste discharge
9 requirements under State law, the Regional Board must consider certain factors, including the water
10 quality conditions that could be reasonably achieved and economic considerations. Water Code §§
11 13263(a) and 13241. A substantial body of evidence exists that suggests several of the proposed SALs
12 and NALs may not be reasonably achievable in South Orange County. Petitioner is hopeful that the
13 Permit's SAL and NAL provisions will provide Permittees with flexibility to prioritize their response to
14 SAL and NAL exceedances. However, if Permittees are required to respond to and address all
15 exceedances without critical prioritization in the context of achievability, the cost will be significant.
16 Because some exceedances will be low-level or low-volume and not significantly impact receiving
17 water quality, the cost to implement the investigations and source controls required by the SALs and
18 NALs may have little if any correlation with improvements to water quality or beneficial uses. There is
19 nothing in the record that suggests that the Regional Board has considered these water quality and
20 economic factors.

21 Accordingly, the State Board should remand the Permit to the Regional Board to conduct
22 the analysis required under state law to ensure that economic factors are considered and that the water
23 quality goals are reasonably achievable through implementation of the SALs and NALs.

24 **F. The LID, SSMP, Retrofitting and Hydromodification Provisions are in Conflict**
25 **With the California Environmental Quality Act ("CEQA").**

26 The LID, Standard Stormwater Mitigation Plans ("SSMP"), retrofitting and
27 hydromodification requirements are in conflict with CEQA. For example, CEQA allows a city to
28 approve a land use development project even if the project has unmitigated potentially significant

1 adverse environmental impacts when the city adopts pursuant to CEQA a Statement of Overriding
2 Considerations that there are overriding economic, legal, social, technological or other benefits of the
3 project that outweigh the significant adverse impacts on the environment. (Public Resources Code
4 Section 21081.) The LID and SSMP requirements do not allow for the approval of such a project even
5 if the city adopts a Statement of Overriding Considerations. The Permit removes the discretion provided
6 by CEQA to cities in processing and approving land use development projects.
7

8 Also, these provisions of the Permit assume that all land use projects falling under their
9 coverage will have a significant adverse environmental impact that must be mitigated by the specific
10 measures set forth in the Permit. This removes the discretion that cities are granted under CEQA for the
11 review and approval of land use projects and selection of mitigation measures. For example, Public
12 Resources Code Section 21081.1 provides that the lead agency's determination under CEQA shall be
13 final and conclusive on all persons, including responsible agencies, unless challenged by litigation and
14 Section 21080.1(a) provides that the lead agency shall be responsible for determining whether an
15 environmental impact report, a negative declaration, or a mitigated negative declaration shall be required
16 for a land use project.
17

18 **G. Several Requirements of the Permit, Including LID, SSMP, Retrofitting and**
19 **Hydromodification Requirements, are All Unfunded Mandates in Violation of the**
20 **California Constitution.**
21

22 Any requirements imposed on Permittees that go beyond what is required by the CWA,
23 such as requiring municipalities to prohibit discharge of landscape irrigation or other similar dry weather
24 runoff from entering the MS4 and the LID, SSMP, retrofitting and hydromodification and related
25 requirements, can only be imposed where adequate funds have been provided to the Permittees to
26 comply with such mandates. In particular, Article XIID, Section 6 of the California Constitution
27 prohibits State agencies from shifting the financial responsibility of carrying out governmental functions
28 to local governmental entities. As discussed above, there are several requirements contained in the

1 Permit, including those mentioned in this subparagraph, that are not required by the CWA. Therefore,
2 all such requirements constitute new unfunded State mandates, which may only be imposed where
3 necessary funding has first been made available to the Permittees.

4 **VIII. NOTICE TO REGIONAL BOARD**

5 As indicated in the attached Proof of Service, a copy of this Petition is being simultaneously
6 served by Federal Express upon the Executive Officer of the Regional Board.

7
8 **IX. ISSUES PREVIOUSLY RAISED**

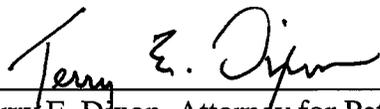
9 As noted in Section IV above, the substantive issues raised in this Petition were presented to the
10 Regional Board before the Regional Board acted on December 16, 2009.

11 **X. CONCLUSION**

12 For the reasons stated herein, Petitioner has been aggrieved by the Regional Board's action in
13 adopting the Permit. However, issues raised in this Petition may be resolved or rendered moot by
14 Regional Board actions. Accordingly, until such time as Petitioner requests the State Board to consider
15 this Petition, Petitioner requests the State Board hold this Petition in abeyance.

16 DATED: January 14, 2010

17 Respectfully submitted,

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19 By: 
20 Terry E. Dixon, Attorney for Petitioner
21 CITY OF LAGUNA NIGUEL
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CITY of LAGUNA NIGUEL

27801 La Paz Road • Laguna Niguel, California 92677
Phone/949•362•4300 Fax/949•362•4340

CITY COUNCIL

Joe Brown
Gary G. Capata
Paul G. Glaab
Linda Lindholm
Robert Ming

September 28, 2009

Dr. Richard Wright, Chairman
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Comments on the Draft Municipal Stormwater Permit for South Orange County – Revised Tentative Order No. R9-2009-0002, NPDES No. CAS 0108740

Dear Dr. Wright:

The City of Laguna Niguel appreciates the opportunity to provide updated comments on the August 12, 2009 draft of the Municipal Stormwater Permit for South Orange County. We would first like to thank the Board and acknowledge the staff for their efforts to reach consensus through the series of meetings conducted since the previous draft was released in March 2009. We note that the language in several provisions has been modified and that the requirement for submittal of a business plan has been deleted. As such, the current draft represents some progress toward a workable solution.

However, a number of previously identified issues were not adequately addressed, and some of the revised language generates new concerns. Rather than re-iterate previously submitted comments, the City incorporates by reference its written comments on the prior versions of the Tentative Order (both No. R9-2007-0002 and No. R9-2009-0002) dated April 4, 2007 and May 15, 2009, addressed to John Robertus. The City also reserves the right to provide additional comments on the Tentative Order prior to the close of the public comment period.

City Concurrence with Comments submitted by the County of Orange as Lead Permittee

Please note that the City of Laguna Niguel has reviewed the legal, technical and monitoring comments to be submitted by the County of Orange as Lead Permittee. The City of Laguna Niguel concurs with, adopts and incorporates into this letter the comments, concerns, and recommended deletions and modifications to the Draft Permit that have been submitted by the County of Orange.

EXHIBIT "A"

General Comments and Areas of Concern

The Draft Permit Does Not Address Cost Neutrality, Legal Authority or Consistency Issues as Directed by the Board

At the public hearing on July 1, 2009, the Board members highlighted three issues of general concern that needed further consideration: (1) cost neutrality compared to the 2002 Permit, in the context of the impact that the prevailing economic climate has had on Cities' ability to support expanded programs; (2) legal authority for declaring that non-stormwater discharges are not subject to the Maximum Extent Practicable (MEP) standard of compliance; and (3) consistency with other regional Permits, especially North Orange County. Despite what we understood to be the Board's direction to its staff, it does not appear that these issues have resulted in substantive reconsideration of Permit provisions since the July hearing took place.

Dry Weather Numeric Effluent Limitations are Untenable

We believe that the most critical intersection of the cost neutrality and legal authority issues is the imposition of Dry Weather Numeric Effluent Limitations (NELs) at the end-of-pipe. The City adopts and incorporates herein the legal positions taken by the County of Orange as Lead permittee and the other co-permittees regarding the applicability of the MEP standard. The practical ramifications of the proposed NELs are overwhelming: Dry Weather Monitoring Program measurements taken since 2002 at almost every pipe outfall in our City – and in all our Co-Permittee Cities – have shown that exceedances of the proposed bacteria, nutrients and dissolved solids NELs are the rule rather than the exception; and that exceedances of the metals NELs are common. A growing body of evidence suggests these constituents are largely natural in origin. Nevertheless, the proposed Permit provisions would appear to trigger the investigation requirement each time and every place that “an exceedance” occurs. Our experience has already shown that a single investigation may entail dozens of man-hours and substantial costs in equipment and laboratory analyses, and yet may still be inconclusive as to source, or be unable to confidently differentiate mixed natural versus anthropogenic sources. The way the NELs provisions are currently written, even naturally-occurring concentrations may be considered non-compliant if their “conveyance” is “anthropogenically-influenced” – a definition that would criminalize all dry-weather flow in the MS4, which locally carries spring flows and groundwater. Such stringent provisions and/or fuzzy outcomes would make the City (and all the other Co-Permittees) continuously non-compliant under the Permit provisions as currently drafted, making us subject to third-party lawsuits and/or enforcement actions and Mandatory Minimum Penalties. The potential costs cannot even be estimated. Such an ill-conceived framework will invite litigation on all fronts: even the Board itself could be subject to third-party lawsuits for failure to enforce. The City requests and recommends that the dry-weather NELs be removed from the draft Permit; or at a minimum be re-framed as *Dry Weather Action Levels* in essential conformance to the existing Dry Weather Monitoring Program parameters.

The Draft Permit Continues to be Overly Prescriptive

The current Stormwater Permit (No. R9-2002-0001) imposed a comprehensive set of stormwater management and regulatory requirements on the Co-Permittees. The Draft Permit substantially expands the requirements and prescriptions of the current Permit without clear or compelling supportive findings, evidence or rationale. While some minor adjustments have been made to the Draft Permit language since the previous Draft version in response to these observations, the City believes that the it remains too prescriptive, increases costs, and limits the discretion and flexibility of the City to implement programs and practices that are appropriate, sensible and practical for our community. For example, the requirements for on-site storm retention, coupled with the prioritization scheme for selection of BMPs for new developments, impose procedures and costs that are locally unsuitable; furthermore the BMP maintenance tracking requirements are more detailed than is supportable. The City requests that the Regional Board carefully review and reconsider all the new requirements of the Draft permit, and wherever possible, provide maximum discretion and flexibility to the Co-Permittees.

Intolerable Impacts on Municipal Co-Permittee Budgets

In addition to the ongoing budgetary 'wild card' represented by the Dry Weather NELs as discussed above, the City will incur significant extra one-time costs during the FY09-10 fiscal year for the development of new ordinances, plans, and assessments. Each of the new local requirements - revising the General Plan, updating the Environmental Review process, updating the Grading Ordinance, adopting Homeowner Association regulations, prohibiting irrigation runoff, reworking the Jurisdictional Urban Runoff Management Plan, setting up the Best Management Practices (BMP) Maintenance Tracking system, and developing an Existing Development Retrofitting Plan - may require dozens and in some cases hundreds of staff and/or consultant hours to be expended by *each* Co-Permittee City for *each* task. Additionally, each City will be charged its cost-share for development by the Lead Permittee of new regional documents, including the Watershed Workplans, the Model Hydromodification Criteria and Waiver Programs, Regional Monitoring Programs, TMDL Load Reduction Plans, etc. The cumulative FY09-10 cost of all this is likely to be well over \$150,000 just in our City - more than doubling our Program Administration budget, without directly achieving any water quality improvement.

The City will also incur new costs on an annual basis for implementing all these new programs. While the City recognizes that the Regional Board has made some effort to 'cost-neutralize' the regional monitoring requirements by reducing some prior commitments while adding new ones in the Draft Permit, the City will still incur higher operational obligations for investigating NEL and Storm Water Action Level exceedances, inspecting existing developments, training staff, educating the public, enforcing the irrigation runoff prohibition, tracking BMP maintenance and reviewing new development proposals. Operational costs are estimated to go up by about 15%, or an additional \$200,000+ annually in this City alone. Capital improvement costs fluctuate year-to-year and cannot really be estimated before the planning efforts defining

the projects are completed, but implementing retrofitting at existing developments may cost additional hundreds of thousands of dollars per year.

These cost increases could not come at a worse time for the City budget. The City has experienced a 6% decline overall in municipal revenues this year due to decreases in property tax, sales tax, real property transfer tax, planning and building fees, and interest income, so that we have had to draw on reserves just to maintain our current programs. Most of our planned capital improvement projects have been put on hold and no new ones are being scheduled for this year. Staff furloughs have been imposed in many Co-Permittee cities. Against this backdrop, it is challenging for the Co-Permittees to maintain current funding levels for our existing Stormwater Programs, let alone increase funding. The City requests that the Regional Board make every effort to ensure that the new Permit is, at most, cost-neutral to the Co-Permittees. At the very least, we recommend substantially extending the timeframes for developing and deploying any new program plans and components, in order to reduce financial impacts concentrated during this lowest (we hope) point for local government operating revenues.

Impacts on New Development and Re-Development

The Draft Permit's imposition of substantial additional requirements on New Development and Significant Redevelopment projects will create substantial cost impacts for developers as well as for existing businesses, institutions and residents in the City. The current economic climate – when property values are down by 30% or more – suggests that this is a most inappropriate time to create larger financial disincentives to the spread of low-impact design and re-design across the City. In particular, we note that the requirements continue to be more onerous than defined for North Orange County or for San Diego; and that new requirements to evaluate water rights and sediment loads have been added in the August Draft to the already-substantive burden of retroactively mitigating hydromodification impacts. The City requests that the Regional Board carefully review and reconsider the necessity, appropriateness and timing of these new requirements.

Impacts on Residents

The Draft Permit's defining of landscape irrigation runoff as an illicit discharge that must be eliminated will overnight convert a large percentage of the City's 20,000 landowners into unintentional scofflaws. Whether they react voluntarily or in response to enforcement actions, eliminating irrigation runoff will cost homeowners money. A new single-family controller with automatic weather-based scheduling and multi-short-cycle capacity costs \$300 to \$500. Correcting overspray and distribution problems even on a flat home lot may cost a homeowner \$200 to \$1,200. If a homeowners' association has to retrofit thousands of feet of sprinkler lines on common areas, each resident will have to pay a share of potentially tens of thousands of dollars. Enforcement against residents who do not or cannot afford to comply will not be 100% because watering happens at night, half-hidden in back yards, for a few minutes at a time; and Cities cannot issue a

citation without actually seeing the offense being committed. The reality is that irrigation runoff can only be controlled to the *maximum extent practicable*.

Porter Cologne Act and Unfunded State Mandates

The City believes that many of the new regulations and requirements in the Draft Permit exceed the requirements of the Clean Water Act. As such, these new regulations and requirements must be considered and evaluated in accordance with applicable provisions of the State Porter Cologne Act. If such regulations and requirements are included in the Final Permit, the City believes that they would constitute unfunded State mandates.

Specific Areas of Concern

Finding E.14 and E.1, B.2 Removing Exemption of Non-Stormwater Discharges

The Draft Permit removes landscape irrigation, irrigation water and lawn watering from the categories of non-stormwater discharges that are not prohibited, and further declares that non-stormwater discharges are not subject to the MEP standard. The City does not believe that the Regional Board has the legal authority to unilaterally declare that these categories of urban runoff are now to be deemed prohibited discharges and must be completely eliminated. Even if the City passed an ordinance to prohibit such discharges, the most cost-intensive “zero tolerance” enforcement still could only achieve compliance to the MEP, and would likely be politically unacceptable to the public. The City also notes that our Dry Weather Monitoring Program investigations have shown that it is typically reclaimed water – not potable water from residents – that causes the most common water quality problems. The producers, purveyors and users of reclaimed water are separately regulated under permits that require them to control such discharge; Cities should not be required to shoulder the primary burden in their stead. The City requests that the Regional Board keep landscape irrigation on the non-prohibited list, and remove the language asserting that non-stormwater discharges are not subject to the MEP standard.

F.1.d.(4) & F.1.d.(7) – Low Impact Development (LID) Requirements

The City is very concerned about the proposed Low Impact Development (LID) requirement that stormwater be retained on-site. Many areas of South Orange County, including Laguna Niguel, have experienced slope failures and landslides. The proposed LID Site Design BMPs, which emphasize infiltration, could in combination with local soil and geological conditions have the potential to increase the risk of such events. As mentioned before, the City is concerned that the significant financial impacts associated with the various reviews, assessments and site improvements necessary to comply with the proposed LID requirements would discourage New Development and Significant Redevelopment, the primary means by which water quality objectives are currently achieved. The proposed requirements also would impose additional demands on the City’s water quality program both in terms of staff resources and budgetary impacts. Given the potential negative impacts of such requirements as noted above, the City is

particularly concerned with the underlying and inadequately supported presumption that LID methods are superior to conventional treatment methods in achieving water quality objectives.

G. Hydromodification Limitations

The inclusion of hydromodification requirements in the current draft permit represents a significant shift away from the regulatory framework of prior permits. As stated in the draft permit, the purpose of this shift is to reduce erosion and/or facilitate removal of existing hardened channels. This justification however fails to address the fact that hardened channels are necessary to safeguard public health and safety and the general welfare in the event of a large storm event. The requirements also place a significant burden on the limited resources of the Copermitees to develop and implement a Hydromodification Management Plan, which includes on-going financial obligations and labor intensive tasks such as assessment of channel conditions, modifications to development review and approval processes, additional field inspections of development sites, and assessment of cumulative impacts within the watershed on channel morphology. As previously noted, these additional requirements also have the potential to inhibit the City's ability to achieve water quality objectives by discouraging New Development and Significant Redevelopment.

F.3.d – Retrofitting Existing Development

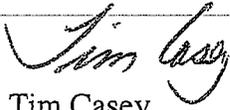
This section requires each Co-Permittee to implement a retrofitting program that reduces impacts from hydromodification, promotes Low Impact Development, supports riparian and aquatic habitat, reduces the discharges of storm water pollutants from the MS4 to the MEP, and prevents discharges from the MS4 from causing or contributing to a violation of water quality standards. First, it is difficult to image the scope and cost of performing the retrofitting evaluation required by Section F.3.d. Second, even if such an evaluation was performed, the Co-Permittees have no legal authority to compel private landowners of existing developments to implement or cooperate on retrofit projects. The City requests that the Regional Board delete Section F.3.d from the Storm Water Permit.

Finding E.11 and E.1, and I. Total Maximum Daily Loads

The Draft Permit imposes strict concentration-based numeric targets for a bacteria TMDL in addition to strict load-based targets, for both dry and wet weather. This language disregards years of painstaking work by staff and stakeholders in crafting TMDL documents firmly promoting the need for better science and iterative-BMP-based WQBELs; and completely contradicts the implementation provisions of the Basin Plan Amendment approved last year, establishing bacteria TMDL implementation provisions under a Reference System/Natural Source Exclusion approach. The City requests and recommends that the concentration-based numeric targets and the load-based allocations both be qualified as “*subject to adjustment in accordance with the bacteria TMDL implementation provisions contained in the Reference System/Natural Source Exclusion Basin Plan Amendment approved by the Board in 2008.*”

The City appreciates the opportunity to submit these comments and respectfully requests that our comments be fully considered by the Regional Board and Staff.

Yours truly,



Tim Casey
City Manager

Cc: Mayor and City Council
City Attorney
Director of Public Works/City Engineer
Director of Community Development
Senior Water Quality Manager

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PROOF OF SERVICE BY EMAIL

I am over 18 years of age, not a party to this action and employed in Laguna Niguel, California at 27801 La Paz Road, Laguna Niguel, California 92677.

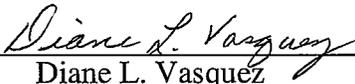
On January 14, 2010, at approximately 11:40 a.m., I served by email a copy of:

PETITION FOR REVIEW
(Re: CITY OF LAGUNA NIGUEL FOR REVIEW OF ACTION BY
THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD, SAN DIEGO REGION, IN ADOPTING ORDER NO. R9-
2009-0002, NPDES PERMIT NO. CAS0108740 (Without Exhibits))

on the following:

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
1001 "I" Street, 22nd Floor
Sacramento, CA 95814
Email: jbashaw@waterboards.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 14, 2010.



Diane L. Vasquez

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in Laguna Niguel, California at 27801 La Paz Road, Laguna Niguel, California 92677.

I am readily familiar with the practice of this office for collection and processing of correspondence for next business day delivery by Federal Express, and correspondence is deposited with Federal Express that same day in the ordinary course of business.

Today I served the attached:

PETITION FOR REVIEW
(Re: CITY OF LAGUNA NIGUEL FOR REVIEW OF ACTION BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, IN ADOPTING ORDER NO. R9-2009-0002, NPDES PERMIT NO. CAS0108740)

by causing a true and correct copy of the above to be delivered by Federal Express from Laguna Niguel, California in sealed envelope(s) with all fees prepaid, addressed as follows:

State Water Resources Control Board	Mr. David W. Gibson
Office of Chief Counsel	Executive Officer
Jeannette L. Bashaw, Legal Analyst	California Regional Water Quality Control Board, San Diego Region
1001 "T" Street, 22nd Floor	9174 Sky Park Court, Suite 100
Sacramento, CA 95814	San Diego, CA 92123

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 14, 2010.



Diane L. Vasquez

1 **TERRY E. DIXON, City Attorney (SBN 059305)**
2 **27801 La Paz Road**
3 **Laguna Niguel, California 92677**
4 **Telephone: (949) 362-4300**
5 **Facsimile: (949) 362-4340**

6 **Attorney for Petitioner**
7 **CITY OF LAGUNA NIGUEL**

8 *Exempt From Filing Fees Pursuant To Gov't Code § 6103*



9 **STATE OF CALIFORNIA**

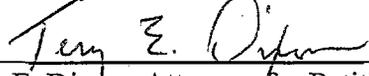
10 **STATE WATER RESOURCES CONTROL BOARD**

11
12 **In the Matter of the Petition of:**) **No. A-2073(a)**
13 **CITY OF LAGUNA NIGUEL FOR REVIEW**) **PETITION FOR REVIEW**
14 **OF ACTION BY THE CALIFORNIA**) **[Water Code § 13320(a)]**
15 **REGIONAL WATER QUALITY CONTROL**) **SUBMITTAL OF ORDER**
16 **BOARD, SAN DIEGO REGION, IN**) **NO. R9-2009-0002, NPDES PERMIT**
17 **ADOPTING ORDER NO. R9-2009-0002,**) **NO. CAS0108740**
18 **NPDES PERMIT NO. CAS0108740**)

19 The Petition for Review was submitted on behalf of the City of Laguna Niguel ("Petitioner") on
20 January 14, 2010, pursuant to California Water Code Section 13320 and California Code of Regulations
21 ("CCR") Title 23, Section 2050, for review of Order No. R9-2009-0002, NPDES Permit No.
22 CAS0108740, which was adopted by the California Regional Water Quality Control Board, San Diego
23 Region (the "Regional Board") on December 16, 2009. The final Order had not been prepared by
24 January 14, 2010. Attached as Exhibit "B" is a copy of the final Order No. R9-2009-0002, NPDES
25 Permit No. CAS0108740, that was issued by the Regional Board on January 27, 2010.

26 DATED: January 28, 2010

Respectfully submitted,

27 
28 Terry E. Dixon, Attorney for Petitioner

**California Regional Water Quality Control Board
San Diego Region**

**Waste Discharge Requirements for
Discharges of Runoff from the
Municipal Separate Storm Sewer Systems
(MS4s)**

**Draining the Watershed of the County of Orange,
The Incorporated Cities of Orange County, and
The Orange County Flood Control District
Within the San Diego Region**

**Order No. R9-2009-0002
NPDES NO. CAS0108740**

December 16, 2009

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340

Phone • (858) 467-2952 • Fax (858) 571-6972

<http://www.waterboards.ca.gov/sandiego>

To request copies of the Orange County Municipal Storm Water Permit, please contact Ben Neill, Water Resources Control Engineer at (858) 467 – 2983, bneill@waterboards.ca.gov

Documents also are available at: <http://www.waterboards.ca.gov/sandiego>

**WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES OF RUNOFF FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)
DRAINING THE WATERSHED OF
THE COUNTY OF ORANGE, THE INCORPORATED CITIES OF
ORANGE COUNTY, AND THE ORANGE COUNTY FLOOD
CONTROL DISTRICT WITHIN THE SAN DIEGO REGION**

Adopted by the
California Regional Water Quality Control Board
San Diego Region
on December 16, 2009

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340**

Telephone (858) 467-2952

STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor
LINDA S. ADAMS, Agency Secretary, California Environmental Protection Agency



**California Regional Water Quality Control Board
San Diego Region**

David King <i>Vice Chair</i>	Recreation / Wildlife
Eric Anderson	Irrigated Agriculture
Wayne Rayfield	Water Quality
Grant Destache	Industrial Water Use
George Loveland	Water Supply
Marc Luker	Undesignated (Public)

David W. Gibson, *Executive Officer*
Michael P. McCann, *Assistant Executive Officer*

This permit was prepared under the direction of

David T. Barker P.E., *Chief, Water Resource Protection Branch*

by

Jimmy G. Smith, *Senior Environmental Scientist*
Ben Neill, *Water Resource Control Engineer*
Chad Loflen, *Environmental Scientist*

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Attachment A – Basin Plan Prohibitions

Attachment B – Standard Provisions, Reporting Requirements, and Notifications

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Attachment D – Scheduled Submittal Summary and Reporting Checklist Requirements

Attachment E – Receiving Waters And MS4 Discharge Monitoring And Reporting
Program No. R9-2009-0002

Attachment F – Data

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

A. BASIS FOR THE ORDER

1. This Order is based on the federal Clean Water Act (CWA), the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable State and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board), the Water Quality Control Plan for the San Diego Basin adopted by the Regional Board, the California Toxics Rule, and the California Toxics Rule Implementation Plan.
2. This Order reissues National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108740, which was first adopted by the Regional Board on July 16, 1990 (Order No. 90-38), and then reissued on August 8, 1996 (Order No. 96-03) and February 13, 2002 (Order No. R9-2002-01). On August 21, 2006, in accordance with Order No. R9-2002-01, the County of Orange, as the Principal Copermittee, submitted a Report of Waste Discharge (ROWD) for reissuance of the municipal separate storm sewer system (MS4) Permit.
3. This Order is consistent with the following precedential Orders adopted by the State Water Resources Control Board (State Board) addressing MS4 NPDES Permits: Order 99-05, Order WQ-2000-11, Order WQ 2001-15, Order WQO 2002-0014, and Order WQ-2009-0008 (*SWRCB/OCC FILE A-1780*).
4. The Fact Sheet / Technical Report for the Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District Within the San Diego Region includes cited regulatory and legal references and additional explanatory information and data in support of the requirements of this Permit. This information, including any supplements thereto, and any response to comments on the Tentative Orders, is hereby incorporated by reference into these findings.

B. REGULATED PARTIES

1. Each of the persons in Table 1 below, hereinafter called Copermittees or dischargers, owns or operates an MS4, through which it discharges runoff into waters of the United States within the San Diego Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a

violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the United States (waters of the U.S).

Table 1. Municipal Copermittees

1. City of Aliso Viejo	8. City of Mission Viejo
2. City of Dana Point	9. City of Rancho Santa Margarita
3. City of Laguna Beach	10. City of San Clemente
4. City of Laguna Hills	11. City of San Juan Capistrano
5. City of Laguna Niguel	12. County of Orange
6. City of Laguna Woods	13. Orange County Flood Control District
7. City of Lake Forest	

C. DISCHARGE CHARACTERISTICS

1. Runoff discharged from an MS4 contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA.
2. MS4 storm water and non-storm water discharges are likely to contain pollutants that cause or threaten to cause a violation of water quality standards, as outlined in the Regional Board's Water Quality Control Plan for the San Diego Basin (Basin Plan). Storm water and non-storm water discharges from the MS4 are subject to the conditions and requirements established in the San Diego Basin Plan for point source discharges. These surface water quality standards must be complied with at all times, irrespective of the source and manner of discharge.
3. The most common categories of pollutants in runoff include total suspended solids, sediment, pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers); oxygen-demanding substances (decaying vegetation, animal waste); detergents; and trash.
4. The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and/or impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.
5. Pollutants in runoff can threaten and adversely affect human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

6. Runoff discharges from MS4s often contain pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants impact the overall quality of aquatic systems and beneficial uses of receiving waters.
7. The Copermitttees discharge runoff into lakes, drinking water reservoirs, rivers, streams, creeks, bays, estuaries, coastal lagoons, the Pacific Ocean, and tributaries thereto within one of the eleven hydrologic units (San Juan Hydrologic Unit) comprising the San Diego Region as shown in Tables 2a and 2b. Some of the receiving water bodies have been designated as impaired by the Regional Board and the United States Environmental Protection Agency (USEPA) in 2006 pursuant to CWA section 303(d). Also shown in the Tables are the watershed management areas (WMAs) as defined in the Regional Board report, Watershed Management Approach, January 2002.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit	Major Receiving Water Bodies	303(d) Pollutant(s)/stressor or Water Quality Effect ¹
Laguna Coastal Streams	Laguna HA, excluding Aliso HSA and Dana Point HSA	Laguna Canyon Creek, Pacific Ocean	Bacterial indicators Sediment toxicity
Aliso Creek	Aliso HSA	Aliso Creek, English Canyon, Pacific Ocean	Toxicity Phosphorus Bacterial indicators Benzo[b]fluoranthene Dieldrin Sediment Toxicity
Dana Point Coastal Streams	Dana Point HSA	Dana Point Harbor, Salt Creek, Pacific Ocean	Bacterial indicators
San Juan Creek	Mission Viejo HA	San Juan Creek, Trabuco Creek, Oso Creek, Canada Gobernadora, Bell Canyon, Verdugo Canyon, Pacific Ocean	Bacterial indicators DDE Chloride Sulfates Total dissolved solids

¹ The listed 303(d) pollutant(s) do not necessarily reflect impairment of the entire corresponding WMA or all corresponding major surface water bodies. The specific impaired portions of each WMA are listed in the State Water Resources Control Board's 2006 Section 303(d) List of Water Quality Limited Segments.

Table 2a. Common Watersheds and CWA Section 303(d) Impaired Waters

Regional Board Watershed Management Area (WMA)	Hydrologic Area (HA) or Hydrologic Subarea (HSA) of the San Juan Hydrologic Unit	Major Receiving Water Bodies	303(d) Pollutant(s)/stressor or Water Quality Effect ¹
San Clemente Coastal Streams	San Clemente HA	Prima Deshecha, Segunda Deshecha, Pacific Ocean	Bacterial indicators Phosphorus Turbidity
San Mateo Creek	San Mateo HA	San Mateo Creek, Christianitos Creek, Pacific Ocean	

Table 2b. Common Watersheds and Municipalities

Municipality	Laguna Coastal Streams	Aliso Creek	Dana Point Coastal Streams	San Juan Creek	San Clemente Coastal Streams	San Mateo Creek
Aliso Viejo	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Dana Point			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Laguna Beach	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Laguna Hills *		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
Laguna Niguel		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Laguna Woods *		<input checked="" type="checkbox"/>				
Lake Forest *		<input checked="" type="checkbox"/>				
Mission Viejo		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
Rancho Santa Margarita				<input checked="" type="checkbox"/>		
San Clemente					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
San Juan Capistrano				<input checked="" type="checkbox"/>		
County of Orange *	<input checked="" type="checkbox"/>					
Orange County Flood Control District *	<input checked="" type="checkbox"/>					

* Municipality also includes areas within watersheds of the Santa Ana Regional Board that are outside the scope of this Order

8. Trash is a persistent pollutant which can enter receiving waters from the MS4 resulting in accumulation and transport in receiving waters over time. Trash poses a serious threat to the Beneficial Uses of the receiving waters, including, but not limited to, human health, rare and endangered species, navigation and human recreation.
9. The Copermittees' water quality monitoring data submitted to date documents persistent violations of Basin Plan water quality objectives for various runoff-related pollutants (fecal coliform bacteria, total suspended solids, turbidity, metals; etc.) at

various watershed monitoring stations. Persistent toxicity has also been observed at some watershed monitoring stations. In addition, bioassessment data indicates that the majority of urbanized receiving waters have Poor to Very Poor Index of Biotic Integrity ratings. In sum, the above findings indicate that runoff discharges are causing or contributing to water quality impairments, and are a leading cause of such impairments in Orange County.

10. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area is significantly greater in runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. Runoff durations can also increase as a result of flood control and other efforts to control peak flow rates. Increased volume, velocity, rate, and duration of runoff, and decreased natural clean sediment loads, greatly accelerate the erosion of downstream natural channels. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as a 3-5 percent conversion from natural to impervious surfaces. The increased runoff characteristics from new development must be controlled to protect against increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.
11. Development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc. which can either be washed or directly dumped into the MS4. As a result, the runoff leaving the developed urban area is significantly greater in pollutant load than the pre-development runoff from the same area. These increased pollutant loads must be controlled to protect downstream receiving water quality.
12. Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d)-impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in other areas. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. Therefore, additional control to reduce storm water pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA.
13. Although dependent on several factors, the risks typically associated with properly managed infiltration of runoff (especially from residential land use areas) are not significant. The risks associated with infiltration can be managed by many techniques, including (1) designing landscape drainage features that promote infiltration of runoff, but do not "inject" runoff (injection bypasses the natural processes of filtering and transformation that occur in the soil); (2) taking reasonable

steps to prevent the illegal disposal of wastes; (3) protecting footings and foundations; (4) ensuring that each drainage feature is adequately maintained in perpetuity; and (5) pretreatment.

14. Non-storm water (dry weather) discharge from the MS4 is not considered a storm water (wet weather) discharge and therefore is not subject to regulation under the Maximum Extent Practicable (MEP) standard from CWA 402(p)(3)(B)(iii), which is explicitly for "Municipal ... *Stormwater Discharges* (emphasis added)" from the MS4. Non-storm water discharges, per CWA 402(p)(3)(B)(ii), are to be effectively prohibited. Such dry weather non-storm water discharges have been shown to contribute significant levels of pollutants and flow in arid, developed Southern California watersheds and are to be effectively prohibited under the Clean Water Act.
15. Non-storm water discharges to the MS4 granted an influent exception [i.e., which are exempt from the effective prohibition requirement set forth in CWA section 402(p)(3)(B)(ii)] under 40 CFR 122. 26 are included within this Order. Any exempted discharges identified by Copermittees as a source of pollutants are subsequently required to be *addressed* (emphasis added) as illicit discharges through prohibition and incorporation into existing IC/ID programs. The Copermittees have identified landscape irrigation, irrigation water and lawn water, previously exempted discharges, as a source of pollutants and conveyance of pollutants to waters of the United States.

D. RUNOFF MANAGEMENT PROGRAMS

1. General

- a. This Order specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in storm water runoff to the maximum extent practicable (MEP). However, since MEP is a dynamic performance standard, which evolves over time as runoff management knowledge increases, the Copermittees' runoff management programs must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. in order to achieve the evolving MEP standard. Absent evidence to the contrary, this continual assessment, revision, and improvement of runoff management program implementation is expected to ultimately achieve compliance with water quality standards in the Region.
- b. The Copermittees have generally been implementing the jurisdictional runoff management programs required pursuant to Order No. 2002-01 since February 13, 2003. Prior to that, the Copermittees were regulated by Order No. 96-03 since August 8, 1996. Runoff discharges, however, continue to cause or contribute to violations of water quality standards as evidenced by the Copermittees monitoring results.

- c. This Order contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in storm water runoff to the MEP and achieve water quality standards. Some of the new or modified requirements, such as the revised Watershed Runoff Management Program section, are designed to specifically address high priority water quality problems. Other new or modified requirements address program deficiencies that have been noted during audits, report reviews, and other Regional Board compliance assessment activities.
- d. Updated Jurisdictional Runoff Management Plans (JRMPs) and Watershed Runoff Management Plans (WRMPs), which describe the Copermittees' runoff management programs in their entirety, are needed to guide the Copermittees' runoff management efforts and aid the Copermittees in tracking runoff management program implementation. It is practicable for the Copermittees to update the JRMPs and WRMPs within one year, since significant efforts to develop these programs have already occurred.
- e. Pollutants can be effectively reduced in storm water runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first-line of defense." Source control BMPs (both structural and non-structural) minimize the contact between pollutants and flows (e.g., rerouting run-on around pollutant sources or keeping pollutants on-site and out of receiving waters). Treatment control BMPs remove pollutants that have been mobilized by wet-weather or dry-weather flows.
- f. Runoff needs to be addressed during the three major phases of urban development (planning, construction, and use) in order to reduce the discharge of pollutants from storm water to the MEP, effectively prohibit non-storm water discharges and protect receiving waters. Development which is not guided by water quality planning policies and principles can unnecessarily result in increased pollutant load discharges, flow rates, and flow durations which can negatively impact receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development generates substantial pollutant loads which are discharged in runoff to receiving waters.
- g. Annual reporting requirements included in this Order are necessary to meet federal requirements and to evaluate the effectiveness and compliance of the Copermittees' programs.
- h. This Order establishes Storm Water Action Levels (SALs) for selected pollutants based on USEPA Rain Zone 6 (arid southwest) Phase I MS4 monitoring data for pollutants in storm water. The SALs were computed as the 90th percentile of the data set, utilizing the statistical based population approach, one of three

approaches recommended by the California Water Board's Storm Water Panel in its report, 'The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 2006). SALs are identified in Section D of this Order. Copermittees shall implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water from the permitted areas so as not to exceed the SALs. Exceedance of SALs may indicate inadequacy of programmatic measures and BMPs required in this Order.

2. Development Planning

- a. The Standard Storm Water Mitigation Plan (SSMP) requirements contained in this Order are consistent with Order WQ-2000-11 adopted by the State Water Resources Control Board (State Board) on October 5, 2000. In the precedential order, the State Board found that the design standards, which essentially require that runoff generated by 85 percent of storm events from specific development categories be infiltrated or treated, reflect the MEP standard. The order also found that the SSMP requirements are appropriately applied to the majority of the Priority Development Project categories contained in Section D.1 of this Order. The State Board also gave Regional Water Quality Control Boards the needed discretion to include additional categories and locations, such as retail gasoline outlets (RGOs), in SSMPs.
- b. Controlling runoff pollution by using a combination of onsite source control and site design BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the pollutant source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources of pollution and their prevention.
- c. Use of Low-Impact Development (LID) site design BMPs at new development, redevelopment and retrofit projects can be an effective means for minimizing the impact of storm water runoff discharges from the development projects on receiving waters. LID is a site design strategy with a goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques. LID site design BMPs help preserve and restore the natural hydrologic cycle of the site, allowing for filtration and infiltration which can greatly reduce the volume, peak flow rate, velocity, and pollutant loads of storm water runoff. Current runoff management, knowledge, practices and technology have

resulted in the use of LID BMPs as an acceptable means of meeting the storm water MEP standard.

- d. Retail Gasoline Outlets (RGOs) are significant sources of pollutants in storm water runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other developed areas.
- e. Industrial sites are significant sources of pollutants in runoff. Pollutant concentrations and loads in runoff from industrial sites are similar or exceed pollutant concentrations and loads in runoff from other land uses, such as commercial or residential land uses. As with other land uses, LID site design, source control, and treatment control BMPs are needed at industrial sites in order to meet the MEP standard. These BMPs are necessary where the industrial site is larger than 10,000 square feet. The 10,000 square feet threshold is appropriate, since it is consistent with requirements in other Phase I NPDES storm water regulations throughout California.
- f. If not properly designed or maintained, certain BMPs implemented or required by municipalities for runoff management may create a habitat for vectors (e.g. mosquitoes and rodents). Proper BMP design and maintenance to avoid standing water, however, can prevent the creation of vector habitat. Nuisances and public health impacts resulting from vector breeding can be prevented with close collaboration and cooperative effort between municipalities, the Orange County Vector Control District, and the California Department of Public Health during the development and implementation of runoff management programs.
- g. The increased volume, velocity, frequency and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion, impair stream habitat in natural drainages, and negatively impact beneficial uses. Development and urbanization increase pollutant loads in storm water runoff and the volume of storm water runoff. Impervious surfaces can neither absorb water nor remove pollutants and thus lose the purification and infiltration provided by natural vegetated soil. Hydromodification measures for discharges to hardened channels are needed for the future restoration of the hardened channels to their natural state, thereby restoring the chemical, physical, and biological integrity and Beneficial Uses of local receiving waters.

3. Construction and Existing Development

- a. In accordance with federal NPDES regulations and to ensure the most effective oversight of industrial and construction site discharges, discharges of runoff from industrial and construction sites are subject to dual (State and local) storm water regulation. Under this dual system, each Copermitttee is responsible for enforcing its local permits, plans, and ordinances, and the Regional Board is

responsible for enforcing the General Construction Activities Storm Water Permit, State Board Order 99-08 DWQ, NPDES No. CAS000002 (General Construction Permit) and the General Industrial Activities Storm Water Permit, State Board Order 97-03 DWQ, NPDES No. CAS000001 (General Industrial Permit) and any reissuance of these permits. NPDES municipal regulations require that municipalities develop and implement measures to address runoff from industrial and construction activities. Those measures may require the implementation of additional BMPs than are required under the statewide general permits for activities subject to both State and local regulation.

- b. Identification of sources of pollutants in runoff (such as municipal areas and activities, industrial and commercial sites/sources, construction sites, and residential areas), development and implementation of BMPs to address those sources, and updating ordinances and approval processes are necessary for the Copermitees to ensure that discharges of pollutants from its MS4 in storm water are reduced to the MEP and that non-storm water discharges are not occurring. Inspections and other compliance verification methods are needed to ensure minimum BMPs are implemented. Inspections are especially important at high risk areas for pollutant discharges.
- c. Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the urban stream is both an MS4 and receiving water.
- d. As operators of the MS4s, the Copermitees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or a violation of water quality standards.
- e. Waste and pollutants which are deposited and accumulate in MS4 drainage structures will be discharged from these structures to waters of the U.S. unless they are removed. These discharges may cause or contribute to, or threaten to cause or contribute to, a condition of pollution in receiving waters. For this reason, pollutant discharges from storm water into MS4s must be reduced using a combination of management measures, including source control, and an effective MS4 maintenance program must be implemented by each Copermitee.
- f. Enforcement of local runoff related ordinances, permits, and plans is an essential component of every runoff management program and is specifically required in the federal storm water regulations and this Order. Each Copermitee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent

or reduce pollutants in storm water runoff, and for the allocation of funds for the capital, operation and maintenance, administrative, and enforcement expenditures necessary to implement and enforce such control measures/BMPs under its jurisdiction. Education is an important aspect of every effective runoff management program and the basis for changes in behavior at a societal level. Education of municipal planning, inspection, and maintenance department staffs is especially critical to ensure that in-house staffs understand how their activities impact water quality, how to accomplish their jobs while protecting water quality, and their specific roles and responsibilities for compliance with this Order. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.

- g. Public participation during the development of runoff management programs is necessary to ensure that all stakeholder interests and a variety of creative solutions are considered.
- h. Retrofitting existing development with storm water treatment controls, including LID, is necessary to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards. Although SSMP-BMPs are required for redevelopment, the current rate of redevelopment will not address water quality problems in a timely manner. Cooperation with private landowners is necessary to effectively identify, implement and maintain retrofit projects for the preservation, restoration, and enhancement of water quality.

4. Watershed Runoff Management

- a. Since runoff within a watershed can flow from and through multiple land uses and political jurisdictions, watershed-based runoff management can greatly enhance the protection of receiving waters. Such management provides a means to focus on the most important water quality problems in each watershed. By focusing on the most important water quality problems, watershed efforts can maximize protection of beneficial use in an efficient manner. Effective watershed-based runoff management actively reduces pollutant discharges and abates pollutant sources causing or contributing to watershed water quality problems. Watershed-based runoff management that does not actively reduce pollutant discharges and abate pollutant sources causing or contributing to watershed water quality problems can necessitate implementation of the iterative process outlined in section A.3 of the Tentative Order. Watershed management of runoff does not require Copermittees to expend resources outside of their jurisdictions. Watershed management requires the Copermittees within a watershed to develop a watershed-based management strategy, which can then be implemented on a jurisdictional basis.

- b. Some runoff issues, such as general education and training, can be effectively addressed on a regional basis. Regional approaches to runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs.
- c. It is important for the Copermittees to coordinate their water quality protection and land use planning activities to achieve the greatest protection of receiving water bodies. Copermittee coordination with other watershed stakeholders, especially the State of California Department of Transportation, the United States Department of Defense, and water and sewer districts, is also important.

E. STATUTE AND REGULATORY CONSIDERATIONS

1. The Receiving Water Limitations (RWL) language specified in this Order is consistent with language recommended by the USEPA and established in State Board Water Quality Order 99-05, *Own Motion Review of the Petition of Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES Permit No. CAS0108740*, adopted by the State Board on June 17, 1999. The RWL in this Order require compliance with water quality standards, which for storm water discharges is to be achieved through an iterative approach requiring the implementation of improved and better-tailored BMPs over time. Compliance with receiving water limits based on applicable water quality standards is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality standards and the creation of conditions of pollution.
2. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for surface waters in Orange County: Municipal and Domestic Supply (MUN)², Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional beneficial uses are identified for coastal waters of Orange County: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).
3. This Order is in conformance with State Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*, and the federal Antidegradation Policy described in 40 CFR 131.12.

² Subject to exceptions under the "Sources of Drinking Waters" Policy (Resolution No. 89-33)

4. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Copermittee from developing a non-point source plan, for the urban category, under CZARA. The Regional Board addresses septic systems through the administration of other programs.
5. Section 303(d)(1)(A) of the CWA requires that "Each state must identify those waters within its boundaries for which the effluent limitations... are not stringent enough to implement any water quality standard (WQS) applicable to such waters." The CWA also requires states to establish a priority ranking of impaired water bodies known as Water Quality Limited Segments and to establish Total Maximum Daily Loads (TMDLs) for such waters. This priority list of impaired water bodies is called the Section 303(d) List. The current Section 303(d) List was approved by the State Board on October 25, 2006. On June 28, 2007 the 2006 303(d) list for California was given final approval by the United States Environmental Protection Agency (USEPA).
6. This Order does not constitute an unfunded local government mandate subject to subvention under Article XIII B, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402. (33 U.S.C. § 1342(p)(3)(B).) Second, the local agency Copermittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges. Third, the local agency Copermittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. Fourth, the Copermittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their storm water discharges. Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under State law predates the enactment of Article XIII B, Section (6) of the California Constitution. Likewise, the provisions of this Order to implement total maximum daily loads (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. sec. 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. sec. 122.44(d)(1)(vii)(B).)

7. Runoff treatment and/or mitigation must occur prior to the discharge of runoff into receiving waters. Treatment BMPs must not be constructed in waters of the U.S. or State unless the runoff flows are sufficiently pretreated to protect the values and functions of the water body. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. Without federal authorization (e.g., pursuant to Clean Water Act Section 404), waters of the U.S. may not be converted into, or used as, waste treatment or conveyance facilities. Similarly, waste discharge requirements pursuant to California Water Code Section 13260 are required for the conversion or use of waters of the State as waste treatment or conveyance facilities. Diversion from waters of the U.S./State to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements.
8. The issuance of waste discharge requirements and an NPDES permit for the discharge of runoff from MS4s to waters of the U.S. is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with the CWC section 13389.
9. Multiple water bodies in Orange County have been identified as impaired and placed on the 303(d) list. In 2004, Bacteria Impaired Waters TMDL Project II included six bacteria impaired shorelines in Dana Point Harbor and San Diego Bay: Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park, B Street, G Street Pier, Tideland Park, and Chula Vista Marina in San Diego Bay. Since then, only Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay can be confirmed as still impaired by indicator bacteria. On June 11, 2008 the Regional Board adopted a Basin Plan amendment to incorporate *Bacteria Impaired Waters TMDL Project II for San Diego Bay and Dana Point Harbor Shorelines*. On June 16, 2009, the State Board approved the Basin Plan amendment. This action meets requirements of section 303(d) of the Clean Water Act (CWA). The Basin Plan amendment process is authorized under section 13240 of the Water Code. The State's Office of Administrative Law (OAL) approved the TMDLs on September 15, 2009. The effective date of the TMDLs is the date of OAL approval. USEPA approved the TMDLs on October 26, 2009.
10. Storm water discharges from developed and developing areas in Orange County are significant sources of certain pollutants that cause, may be causing, threatening to cause or contributing to water quality impairment in the waters of Orange County.

Furthermore, as delineated in the CWA section 303(d) list in Table 3, the Regional Board has found that there is a reasonable potential that municipal storm water and non-storm water discharges from MS4s cause or may cause or contribute to an excursion above water quality standards for the following pollutants: Indicator Bacteria, Phosphorous, Toxicity and Turbidity. In accordance with CWA section 303(d), the Regional Board is required to establish Total Maximum Daily Loads (TMDLs) for these pollutants to these waters to eliminate impairment and attain water quality standards. Therefore, certain early pollutant control actions and further pollutant impact assessments by the Copermitees are warranted and required pursuant to this Order.

Table 3. 2006 Section 303(d) Listed Waterbodies in So. Orange County

Waterbody	Pollutant
Aliso Creek	Indicator Bacteria, Phosphorus, Toxicity
Aliso Creek Mouth	Indicator Bacteria
Dana Point Harbor	Indicator Bacteria
English Canyon Creek	Benzo[b]fluoranthene, Dieldrin, Sediment Toxicity
Laguna Canyon Channel	Sediment Toxicity
Oso Creek (at Mission Viejo Golf Course)	Chloride, Sulfates, Total Dissolved Solids
Pacific Ocean Shoreline, Aliso HSA	Indicator Bacteria
Pacific Ocean Shoreline, Dana Point HSA	Indicator Bacteria
Pacific Ocean Shoreline, Laguna Beach HSA	Indicator Bacteria
Pacific Ocean Shoreline, Lower San Juan HSA	Indicator Bacteria
Pacific Ocean Shoreline, San Clemente HA	Indicator Bacteria
Pacific Ocean Shoreline, San Joaquin Hills HSA	Indicator Bacteria
Prima Deshecha Creek	Phosphorus, Turbidity
San Juan Creek	DDE, Indicator Bacteria
San Juan Creek (mouth)	Indicator Bacteria
Segunda Deshecha Creek	Phosphorus, Turbidity

11. This Order incorporates only those MS4 Waste Load Allocations (WLAs) developed in TMDLs that have been adopted by the Regional Water Board and have been approved by the State Board, Office of Administrative Law and U.S. EPA. Approved TMDL WLAs are to be addressed using water quality-based effluent limitations (WQBELs) calculated as numeric limitations (either in the receiving waters and/or at the point of MS4 discharge) and/or as BMPs. In most cases, the numeric limitation must be achieved to ensure the adequacy of the BMP program. Waste load

allocations for storm water and non-storm water discharges have been included within this Order only if the TMDL has received all necessary approvals. This Order establishes WQBELs and conditions consistent with the requirements and assumptions of the WLAs in the TMDLs as required by 40 CFR 122.44(d)(1)(vii)(B).

A TMDL is the total amount of a particular pollutant that a water body can receive and still meet Water Quality Standards (WQSs), which are comprised of Water Quality Objectives (WQOs), Beneficial Uses and the States Policy on Maintaining High Quality Waters³. The WQOs serve as the primary basis for protecting the associated Beneficial Use. The Numeric Target of a TMDL interprets and applies the numeric and/or narrative WQOs of the WQSs as the basis for the WLAs. This Order addresses TMDLs through Water Quality Based Effluent Limitations (WQBELs) that must be consistent with the assumptions and requirements of the WLA⁴. Federal guidance⁵ states that when adequate information exists, storm water permits are to incorporate numeric water quality based effluent limitations. In most cases, the numeric target(s) of a TMDL are a component of the WQBELs. When the numeric target is based on one or more numeric WQOs, the numeric WQOs and underlying assumptions and requirements will be used in the WQBELs as numeric effluent limitations by the end of the TMDL compliance schedule, unless additional information is required. When the numeric target interprets one or more narrative WQOs, the numeric target may assess the efficacy and progress of the BMPs in meeting the WLAs and restoring the Beneficial Uses by the end of the TMDL compliance schedule.

This Order fulfills a component of the TMDL Implementation Plan adopted by this Regional Board on June 11, 2008 for indicator bacteria in Baby Beach by establishing WQBELs expressed as both BMPs to achieve the WLAs and as numeric limitations⁶ for the City of Dana Point and the County of Orange. The establishment of WQBELs expressed as BMPs should be sufficient to achieve the WLA specified in the TMDL. The Waste Load Allocations (WLAs) and Numeric Targets are the necessary metrics to ensure that the BMPs achieve appropriate concentrations of bacterial indicators in the receiving waters.

³ State Water Resources Control Board, Resolution No. 68-16

⁴ 40 CFR 122.44(d)(1)(vii)(B)

⁵ USEPA, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761, August 26, 1996

⁶ The Waste Load Allocations are defined in Resolution No. R9-2008-0027, A Resolution to Adopt an Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to Incorporate Total Maximum Daily Loads for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay.

12. This Order requires each Copermittee to effectively prohibit all types of unauthorized discharges of non-storm water into its MS4. However, historically pollutants have been identified as present in dry weather non-storm water discharges from the MS4s through 303(d) listings, monitoring conducted by the Copermittees under Order No. R9-2002-0001, and there are others expected to be present in dry weather non-storm water discharges because of the nature of these discharges. This Order includes action levels for pollutants in non-storm water, dry weather, discharges from the MS4 designed to ensure that the requirement to effectively prohibit all types of unauthorized discharges of non-storm water in the MS4 is being complied with. Action levels in the Order are based upon numeric or narrative water quality objectives and criteria as defined in the Basin Plan, the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), and the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). An exceedance of an action level requires specified responsive action by the Copermittees. This Order describes what actions the Copermittees must take when an exceedance of an action level is observed. Exceedances of non-storm water action levels do not alone constitute a violation of this Order but could indicate non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions established in this Order. Failure to undertake required source investigation and elimination action following an exceedance of 2a non-storm water action level (NAL or action level) is a violation of this Order. The Regional Board recognizes that use of action levels will not necessarily result in detection of all unauthorized sources of non-storm water discharges because there may be some discharges in which pollutants do not exceed established action levels. However, establishing NALs at levels appropriate to protect water quality standards is expected to lead to the identification of significant sources of pollutants in dry weather non-storm water discharges.
13. In addition to federal regulations cited in the Fact Sheet / Technical Report for the Order NO. R9-2009-0002, monitoring and reporting required under Order No. R9-2009-0002 is required pursuant to authority under CWC section 13383.

F. PUBLIC PROCESS

1. The Regional Board has notified the Copermittees, all known interested parties, and the public of its intent to consider adoption of an Order prescribing waste discharge requirements that would serve to renew an NPDES permit for the existing discharge of runoff.
2. The Regional Board has held public hearings on April 11, 2007, February 13, 2008, July 1, 2009, and November 18, 2009 and heard and considered all comments pertaining to the terms and conditions of this Order.

IT IS HEREBY ORDERED that the Copermittees, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted thereunder, and the provisions of the Clean Water Act (CWA) and regulations adopted thereunder, must each comply with the following:

A. PROHIBITIONS AND RECEIVING WATER LIMITATIONS

1. Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited.
2. Storm water discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited.⁷
3. Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses, water quality objectives developed to protect beneficial uses, and the State policy with respect to maintaining high quality waters) are prohibited.
 - a. ~~Each Copermittee must comply with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order through timely implementation of control measures and other actions to reduce pollutants in storm water discharges in accordance with this Order, including any modifications. If exceedance(s) of water quality standards persist notwithstanding implementation of this Order, the Copermittee must assure compliance with section A.3 and section A.4 as it applies to Prohibition 5 in Attachment A of this Order by complying with the following procedure:~~
 - (1) Upon a determination by either the Copermittee or the Regional Board that storm water MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Copermittee must notify the Regional Board within 30 days and thereafter submit a report to the Regional Board that describes best management practices (BMPs) that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report may be incorporated in the Annual Report unless the Regional Board directs an earlier submittal. The report must include an implementation schedule. The Regional Board may require modifications to the report;

⁷ This prohibition does not apply to MS4 discharges which receive subsequent treatment to reduce pollutants to the MEP prior to entering receiving waters (e.g., low flow diversions to the sanitary sewer).

- (2) Submit any modifications to the report required by the Regional Board within 30 days of notification;
 - (3) Within 30 days following approval of the report described above by the Regional Board, the Copermittee must revise its Jurisdictional Runoff Management Program and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required; and
 - (4) Implement the revised Jurisdictional Runoff Management Program and monitoring program in accordance with the approved schedule.
- b. The Copermittee must repeat the procedure set forth above to comply with the receiving water limitations for continuing or recurring exceedances of the same water quality standard(s) unless directed to do otherwise by the Regional Board Executive Officer.
 - c. Nothing in section A.3 must prevent the Regional Board from enforcing any provision of this Order while the Copermittee prepares and implements the above report.
4. In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in Attachment A to this Order.

B. NON-STORM WATER DISCHARGES

1. Each Copermittee must effectively prohibit all types of non-storm water discharges into its MS4 unless such discharges are either authorized by a separate National Pollutant Discharge Elimination System (NPDES) permit; or not prohibited in accordance with sections B.2 and B.3 below.
2. The following categories of non-storm water discharges are not prohibited unless a Copermittee or the Regional Board identifies the discharge category as a source of pollutants to waters of the U.S. Where the Copermittee(s) have identified a category as a source of pollutants, the category shall be addressed as an illicit discharge and prohibited through ordinance, order or similar means. The Regional Board may identify categories of discharge that either requires prohibition or other controls. For such a discharge category, the Copermittee, under direction of the Regional Board, must either prohibit the discharge category or develop and implement appropriate control measures to prevent the discharge of pollutants to the MS4 and report to the Regional Board pursuant to Section K.1 and K.3 of this Order.
 - a. Diverted stream flows;
 - b. Rising ground waters;
 - c. Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to

- MS4s;
- d. Uncontaminated pumped ground water⁸;
 - e. Foundation drains⁸;
 - f. Springs;
 - g. Water from crawl space pumps⁸;
 - h. Footing drains⁸;
 - i. Air conditioning condensation;
 - j. Flows from riparian habitats and wetlands;
 - k. Water line flushing^{9,10};
 - l. Discharges from potable water sources not subject to NPDES Permit No. CAG679001, other than water main breaks;
 - m. Individual residential car washing; and
 - n. Dechlorinated swimming pool discharges¹¹.
3. Emergency fire fighting flows (i.e., flows necessary for the protection of life or property) do not require BMPs and need not be prohibited. As part of the Jurisdictional Runoff Management Plan (JRMP), each Copermittee must develop and implement a program to address pollutants from non-emergency fire fighting flows (i.e., flows from controlled or practice blazes and maintenance activities) identified by the Copermittee to be significant sources of pollutants to waters of the United States.
- a. Building fire suppression system maintenance discharges (e.g. sprinkler line flushing) contain waste. Therefore, such discharges are to be prohibited by the Copermittees as illicit discharges through ordinance, order, or similar means.
4. Each Copermittee must examine all dry weather effluent analytical monitoring results collected in accordance with section F.4 of this Order and Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2009-0002 to identify water quality problems which may be the result of any non-prohibited discharge category(ies) identified above in section B.2. Follow-up investigations must be conducted as necessary to identify and control, pursuant to section B.2, any non-prohibited discharge category(ies) listed above.

⁸ Requires enrollment under Order R9-2008-002. Discharges into the MS4 require authorization from the owner and operator of the MS4 system.

⁹ This exemption does not include fire suppression sprinkler system maintenance and testing discharges. Those discharges may be regulated under Section B.3.

¹⁰ Requires enrollment under Order R9-2002-0020.

¹¹ Including saline swimming pool discharges directly to a saline water body.

C. NON-STORM WATER DRY WEATHER ACTION LEVELS

1. Each Copermitttee, beginning no later than May 1, 2011, shall implement the non-storm water dry weather action level (NAL) monitoring as described in Attachment E of this Order.
2. In response to an exceedance of an NAL, each Copermitttee must investigate and identify the source of the exceedance in a timely manner. However, if any Copermitttee identifies exceedances of NALs that prevent them from adequately conducting source investigations in a timely manner, then the Copermitttees may submit a prioritization plan and timeline that identifies the timeframe and planned actions to investigate and report their findings on all of the exceedances. Following the source investigation and identification, the Copermitttees must submit an action report dependant on the source of the pollutant exceedance as follows:
 - a. If the Copermitttee identifies the source of the exceedance as natural (non-anthropogenically influenced) in origin and in conveyance into the MS4; then the Copermitttee shall report their findings and documentation of their source investigation to the Regional Board within fourteen days of the source identification.
 - b. If the Copermitttee identifies the source of the exceedance as an illicit discharge or connection, then the Copermitttees must eliminate the discharge to their MS4 and report the findings, including any enforcement action(s) taken, and documentation of the source investigation to the Regional Board within fourteen days of the source identification. If the Copermitttee is unable to eliminate the source of discharge within fourteen days, then the Copermitttee must submit, as part of their action report, their plan and timeframe to eliminate the source of the exceedance. Those dischargers seeking to continue such a discharge must become subject to a separate NPDES permit prior to continuing any such discharge.
 - c. If the Copermitttee identifies the source of the exceedance as an exempted category of non-storm water discharge, then the Copermitttees must determine if this is an isolated circumstance or if the category of discharges must be addressed through the prevention or prohibition of that category of discharge as an illicit discharge. The Copermitttee must submit their findings in including a description of the steps taken to address the discharge and the category of discharge, to the Regional Board for review with the next subsequent annual report. Such description shall include relevant updates to or new ordinances, orders, or other legal means of addressing the category of discharge. The Copermitttees must also submit a summary of their findings with the Report of Waste Discharge.
 - d. If the Copermitttee identifies the source of the exceedance as a non-storm water discharge in violation or potential violation of an existing separate NPDES permit

- (e.g. the groundwater dewatering permit), then the Copermittee must report, within three business days, the findings to the Regional Board including all pertinent information regarding the discharger and discharge characteristics.
- e. If the Copermittee is unable to identify the source of the exceedance after taking and documenting reasonable steps to do so, then the Copermittee must identify the pollutant as a high priority pollutant of concern in the tributary subwatershed, perform additional focused sampling and update their programs within a year to reflect this priority. The Copermittee's annual report shall include these updates to their programs including, where applicable, updates to their watershed workplans (Section G.2), retrofitting consideration (Section F.3.d) and program effectiveness work plans (Section J.4).
 - f. The Copermittees or any interested party, may evaluate existing NALs and propose revised NALs for future Board consideration.
3. An exceedance of an NAL does not alone constitute a violation of the provisions of this Order, but an exceedance of an NAL may indicate lack of compliance with the requirement that Copermittees effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions set forth in Sections A and B of this Order. Failure to timely implement required actions specified in this Order following an exceedance of an NAL constitutes a violation of this Order. However, neither compliance with NALs nor compliance with required actions following observed exceedances, excuses any non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4s or any non-compliance with the prohibitions in Sections A and B of this Order. NALs provide an assessment of the effectiveness of the prohibition of non-storm water discharges and of the appropriateness of exempted non-storm water discharges. During any annual reporting period in which one or more exceedances of NALs have been documented the Copermittee must submit with their next scheduled annual report, a report describing whether and how the observed exceedances did or did not result in a discharge from the MS4 that caused, or threatened to cause or contribute to a condition of pollution, contamination, or nuisance in the receiving waters.
4. Monitoring of effluent will occur at the end-of-pipe prior to discharge into the receiving waters, with a focus on Major Outfalls, as defined in 40 CFR 122.26(B 5-6) and Attachment E of this Order. The Copermittees must develop their monitoring plans to sample a representative percentage of major outfalls and identified stations within each hydrologic subarea. At a minimum, outfalls that exceed any NALs once during any year must be monitored in the subsequent year. Any station that does not exceed an NAL for 3 years may be replaced with a different station.

5. Each Copermittee shall monitor for the non-storm water dry weather action levels, which are incorporated into this Order as follows:

a. Action levels for discharges to inland surface waters:

Table 4.a.1: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Fecal Coliform	MPN/100 ml	200 ^A 400 ^B	-		BPO
Enterococci	MPN/100 ml	33	-	104 ^C	BPO/OP
Turbidity	NTU	-	20		BPO
pH	Units	Within limit of 6.5 to 8.5 at all times			BPO
Dissolved Oxygen	mg/L	Not less than 5.0 in WARM waters and not less than 6.0 in COLD waters			BPO
Total Nitrogen	mg/L	-	1.0	See MDEL	BPO
Total Phosphorus	mg/L	-	0.1	See MDEL	BPO
Methylene Blue Active Substances	mg/L	-	0.5	See MDEL	BPO

A – Based on a minimum of not less than five samples for any 30-day period

B – No more than 10 percent of total samples may exceed 400 per 100 ml during any 30 day period

C – This Value has been set to Ocean Plan Criteria for Designated Beach Areas

BPO – Basin Plan Objective

OP – Ocean Plan

MDAL – Maximum Daily Action Level

AMAL – Average Monthly Action Level

Table 4.a.2: Priority Pollutants

Parameter	Units	Freshwater (CTR)		Saltwater (CTR)	
		MDAL	AMAL	MDAL	AMAL
Cadmium	ug/L	*	*	16	8
Copper	ug/L	*	*	5.8	2.9
Chromium III	ug/L	*	*	-	-
Chromium VI (hexavalent)	ug/L	16	8.1	83	41
Lead	ug/L	*	*	14	2.9
Nickel	ug/L	*	*	14	6.8
Silver	ug/L	*	*	2.2	1.1
Zinc	ug/L	*	*	95	47

CTR – California Toxic Rule

* - Action Levels developed on a case-by-case basis (see below)

The NALs for Cadmium, Copper, Chromium (III), Lead, Nickel, Silver and Zinc will be developed on a case-by-case basis because the freshwater criteria are based on site-specific water quality data (receiving water hardness). For these priority pollutants, the following equations (40 CFR 131.38.b.2) will be required:

Cadmium (Total Recoverable) = $\exp(0.7852[\ln(\text{hardness})] - 2.715)$
 Chromium III (Total Recoverable) = $\exp(0.8190[\ln(\text{hardness})] + .6848)$
 Copper (Total Recoverable) = $\exp(0.8545[\ln(\text{hardness})] - 1.702)$
 Lead (Total Recoverable) = $\exp(1.273[\ln(\text{hardness})] - 4.705)$

$$\begin{aligned} \text{Nickel (Total Recoverable)} &= \exp(.8460[\ln(\text{hardness})] + 0.0584) \\ \text{Silver (Total Recoverable)} &= \exp(1.72[\ln(\text{hardness})] - 6.52) \\ \text{Zinc (Total Recoverable)} &= \exp(0.8473[\ln(\text{hardness})] + 0.884) \end{aligned}$$

b. Action levels for discharges to bays, harbors and lagoons/estuaries:

Table 4.b: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000	BPO
Fecal Coliform	MPN/100 ml	200 ^A , 400 ^B	-		BPO
Enterococci	MPN/100 ml	35	-	104 ^C	BPO
Turbidity	NTU	75	-	225	OP
pH	Units	Within limit of 6.0 to 9.0 at all times			OP
Priority Pollutants	ug/L	See limitations in Table 4.a.2			

A – Based on a minimum of not less than five samples for any 30-day period

B – No more than 10 percent of total samples may exceed 400 per 100 ml during any 30 day period

C – Designated Beach Areas

OP – California Ocean Plan 2005

BPO – Basin Plan Objective

MDAL – Maximum Daily Action Level

AMAL – Average Monthly Action Level

c. Action levels for discharges to the surf zone:

Table 4.c: General Constituents

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000 1,000 ^A	OP
Fecal Coliform	MPN/100 ml	200 ^B	-	400	OP
Enterococci	MPN/100 ml	35	-	104 ^C	OP

A – Total coliform density shall not exceed 1,000 per 100 ml when the ratio of fecal/total coliform exceeds 0.1

B – During any 30 day period

C – Designated Beach Areas

OP – California Ocean Plan 2005

D. STORM WATER ACTION LEVELS

1. Beginning Year 3 after Order adoption date, a running average of twenty percent or greater of exceedances of any discharge of storm water from the MS4 to waters of the United States that exceed the Storm Water Action Levels (SALs) for the pollutants listed in Table 5 (below) will require each Copermitttee to affirmatively augment and implement all necessary storm water controls and measures to reduce the discharge of the associated class of pollutants(s) to the MEP standard. The Copermitttees must utilize the exceedance information when adjusting and executing annual work plans, as required by this Order. Copermitttees shall take the magnitude, frequency, and number of constituents exceeding the SAL(s), in addition to receiving water quality data and other information, into consideration when reacting to SAL exceedances in an iterative manner. Failure to appropriately consider and react to SAL exceedances in an iterative manner creates a presumption that the Copermitttee(s) have not complied with the MEP standard.

Table 5. Storm Water Action Levels

Pollutant	Action Level
Turbidity (NTU)	126
Nitrate & Nitrite total (mg/L)	2.6
P total (mg/L)	1.46
Cd total (µg/L)	3.0
Cu total (µg/L)	127
Pb total (µg/L)	250
Ni total (µg/L)	54
Zn total (µg/L)	976

2. The end-of-pipe assessment points for the determination of SAL compliance are all major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6). The Copermitttees must develop their monitoring plans to sample a representative percent of the major outfalls within each hydrologic subarea. At a minimum, outfalls that exceed SALs must be monitored in the subsequent year. Any station that does not exceed an SAL for 3 years may be replaced with a different station. SAL samples must be 24 hour time weighted composites.
3. The absence of SAL exceedances does not relieve the Copermitttees from implementing all other required elements of this Permit.
4. This Permit does not regulate natural sources and conveyances of constituents listed in Table 5. To be relieved of the requirements to prioritize pollutant/watershed combinations for BMP updates and to continue monitoring a station, the Copermitttee must demonstrate that the likely and expected cause of the SAL exceedance is not anthropogenic in nature.
5. The SALs will be reviewed and updated at the end of every permit cycle. The data collected pursuant to D.2 above can be used to create SALs based upon local data.