

- (c) The assessment measures must target both water quality outcomes and the results of municipal enforcement activities.
- (3) Objectives for major program component outcomes: Determined by Each Copermittee.
 - (a) Each Copermittee must annually develop objectives for each program component in Section F and the overall JRMP. The objectives must be established as appropriate in response to program implementation and evaluation of water quality and management practices.
 - (b) Assessment approaches for program implementation must include a mix of specific activities, general program components, and water quality data.
 - (c) The assessment measures must target both water quality outcomes and the results of municipal enforcement activities.
- (4) Objectives for actions taken to protect receiving water limitations in accordance with this Order.
 - (a) Each Copermittee must develop and implement an effectiveness assessment strategy for each measure conducted in response to a determination to implement the "iterative" approach to prevent or reduce any storm water pollutants that are causing or contributing to the exceedance of water quality standards as outlined in this Order

b. ASSESSMENT REVIEW

- (1) Based on the results of the effectiveness assessments, each Copermittee must annually review its jurisdictional activities and BMPs to identify modifications and improvements needed to maximize JRMP effectiveness, as necessary to achieve compliance with this Order.
- (2) Each Copermittee must develop and annually conduct an Integrated Assessment²⁴ of each effectiveness assessment objective above (Section J.1.a) and the overall JRMP using a combination of outcomes as appropriate to the objectives.²⁵

2. Program Modifications

- a. Each Copermittee must develop and implement a plan and schedule to address program modifications and improvements identified during annual effectiveness

²⁴ Integrated assessment is defined in Attachment C. It is the process of evaluating whether program implementation is resulting in the protection or improvement of water quality. Integrated assessment combines assessments of program implementation and water quality.

²⁵ Not all program components need be addressed at each of the six outcome levels.

assessments.

- b. Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs must be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems must be modified and improved to correct the water quality problems.

3. Effectiveness Assessment and Program Response Reporting

- a. Each Copermittee must include a description and summary of its annual and long-term effectiveness assessments within each Annual Report. Beginning with the Annual Report due in 2010, the Program Effectiveness reporting must include:
 - (1) 303(d) waterbodies: A description and results of the annual assessment measures or methods specifically for reducing discharges of storm water pollutants from its MS4 into each 303(d)-listed waterbody;
 - (2) ESAs: A description and results of the annual assessment measures or methods specifically for managing discharges of pollutants from its MS4 into each downstream ESA;
 - (3) Other Program Components: A description of the objectives and corresponding assessment measures and results used to evaluate the effectiveness of each general program component. The results must include findings from both program implementation and water quality assessment where applicable;
 - (4) Receiving water protection: A description and results of the annual assessment measures or methods employed specifically for actions taken to protect receiving water limitations in accordance with Section A.3 of this Order;
 - (5) A description of the steps taken to use dry-weather and wet-weather monitoring data to assess the effectiveness of the programs for 303(d) impairments, ESAs, and general program components;
 - (6) A description of activities conducted in response to investigations of illicit discharge and illicit connection activities, including how each investigation was resolved and the pollutant(s) involved;
 - (7) Responses to effectiveness assessments: A description of each program modification, made in response to the results of effectiveness assessments

conducted pursuant to Section J.1.a, and the basis for determining (pursuant to Section J.2.b.) that each modified activity and/or BMP represents an improvement with respect to reducing the discharge of storm water pollutants from the MS4.

- (8) A description of the steps that will be taken to improve the Copermittee's ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6. Include a time schedule for when improvement will occur; and
- (9) A description of the steps that will be taken to identify aspects of the Copermittee's Jurisdictional Runoff Management Program that will be changed based on the results of the effectiveness assessment.

4. Work Plan

Each Copermittee must develop a work plan to address their high priority water quality problems in an iterative manner over the life of the permit. The goal of the work plan is to demonstrate a responsive and adaptive approach for the judicious and effective use of available resources to attack the highest priority problems. The work plan shall include, at a minimum, the following:

- a. The problems and priorities identified during the assessment;
- b. A list of priority pollutants and known or suspected sources;
- c. A brief description of the strategy employed to reduce, eliminate or mitigate the negative impacts;
- d. A description and schedule for new and/or modified BMPs. The schedule is to include dates for significant milestones;
- e. A description of how the selected activities will address an identified high priority problem. This will include a description of the expected effectiveness and benefits of the new and/or modified BMPs;
- f. A description of implementation effectiveness metrics;
- g. A description of how efficacy results will be used to modify priorities and implementation; and
- h. A review of past activities implemented, progress in meeting water quality standards, and planned program adjustments.

The Copermittee shall submit the work plan to the Regional Board within 365 days of adoption of the Order. Annual updates are also required and shall be included with the annual JRMP report. The Regional Board will assess the work plan for compliance with the specific and overall requirements of the Order. To increase effectiveness and efficiencies, Copermittees may combine their implementation efforts and work plans within a hydrologic area or sub area. Each Copermittee, however, maintains individual responsibility for developing and implementing an acceptable work plan.

K. REPORTING

The Copermittees may propose alternate reporting criteria and schedules, as part of their updated JRMP, for the Executive Officer's acceptance. The Copermittees shall submit the updated JRMP within 365 days after adoption of this Order.

1. Runoff Management Plans

a. JURISDICTIONAL RUNOFF MANAGEMENT PLANS

- (1) Copermittees: The written account of the overall program to be conducted by each Copermittee to meet the jurisdictional requirements of section F of this Order is referred to as the Jurisdictional Runoff Management Plan (JRMP). Each Copermittee must revise and update its existing JRMP so that it describes all activities the Copermittee will undertake to implement the requirements of this Order. Each Copermittee must submit its updated and revised JRMP to the Regional Board 365 days after adoption of this Order.
- (2) At a minimum, each Copermittee's JRMP must be updated and revised to demonstrate compliance with each applicable section of this Order.

b. WATERSHED WORKPLANS

- (1) Copermittees: The written account of the program conducted by each watershed group of Copermittees is referred to as the Watershed Workplan. Copermittees within each watershed shall be responsible for updating and revising each Watershed Workplan. Each Watershed Workplan shall be updated and revised to describe any changes in water quality problems or priorities in the WMAs, and any necessary change to actions Copermittees will take to implement jurisdictional or watershed BMPs to address those identified.
- (2) Lead Watershed Copermittee: Each Lead Watershed Permittee shall be responsible for coordinating the production of the Watershed Workplan, as well as coordinating Annual Watershed Review Meetings and public participation/public noticing in accordance with the requirements of this Order. The Lead Watershed Permittee shall submit the Watershed Workplan to the Principal.
- (3) Principal Copermittee: The Principal Permittee shall assemble and submit the Watershed Workplan to the Regional Board no later than 365 days after adoption of this Order, and shall be prepared to implement the workplan within 60 days of the Regional Board Executive Officer deeming the workplan acceptable.

(4) Each Watershed Workplan shall, at a minimum, include:

- (a) Identification of the Lead Watershed Permittee for the watershed.
- (b) An updated watershed map.
- (c) Identification and description of all applicable water quality data, reports, analyses, and other information to be used to assess receiving water quality.
- (d) Assessment and analysis of the watershed's water quality data, reports, analyses, and other information, used during identification and prioritization of the watershed's water quality problems.
- (e) A prioritized list of water quality problems within the WMA including rationale explaining the method/logic used to determine prioritization.
- (f) Identification of the likely sources, pollutant discharges, and/or other factors causing the high priority water quality problems within the WMA.
- (g) A description of the strategy to be used to guide Copermittee implementation of BMPs either jurisdictionally or on a watershed-wide basis to abate the highest water quality problems
- (h) A list of criteria used to evaluate BMP effectiveness and how it was applied.
- (i) A GIS map of BMPs implemented and BMPs scheduled for implementation.
- (j) A description of the public participation mechanisms to be used and the parties anticipated to be involved during the development and implementation of the Watershed Workplan.
- (k) A description of Copermittee collaboration to accomplish development of the Watershed Workplan, including a schedule for Watershed meetings.
- (l) A description of how TMDLs and 303(d)-listed water bodies were considered during prioritization of watershed water quality problems
- (m) A description of the strategy to model and monitor improvement in receiving water quality directly resulting from implementation of the BMPs described in the Watershed Workplan.
- (n) A scheduled annual Watershed Workplan Review Meeting once every calendar year. This meeting shall be open to the public.

2. Other Required Reports and Plans

a. SSMP UPDATES

- (1) Copermittees must submit their updated model SSMP in accordance with the applicable requirements of section F.1 with the JRMP 365 days after adoption of this Order.
- (2) Within 180 days of determination that the Model SSMP is in compliance with this Permit's provisions, each Copermittee must update their own local SSMP, and amended ordinances consistent with the model SSMP, and shall submit both (local SSMP and amended ordinances) to the Regional Board.

- (3) For SSMP-related requirements of Section F.1 with subsequent implementation due dates, updated SSMPs must be submitted with the JRMP annual report covering the applicable reporting period.

b. REPORT OF WASTE DISCHARGE

The Principal Copermittee must submit to the Regional Board, no later than 210 days in advance of the expiration date of this Order, a Report of Waste Discharge (ROWD) as an application for issuance of new waste discharge requirements. The fourth annual report for this Order may serve as the ROWD, provided it contains the minimum information below.

At a minimum, the ROWD must include the following: (1) Proposed changes to the Copermittees' runoff management programs; (2) Proposed changes to monitoring programs; (3) Justification for proposed changes; (4) Name and mailing addresses of the Copermittees; (5) Names and titles of primary contacts of the Copermittees; and (6) Any other information necessary for the reissuance of this Order.

3. Annual Reports

a. JURISDICTIONAL RUNOFF MANAGEMENT PROGRAM (JRMP) ANNUAL REPORTS

- (1) Copermittees: Each Copermittee must generate individual JRMP Annual Reports which cover implementation of its jurisdictional activities during the past annual reporting period. Each Annual Report must verify and document compliance with this Order as directed in this section. Each Copermittee must retain records through 2015, available for review, that document compliance with each requirement of this Order. Each Copermittee must submit to the Principal Copermittee its individual JRMP Annual Report by the date specified by the Principal Copermittee. The reporting period for these annual reports must be the previous fiscal year. For example, the report submitted September 30, 2010 must cover the reporting period July 1, 2009 to June 30, 2010.
- (2) Principal Copermittee: The Principal Copermittee is responsible for collecting and assembling each Copermittee's individual JRMP Annual Report. The Principal Copermittee must submit Unified JRMP Annual Reports to the Regional Board by September 30 of each year, beginning on September 30, 2010. The Unified JRMP Annual Report must contain the 13 individual JRMP Annual Reports.
- (3) Each JRMP Annual Report must contain, at a minimum, the following information:
 - (a) Information required to be reported annually in Section H (Fiscal Analysis)

- of this Order;
- (b) Information required to be reported annually in Section J (Program Effectiveness) of this Order;
 - (c) The completed Reporting Checklist found in Attachment D, and
 - (d) Information for each program component by watershed as described in the following Table 9:

Table 9. Annual Reporting Requirements

Program Component	Reporting Requirement
New Development	1. Updated relevant sections of the General Plan and environmental review process and a description of planned updates within the next annual reporting period, if applicable;
	2. Revisions to the local SSMP, including where applicable: <ul style="list-style-type: none"> (a) Identification and summary of where the SSMP fails to meet the requirements of this Order; (b) Updated procedures for identifying pollutants of concern for each Priority Development Project; (c) Updated treatment BMP ranking matrix; and (d) Updated site design and treatment control BMP design standards;
	3. Verification that site design, source control, and treatment BMPs were required on all applicable Priority Development Projects;
	4. Description of the application of LID and site design BMPs in the planning and approval process;
	5. Description of projects subject to the local waiver provision for numeric sizing of treatment control BMP requirements;
	6. Description and summary of the LID site design BMP substitution program, if applicable;
	7. Description and summary of the process to verify compliance with SSMP requirements;
	8. Updates to the BMPs that are listed in the local SSMP as options for treatment control;
	9. Description of the treatment control maintenance tracking process and verification that the requirements of this Order were met during the reporting period; <ul style="list-style-type: none"> (a) Updated watershed-based database of approved treatment control BMPs and treatment control BMP maintenance within its jurisdiction, including updates to the list of high-priority treatment BMPs;
	10. Description of the process for identifying and evaluating hydrologic conditions of concern and requiring a suite of management measures within all Priority Development Projects to protect downstream beneficial uses and prevent adverse physical changes to downstream stream channels;

Program Component	Reporting Requirement
	11. Description of enforcement activities applicable to the new development and redevelopment component and a summary of the effectiveness of those activities;
Construction	<p>1. Updated relevant ordinances and description of planned ordinance updates within the next annual reporting period, if applicable;</p> <p>2. A description of procedures used for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality;</p> <p>3. Designated minimum and enhanced BMPs;</p> <p>4. Summary of the inspection program, including the following information:</p> <ul style="list-style-type: none"> (a) Number and date of inspections conducted at each facility, including the facility address; (b) Number of facilities lacking adequate BMPs; (c) The BMP violations identified during the inspection by facility; (d) Number, date, and types of enforcement actions by facility; (e) Narrative description of inspection findings and follow-up activities for each facility;
Municipal	<p>1. Updated source inventory;</p> <p>2. Changes to the designated municipal BMPs</p> <p>3. Descriptions of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies;</p> <p>4. Summary and assessment of BMPs implemented at retrofitted flood control structures, including:</p> <ul style="list-style-type: none"> (a) List of projects with BMP retrofits; and (b) List and description of structures retrofitted without BMPs; <p>5. Description and assessment of the municipal structural treatment control operations and maintenance activities, including:</p> <ul style="list-style-type: none"> (a) Number of inspections and types of facilities; and (b) Summary of findings; <p>6. Description of the municipal areas/facilities operations and maintenance activities, including:</p> <ul style="list-style-type: none"> (a) Number and types of facilities maintained; (b) Amount of material removed and how that material was disposed; and (c) List of facilities planned for bi-annual inspections and the justification;

Program Component	Reporting Requirement
	<p>7. Description of the municipal areas/programs inspection activities, including:</p> <ul style="list-style-type: none"> (a) Number and date of inspections conducted at each facility; (b) Number of facilities lacking adequate BMPs; (c) The BMP violations identified during the inspection by facility; (d) Number, date and types of enforcement actions by facility; (e) Narrative description of inspection findings and follow-up activities for each facility;
	<p>8. Description of activities implemented to address sewage infiltration into the MS4;</p>
Commercial / Industrial	<p>1. Annual inventory of commercial / industrial sources;</p> <p>2. Summary of the inspection program, including the following information:</p> <ul style="list-style-type: none"> (a) Number and date of inspections conducted at each facility including the facility address; (b) Number of facilities lacking adequate BMPs; (c) The BMP violations identified during the inspection by facility; (d) Number, date, and types of enforcement actions by facility; (e) Narrative description of inspection findings and follow-up activities for each facility; <p>3. Changes to designated minimum and enhanced BMPs;</p> <p>4. A list of industrial sites, including each name, address, and SIC code, that the Copermittee suspects may require coverage under the General Industrial Permit, but has not submitted an NOI.</p>
Residential	<p>1. Updated minimum BMPs required for residential areas and activities;</p>
	<p>2. Quantification and summary of applicable runoff and storm water enforcement actions within residential areas and activities</p>
	<p>3. Description of efforts to manage runoff and storm water pollution in common interest areas;</p>
Illicit Discharge Detection and Elimination	<p>1. Changes to the legal authority to implement Illicit Discharge Detection and Elimination activities;</p> <p>2. Changes to the established investigation procedures;</p> <p>3. Public reporting mechanisms, including phone numbers and web pages;</p> <p>4. All data and assessments from the Dry Weather Effluent Analytical Monitoring activities;</p> <p>5. Response criteria developed for water quality data and notifications;</p> <p>6. Summaries of illicit discharges (including spills and water quality data events) and how each significant case was resolved;</p> <p>7. A description of instances when field screening and analytical data exceeded action levels, but for which no investigation was conducted;</p>

Program Component	Reporting Requirement
	8. A description of enforcement actions taken in response to investigations of illicit discharges and a description of the effectiveness of those enforcement measures; 9. A description of controls to prevent infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems.
Work Plan	Priorities, strategy, implementation schedule and effectiveness evaluation.

(4) Each JRMP Annual Report must also include the following information regarding non-storm water discharges (see Section B.2. of this Order):

- (a) Identification of non-storm water discharge categories identified as a source of pollutants to waters of the U.S;
- (b) A description of ordinances, orders, or similar means to prohibit non-storm water discharge categories identified under section B.2 above ;
- (c) Identification of any control measures to be required and implemented for non-storm water discharge categories identified as needing said controls by the Regional Board; and
- (d) A description of a program to address pollutants from non-emergency fire fighting flows identified by the Copermittee to be significant sources of pollutants.

4. Interim Reporting Requirements

For the July 2009-June 2010 reporting period, the Jurisdictional RMP must be submitted on January 31, 2011. Each Jurisdictional RMP Annual Report submitted for this reporting period must, at a minimum, include comprehensive descriptions of all activities conducted to fully implement the Copermittees' Jurisdictional RMP documents, as those documents were developed to comply with the requirements of Order No. 2002-01. The Principal Copermittee must submit these documents in a unified manner, consistent with the unified reporting requirements of Order No. 2002-01.

5. Universal Reporting Requirements

All submittals must include an executive summary, introduction, conclusion, recommendations, and signed certified statement. Each Copermittee must submit a signed certified statement covering its responsibilities for each applicable submittal. The Principal Copermittee must submit a signed certified statement covering its responsibilities for each applicable submittal and the sections of the submittals for which it is responsible.

L. MODIFICATION OF PROGRAMS

Modifications of Jurisdictional Runoff Management Programs and/or Watershed Runoff Management Programs may be initiated by the Executive Officer of the Regional Board or by the Copermittees. Requests by Copermittees must be made to the Executive Officer, and must be submitted during the annual review process. ~~Requests for modifications should be incorporated, as appropriate, into the Annual Reports or other deliverables required or allowed under this Order.~~

1. **Minor Modifications:** Minor modifications to Jurisdictional Runoff Management Programs, and/or Watershed Runoff Management Programs, may be accepted by the Executive Officer where the Executive Officer finds the proposed modification complies with all discharge prohibitions, receiving water limitations, and other requirements of this Order.
2. **Modifications Requiring an Amendment to this Order:** Proposed modifications that are not minor require amendment of this Order in accordance with this Order's rules, policies, and procedures.

M. PRINCIPAL COPERMITTEE RESPONSIBILITIES

Within 180 days of adoption of this Order, the Copermittees must designate the Principal Copermittee and notify the Regional Board of the name of the Principal Copermittee. The Principal Copermittee must, at a minimum:

1. Serve as liaison between the Copermittees and the Regional Board on general permit issues, and when necessary and appropriate, represent the Copermittees before the Regional Board.
2. Coordinate permit activities among the Copermittees and facilitate collaboration on the development and implementation of programs required under this Order.
3. Integrate individual Copermittee documents and reports into single unified documents and reports for submittal to the Regional Board as required under this Order.
4. Produce and submit documents and reports as required by section K of this Order and Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2009-0002 in Attachment E of this Order.

N. RECEIVING WATERS AND MS4 DISCHARGE MONITORING AND REPORTING PROGRAM

Pursuant to CWC section 13267, the Copermittees must comply with all the requirements contained in Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2009-0002 in Attachment E of this Order.

O. STANDARD PROVISIONS, REPORTING REQUIREMENTS, AND NOTIFICATIONS

1. Each Copermittee must comply with Standard Provisions, Reporting Requirements, and Notifications contained in Attachment B of this Order. This includes 24 hour/5 day reporting requirements for any instance of non-compliance with this Order as described in section 5.e of Attachment B.
2. All plans, reports and subsequent amendments submitted in compliance with this Order must be implemented immediately (or as otherwise specified). All submittals by Copermittees must be adequate to implement the requirements of this Order.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on **(DATE)**.

TENTATIVE

John H. Robertus
Executive Officer

EXHIBIT "B"



December 8, 2009

Via US Mail and E-mail

Mayor
Mark Tetterer

Mayor Pro Tem
Peter Herzog

Mr. David Gibson
Executive Officer
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Council Members
Richard Dixon
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Subject: Comments on the Additional Errata and Updates to Sixth Draft of Tentative Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges for 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, dated December 16, 2009

Dear Mr. Gibson:

The City of Lake Forest ("City") submits this letter to the California Regional Water Quality Control Board, San Diego Region ("SDRWQCB") to convey the City's formal written comments on Tentative Order No. R9-2009-0002/NPDES Permit No. CAS0108740 ("Draft Permit").

The City fully supports the SDRWQCB's decision to remove Numeric Effluent Limits from the Draft Permit, and replace them with action levels. The City still has concerns about several aspects of the changes including the following:

- The action levels are too low, in some cases lower than "natural" watershed conditions. To be truly effective, the action levels should be based on actual conditions as suggested by the State Water Resources Control Board's Blue Ribbon Panel.
- There is no clear exemption for natural sources, or uncontrollable sources. As currently drafted, the action level responses do not provide an attainable natural source exclusion. Instead, natural sources are only "exempt" if they are "natural in origin and conveyance." This should be revised to include all natural sources regardless of how they are conveyed to the MS4 or the waters of the State. In addition, the Copermittees lack legal jurisdiction over certain discharges that are permitted by the State Water Resources Control Board or the SDRWQCB such as some government facilities, utilities, and special districts. Other potentially significant pollutants are not controllable by the Copermittees such as those generated from internal combustion engines, brake pad wear, tire wear, atmospheric deposition, and leaching of naturally occurring minerals from local geologic formations.



Mr. David Gibson
December 8, 2009
Page 2 of 2
Tentative Order No. R9-2009-0002

- The categorical prohibition approach to exempt discharges is unnecessary. As drafted, the Draft Permit's action level responses will require the City to prohibit any type of currently exempt discharge that is observed causing an action level exceedance. Addressing pollutant loads from such discharges can be done on a case-by-case basis that would not require a blanket prohibition. The Draft Permit should adopt this approach.
- The Draft Permit still makes an artificial distinction between stormwater and non-stormwater, and implies that non-stormwater is subject to something other than the MEP standard. This should be revised, and references to non-stormwater should be replaced with references to dry weather flows.

The City is aware that the County of Orange ("County") is submitting a comment letter documenting its concerns with the Draft Permit, and suggesting revisions. The City would like to express its full support for the County's comments and proposed revisions. This support, however, should not be interpreted as an endorsement of the Draft Permit's current distinction between discharges of stormwater and non-stormwater.

Thank you for your attention to our comments. The City is committed to the goal of water quality improvement and wants to work with the SDRWQCB in developing the most prudent and cost effective permit possible. If you should have any questions, please contact Devin Slaven, Water Quality Specialist, at (949) 461-3436.

Sincerely,

CITY OF LAKE FOREST



Robert L. Woodings, P.E.
Director of Public Works/City Engineer

cc: Robert C. Dunek, City Manager
Theodore G. Simon, P.E., Engineering Services Manager
Devin E. Slaven, REA, CPSWQ, Water Quality Specialist
Chris Crompton, County of Orange, RDMD



September 28, 2009

Mayor
Mark Tettemer

Via US Mail and E-mail Mayor Pro Tem
Peter Herzog

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Council Members
Richard Dixon
Kathryn McCullough
Marcla Rudolph

City Manager
Robert C. Dunek

Subject: Comments on the Sixth Draft of Tentative Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges for 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, dated August 12, 2009

Dear Mr. Robertus:

The City of Lake Forest ("City") submits this letter to the California Regional Water Quality Control Board, San Diego Region ("SDRWQCB") to convey the City's formal written comments on the sixth draft of Tentative Order No. R9-2009-0002/NPDES Permit No. CAS0108740 ("Draft Permit").¹ The City is aware that the County of Orange ("County") is submitting a similar comment letter regarding the Draft Permit. The City would like to express its full support for the County's comments and intends the comments contained in the County's letter to supplement those submitted by the City. Where there are differences in position on individual issues the City intends the comments in this letter to be controlling. Nonetheless, please consider the County's comments to be incorporated in the City's letter by this reference. The City's comments follow.

COMMENTS

On July 1, 2009 the SDRWQCB held a workshop on the Draft Permit to discuss issues of concern. During the workshop, two of the major issues addressed by the SDRWQCB Board were the issues of consistency and cost neutrality. The most recent iteration of the Draft Permit has not resolved either issue. The considerable and profound disparities between the Draft Permit and the North Orange County Municipal Stormwater Permit ("North Orange County Permit") represents a real and immediate cause for concern to the City, as does the significant

¹ The Draft Permit was issued on August 12, 2009, along with a request that comments should focus on changes made since the last draft. However a "redline" version of the Draft Permit was not made available from the SDRWQCB even after one was requested by the Copermittees. In order to ensure that all of its comments are included in the record of proceedings, the City's comments address the entire Draft Permit.



increase in costs required for compliance with the Draft Permit's many new requirements.

CONSISTENCY

As stated in previous correspondence², the City is subject to the jurisdiction of both the San Diego and Santa Ana Regional Water Quality Control Boards. Significant differences in the large municipal stormwater permits issued by either jurisdiction causes the City to incur unnecessary administrative costs. Moreover, disparities between the Santa Ana and San Diego permits are likely to cause confusion among the public, and discourage public acceptance and participation in clean water efforts. During the July 1, 2009, workshop, the SDRWQCB expressed concern about this cost burden, and stated a desire to have the Draft Permit be consistent where possible. Nonetheless, the Draft Permit remains basically unchanged from the draft considered at the July 1 workshop.

Consistency among stormwater permits implicates the larger issue of compliance with the MEP standard. It is not feasible for stormwater permits with significantly different requirements to be mandated by the same, federal standard. Such permits may be consistent with a baseline MEP standard, however major deviations from one another demonstrate that the baseline has been exceeded. While the SDRWQCB may have the authority to exceed the MEP standard under the appropriate circumstances, as described more fully below, this requires compliance with applicable state laws, including but not limited to the California Constitution's prohibition on unfunded state mandates.

This concern was also raised by the SDRWQCB members during the July 1, 2009 workshop on the Draft Permit. At that time, the SDRWQCB directed Regional Board staff to prepare a chart comparing the Draft Permit to the North Orange County permit, and explaining why it is different. As of September 28, 2009, the deadline for submitting written comments on the Draft Permit, that document has not been made public. Moreover, the Draft Permit is not any more consistent with other the other Southern California stormwater permits than it was at the July 1, 2009 Workshop. The following table provides a comparison of key permit requirements, and whether they are included in other regional permits (North Orange County, Ventura County, and San Diego County Permits).

² Copies of the City's previous correspondence regarding the prior iterations of the Draft Permit are attached as Exhibit A.

	DRAFT SOUTH ORANGE COUNTY PERMIT	NORTH ORANGE COUNTY PERMIT	VENTURA COUNTY PERMIT	SAN DIEGO COUNTY PERMIT
NUMERIC EFFLUENT LIMITS	Yes	No	No	No
MANDATORY MINIMUM PENALTIES	Yes	No	No	No
ACTION LEVELS	Yes	No	Yes	No
IRRIGATION OVERFLOW PROHIBITION	Yes	No	No	No
EXISTING DEVELOPMENT RETROFIT REQUIREMENTS	Yes	No	No	No

The Draft Permit and the Fact Sheet do not address why these requirements are different. The distinctions are especially meaningful for the North Orange permit and San Diego County permit. These permits govern areas geographically similar to South Orange County, yet do not impose many of the stringent requirements included in the Draft Permit. The City therefore requests that the SDRWQCB revise the Draft Permit to make it consistent with the North Orange and San Diego County permits on these issues.

COST NEUTRALITY AND COMPLIANCE WITH STATE LAW

The Draft Permit will increase costs for the City. Attached as Exhibit B is a chart that was filed with the County of San Diego's Test Claim challenging the San Diego County Permit as an unfunded state mandate. That chart lists how much each permittee is expected to spend on permit-related programs alleged to be unfunded state mandates. Similar programs have the potential to cost the City millions of dollars. For instance, in San Diego County, development of a Hydromodification Management Plan cost the Permittees \$1.5 million over two years. County-wide, costs associated with each of the challenged programs were estimated at over \$66 million in *new* unfunded program costs. Similar costs are likely in South Orange County, and in fact could be higher as a result of the large number of new programs in the Draft Permit that were not included in the San Diego County permit.

The SDRWQCB may have the discretion to impose some of the programs in the Draft Permit. However, imposing requirements more stringent than that required by the Clean Water Act and its implementing regulations triggers applicable state law requirements. (*See City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613.) For waste discharge requirements that exceed the requirements of federal law, California law requires consideration of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing in the region.
- (f) The need to develop and use recycled water.

(Cal. Water Code § 13241.)

Of the above listed factors, the economic considerations can be the most difficult to navigate. In *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, the California Supreme Court held that where an NPDES Permit exceeds the requirements of federal law, the Regional Boards are required to consider the "economic" impacts on dischargers. The Supreme Court defined the economic impact as the "discharger's cost of compliance." (*Id.* at 618, 625.) To date, the SDRWQCB has maintained that the entire Draft Permit is federally mandated, and thus consideration of the factors listed in Water Code section 13241, including the economic impacts to the Permittees, is not required.

As a result, the SDRWQCB has failed to fully consider the economic costs associated with the Draft Permit. The Fact Sheet includes a cursory discussion of costs associated with Large MS4 permits in general, but it does not analyze the cost of compliance for dischargers under the Draft Permit. As stated above, compliance with the Draft Permit's new requirements will run into the millions of dollars. Before the SDRWQCB imposes this obligation on the City, it needs to consider the direct economic costs placed on the City and the other permittees. The purpose of Water Code section 13241 is to ensure that the public has an opportunity to have an honest, open discussion about the ramifications, costs, and benefits of those permit requirements that exceed federal law. Sidestepping these considerations not only violates Section 13241, but more importantly denies the public this opportunity.

Lastly, pursuant to Article XIII B, Section 6 of the California Constitution, any NPDES requirements that are not explicitly required by federal law must be funded by the state. (*County*

of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 915-916.) Where, as here, a federal program provides discretion to the State agency to impose a local program on a municipality, such as a TMDL, the municipality is entitled to reimbursement from the state. (See *Hayes v. Commission on State Mandates* (1992) 11 Cal. App.4th 1564, 1570.) Numerous programs in the Draft Permit exceed the requirements of federal law and thus represent state mandates. Pursuant to Article XIII B, Section 6 of the California Constitution, the City is entitled to reimbursement for the cost of implementing these programs.

NUMERIC EFFLUENT LIMITS

The Draft Permit's Numeric Effluent Limit ("NEL") requirements are fundamentally flawed and should be removed. The numbers assigned to each NEL do not reflect existing conditions in the South Orange County watersheds, nor do they reflect the limits of current technology to locate, analyze, and treat discharges that are causing NEL exceedances. To further this point, a County assessment indicates that the NELs are not even achievable at reference sites unaffected by urban influences. Moreover, the rationale relied upon for imposing the NELs is based on a flawed interpretation of the Clean Water Act. The Draft Permit's findings related to the need to require NELs are therefore factually untrue, and fail to bridge the analytical gap between the Draft Permit's requirements and conditions in the South Orange County region.

The Clean Water Act requires MS4 permits to effectively prohibit non-stormwater discharges *into* the MS4, and holds all discharges *from* the MS4 are subject to the maximum extent practicable (MEP) standard. (33 USC § 1342(p)(3)(B).) Clean Water Act section 402(p)(B) states:

Municipal discharge. Permits for discharges from municipal storm sewers—

- (i) may be issued on a system- or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges *into* the storm sewers; and
- (iii) shall require controls *to reduce the discharge of pollutants to the maximum extent practicable*, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(33 USC § 1342(p)(3)(B) [emphasis added].)

Thus the Clean Water Act does not impose a separate standard on the discharge of non-stormwater from the MS4. The discharge of any pollutant from the MS4 is subject to the MEP standard. The Draft Permit ignores this plain language of the Clean Water Act. It differentiates between discharges of stormwater and non-stormwater *from* the MS4, and attempts to justify imposition of NELs on the grounds that the Clean Water Act imposes different compliance

standards on discharges of each. As demonstrated by the plain language of the act, the Clean Water Act does not distinguish between stormwater and non-stormwater when regulating discharges *from* an MS4. (33 USC § 1342(p)(3)(B)(iii).) The MEP standard expressly applies to discharges of pollutants from the MS4.

Application of the MEP standard to discharges from the MS4 is important in the instant case because it speaks to the appropriateness of including NELs in the Draft Permit. Both the State Water Resources Control Board (SWRCB), and US EPA have stated on numerous occasions that an iterative, BMP-based process should be employed to implement MS4 permits. Indeed, the SWRCB explicitly recognized this in Order WQ 2001-15, when it directed the SDRWQCB to revise the 2001 San Diego County Permit to clarify that the MEP standard applies to discharges *from* the MS4.

The permit must be clarified so that the reference to the iterative process for achieving compliance applies not only to the receiving water limitation, but also to the discharge prohibitions that require compliance with water quality standards. The permit should also be revised so that it requires that MEP be achieved for discharges "from" the municipal sewer system.

(SWRCB Order WQ 2001-15, pages 9-10, 17.)

If the Draft Permit is going to require compliance with NELs in an MS4 permit, the SDRWQCB needs to directly address why those authorities mandating an iterative, BMP based approach to municipal stormwater are not applicable. Sidestepping the issue by claiming that the approach is mandated by federal law denies the public an opportunity to have an honest, open discussion about the ramifications, costs, and benefits of imposing NELs on the Permittees.

In addition to the flawed rationale, the actual numeric limits established for the NELs are overly conservative, and in some cases essentially guarantee that the Permittees will violate the Draft Permit's NEL requirements. For instance, for discharges of certain criteria pollutants, "inland surface waters, enclosed bays, and estuaries have conservatively been allotted a mixing zone and dilution credit of zero. As such, any discharge of these priority pollutants is likely to impact the receiving water, regardless of the quantity or rate of discharge." (Fact Sheet, p 112.) As a result, the NEL for these discharge points has been set at the water quality objective for the receiving water. (Fact Sheet, p 113.) There is no basis for imposing this discharge standard on the City and the other Permittees. The SDRWQCB's action in imposing such a standard is arbitrary and not reflective of current technological limits.

NATURAL SOURCE EXCLUSION AND REMOVAL OF THE TERM "URBAN"

The Draft Permit needs to be revised to include a clear, meaningful exclusion for discharges caused by natural sources or third parties over which the City has little or no control. In its present form, the Draft Permit does not provide a safe harbor for discharge violations caused by natural sources or third party entities. This is best demonstrated by the Draft Permit's NEL requirements. The Draft Permit will impose the following NEL requirements on the City:

Compliance with numeric limitations does not excuse compliance with the non-stormwater discharge prohibition in Section B.1. Compliance with NELs provides an assessment of the effectiveness of the prohibition of non-stormwater discharges and of the appropriateness of exempted non-stormwater discharges. Compliance with Section C of this Order requires that an exceedance of an NEL must result in one of the following outcomes:

- a. Copermittees investigate the source of the exceedance and determine that it is natural (non-anthropogenically influenced) in origin and conveyance. The findings are to be conveyed to the Regional Board for review and acceptance.
- b. Copermittees investigate the source of the exceedance and determine that the source is an illicit discharge or connection. The Copermittees are to eliminate the discharge to their MS4 and report the findings, including any enforcement action(s) taken, to the Regional Board. Those seeking to continue such a discharge must become subject to a separate NPDES permit.
- c. Copermittees investigate the source of the exceedance and determine that the source is an exempted non-stormwater discharge. The Copermittees shall investigate the appropriateness of the discharge continuing to be exempt and report the findings to the Regional Board.

(Draft Permit § C.1.)

The Draft Permit's NEL requirements do not provide an exemption for exceedances caused by natural sources or discharges from third parties beyond the City's jurisdiction. As a result, pursuant to Water Code section 13385, the City could still be held liable for NEL violations even if it complied with all of the listed remedial measures, and even if the violation was caused by a natural source or a source beyond the City's authority to control.

As drafted, the Draft Permit does not limit the impact Section 13385's mandatory minimum penalty requirements. In fact, since the term "Urban" has been removed from the text the Draft Permit, the Draft Permit appears to attempt to hold the City directly responsible for discharges from natural sources, agricultural sources, and other third party entities over which the City has little to no control. Draft Permit Finding D.3. is emblematic of this problem:

As operators of the MS4s, the Copermittees 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.

The City has no authority to refuse to accept discharges from other jurisdictions or entities.

California law applies a “rule of reason” to flood control issues that requires cities to accept surface water flows from neighboring property owners. (*Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 349.) Thus the City cannot refuse to accept drainage from adjacent jurisdictions. The City likewise lacks authority over the conduct of state and local agencies within its jurisdiction. These entities are exempt from many conditions in the Draft Permit. (See Cal. Gov. Code § 53091; see also *Hall v. Taft* (1956) 47 Cal.2d 177 [holding that when the State engages in sovereign activities it is not subject to local regulations unless the California Constitution says it is, or the legislature has consented to it].)

The Draft Permit’s attempt to hold the City responsible for such discharges is especially frustrating given that many of the entities implicated by this requirement are required to obtain their own NPDES permits, and thus should be regulated directly by the SDRWQCB. The SDRWQCB’s failure to regulate discharges from these entities should not be imputed to the City. The SDRWQCB’s attempt to regulate such entities through the Draft Permit is therefore arbitrary, capricious, and without justification.

ACTION LEVELS

The Draft Permit’s Stormwater Action Levels (“SALs”) are unnecessary, exceed the requirements of federal law, and should be removed. The Draft Permit’s SAL provisions represent a major increase in monitoring and reporting requirements for the City. Compliance with the SAL requirements will significantly increase the City’s monitoring costs without a defined benefit to water quality. The Clean Water Act and its implementing regulations do not require the SDRWQCB to impose SALs in large MS4 permits, and the SDRWQCB has not demonstrated that SALs are necessary at this time. For that reason, the City requests that the SDRWQCB remove the SALs from the Draft Permit.

IRRIGATION PROHIBITION

The Draft Permit has eliminated irrigation water as an exempt discharge. The federal stormwater regulations include a list of categories of “exempt” non-stormwater discharges or flows. (40 CFR 122.26(d)(2)(iv)(B)(1).) The City must address these discharges or flows when they have been identified by the City as sources of pollutants to waters of the U.S. (*Id.*) Where individual sources of discharge are identified they are to be addressed on an individual basis.

Irrigation runoff may act as a conveyance of pollutants in some instances, however, it is not a conveyance of pollutants in all cases. Additionally, many of the pollutants that may be conveyed by irrigation overflows are naturally occurring, are regulated by the State under different permits or programs, or are diffuse and uncontrollable by the Permittees. Enforcing discharges of potable irrigation water from residential homes will therefore be very difficult. Residents without a significant water quality background are unlikely to agree that potable irrigation water is a pollutant. This will discourage public acceptance and participation in the water quality program, a program whose foundation is outreach and public education.

It is also important to recognize that over irrigation is being addressed as a water conservation

issue. The City, the other Permittees, and water districts throughout the region are working toward limiting excessive irrigation (and irrigation runoff) through numerous water conservation programs and ordinances. Reduction of irrigation runoff will therefore be achieved through other means, and does not need to be regulated in the Draft Permit. Regulation as a water conservation issue has the added benefit of public acceptance and participation in conservation programs. This will allow irrigation overflows to be regulated without undermining public support for the City's water quality program. The City therefore requests that the exemption for landscape irrigation be restored.

LOW IMPACT DEVELOPMENT

The City appreciates the SDRWQCB's efforts to revise the Draft Permit's Low Impact Development requirements to make them more similar to those in the North Orange County Permit. However, the City objects to the mitigation and fee requirements that the Draft Permit will impose on projects that cannot retain and treat stormwater on site. The Draft Permit has a stated preference for LID BMPs that treat stormwater on site. It is possible to require these development techniques where feasible, however such BMPs will not be feasible for all projects. There is no rationale basis for requiring these projects to pay a penalty when they can deploy other traditional BMPs that will treat stormwater to levels that are equivalent or better than the LID and retention requirements currently espoused by the Draft Permit. For that reason, the City requests that the Draft Permit be revised to remove this penalty.

RETROFIT REQUIREMENTS

Section F.3.d of the Draft Permit will require the City to develop a plan to retrofit existing development within its jurisdiction. The City has land use authority to impose requirements on new development as a condition of development, but lacks comparable authority to require property owners to retrofit existing development. The Draft Permit ignores this lack of authority and includes requirements to identify, inventory and prioritize existing developments that are potential sources of pollutants. (Draft Permit, section F.3.d(1)-(6).

The Draft Permit will require the City to identify existing development candidates, evaluate and rank the candidate sites to prioritize them for retrofitting, cooperate with landowners of priority sites and encourage them to retrofit their properties, and track and inspect all sites that do complete retrofitting. This will require the City to invest a significant amount of time and resources developing and implementing this program. The City's lack of authority to impose retrofit requirements on existing development means there will be no corresponding benefit to water quality. For that reason, the Draft Permit's retrofit requirements should be removed.

WORK PLAN

Section J.4 of the Draft Permit will require the City to develop a Work Plan to address high priority water quality programs in an iterative manner. This requirement is duplicative, of other existing programs and is wholly unnecessary. At least four other planning level documents cover these issues. The City uses the Drainage Area Management Plan as the principal policy

Mr. John Robertus
September 28, 2009
Page 10 of 10
Tentative Order No. R9-2009-0002

and guidance document; each jurisdiction also has a related Local Implementation Plan; the South Orange County area uses an Integrated Regional Water Management Plan; the watersheds are assessed and managed with a Watershed Action Plan; and the Aliso Creek Watershed has its own Watershed Runoff Management Plan. There is no reason to add yet another bureaucratic layer to the Draft Permit. This requirement will only increase costs without providing a corresponding benefit to water quality.

CONCLUSION

We appreciate your attention to our comments and look forward to receiving your response. The City is committed to the goal of water quality improvement and wants to work with the SDRWQCB in developing the most prudent and cost effective permit possible. If you should have any questions, please contact Devin Slaven, Water Quality Specialist, at (949) 461-3436.

Sincerely,
CITY OF LAKE FOREST



Robert L. Woodings, P.E.
Director of Public Works/City Engineer

Exhibits:

- A) City's previous comment letters for previous iterations of the Draft Permit
- B) County of San Diego test claim summary of costs

cc: Robert C. Dunek, City Manager
Theodore G. Simon, P.E., Engineering Services Manager
Devin E. Slaven, REA, Water Quality Specialist
Chris Crompton, County of Orange, RDMD

EXHIBIT A

CITY OF LAKE FOREST



April 4, 2007

Mayor
Richard T. Dixon

Mayor Pro Tem
Mark Tettemer

Council Members
Peter Herzog
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Via Fax (858) 571-6972

Subject: Comments on Tentative Order No. R9-2007-0002, Waste Discharge Requirements for Discharges of Urban 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

Dear Mr. Robertus:

The City of Lake Forest (City) respectfully submits this letter to the California Regional Water Quality Control Board, San Diego Region (Regional Board) to convey the City's formal written comments on Tentative Order No. R9-2007-0002/NPDES Permit No. CAS0108740 (Permit). Once adopted, the Permit will govern discharges of storm water from all Large Municipal Separate Storm Sewer Systems (MS4s) in Southern Orange County. As a regulated Large MS4 operator, the City is very concerned with a number of the Permit's proposed provisions.

As an initial matter, the City would like to address the projected timeline for the Permit's renewal. Regional Board staff have proposed closing the public comment period immediately following the April 11, 2007 Regional Board workshop. In order to facilitate greater public participation, the City hereby requests that the Regional Board keep the comment period open beyond this date. This will provide the Regional Board with the opportunity to review all of the submitted comments, and will allow all stakeholders to review any changes to the Permit that the Regional Board chooses to make.

In developing the following comments, the City worked closely with the County of Orange (County) as well as the other Copermittees to identify common concerns among the Copermittees. The City is aware that the County, as the Principle Permittee, has submitted a comment letter to the Regional Board regarding the Permit. The City would like to express its full support for the County's comments and intends the comments contained in this letter to supplement those submitted by the County and the other Copermittees. Accordingly, please consider the County's comments to be incorporated in the City's letter by this reference.

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CITY OF LAKE FOREST



May 14, 2009

Via US Mail and E-mail

Mayor
Mark Tettmer

Mayor Pro Tem
Peter Herzog

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Council Members
Richard Dixon
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Subject: Comments on Tentative Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges for 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

Dear Mr. Robertus:

The City of Lake Forest ("City") submits this letter to the California Regional Water Quality Control Board, San Diego Region ("SDRWQCB") to convey the City's formal written comments for Tentative Order No. R9-2009-0002/NPDES Permit No. CAS0108740 ("Draft Permit"). The City is additionally aware that the County of Orange ("County") is submitting a similar comment letter regarding specific conditions contained in the Draft Permit. The City would like to express its full support for the County's comments and intends the comments contained in this letter to supplement those submitted by the County. Accordingly, please consider the County's comments to be incorporated in the City's letter by this reference. The City's comments follow.

GLOBAL COMMENTS

During the last public hearing on the Draft Permit, in February, 2008, the SDRWQCB Board directed Board Staff to revise the permit to achieve greater consistency with Phase I MS4 permits throughout the state, and to provide stakeholders and the regulated community with a meaningful opportunity to assist in the development of the revisions. Unfortunately, the Draft Permit was released without cooperative input from the regulated community prior to its release and, more significantly, is entirely inconsistent with other Large MS4 Permits issued throughout the state.

Indeed, a brief comparison of the Draft Permit with the North Orange County MS4 Permit that is likely to be adopted by the California Regional Water Quality Control Board, Santa Ana Region ("SARWQCB") on May 22, 2009, reveals that there is a significant disparity between the two permits. The North Orange County MS4 Permit is of particular concern because many of the Copermittees, including the City, are subject to



Chon 152

CITY OF LAKE FOREST



August 22, 2007

Mayor
Richard T. Dixon

Mayor Pro Tem
Mark Tetterer

Council Members
Peter Herzog
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Via US Mail and Fax 858-571-6972

Subject: Comments on Revised Tentative Order No. R9-2007-0002, Waste Discharge Requirements for Discharges of Urban 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 Sand Diego Region

Dear Mr. Robertus:

The City of Lake Forest (City) respectfully submits this letter to the California Regional Water Quality Control Board, San Diego Region (SDRWQCB) to convey the City's formal written comments on Revised Tentative Order No. R9-2007-0002/NPDES Permit No. CAS0108740 (Permit).

As an initial matter, the City would like to commend the SDRWQCB for modifying the Permit in response to comments submitted by the Copermittees. The changes indicate an effort on the part of the SDRWQCB and its staff to work with the Copermittees to develop a mutually beneficial Permit.

The City is aware that the County of Orange (County) is submitting a similar comment letter regarding specific conditions contained in the Permit. The City would like to express its support for the County's comments, and intends the comments contained in this letter to supplement those submitted by the County and the other Copermittees.

Like the County, the City continues to have certain concerns about the way the SDRWQCB has structured the Permit. The City, therefore, submits the following comments to continue the open dialogue between the Copermittees and the SDRWQCB, and to facilitate further collaboration on the development of a Permit that both promotes water quality improvement, and meets the needs of the Copermittees. A description of the City's other concerns is set forth below.

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EXHIBIT B

Co-Permittee Costs: Implementation of Watershed Activities

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$10,000.00	\$12,000.00	\$14,400.00	\$17,280.00	\$20,736.00
Chula Vista	\$35,000.00	\$36,500.00	\$38,000.00	\$39,500.00	\$41,000.00
Coronado	\$3,000.00	\$3,600.00	\$4,320.00	\$5,184.00	\$6,221.00
Del Mar	\$7,500.00	\$9,500.00	\$10,450.00	\$11,495.00	\$12,644.50
El Cajon	\$52,002.00	\$38,848.00	\$49,040.00	\$74,592.00	\$92,182.00
Encinitas	\$3,000.00	\$3,600.00	\$4,320.00	\$5,184.00	\$6,222.00
Escondido	\$20,000.00	\$24,000.00	\$28,800.00	\$34,560.00	\$41,470.00
Imperial Beach	\$3,000.00	\$3,600.00	\$4,320.00	\$5,184.00	\$6,221.00
La Mesa	\$30,000.00	\$30,000.00	\$36,000.00	\$43,200.00	\$51,840.00
Lemon Grove	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
National City	\$199,470.00	\$207,448.80	\$215,746.75	\$224,376.62	\$233,351.69
Oceanside	\$25,000.00	\$30,000.00	\$36,000.00	\$43,200.00	\$51,840.00
Poway	\$500.00	\$5,000.00	\$6,000.00	\$7,200.00	\$8,640.00
San Diego	\$600,000.00	\$660,000.00	\$726,000.00	\$798,600.00	\$878,460.00
San Marcos	\$10,000.00	\$12,000.00	\$14,400.00	\$17,280.00	\$20,736.00
Santee	\$4,408.00	\$9,212.00	\$9,673.00	\$10,157.00	\$10,665.00
Solana Beach	\$1,000.00	\$1,200.00	\$1,440.00	\$1,728.00	\$2,073.60
Vista	\$10,000.00	\$12,000.00	\$14,400.00	\$17,280.00	\$20,736.00
Inincorporated	\$40,000.00	\$48,000.00	\$57,600.00	\$69,120.00	\$82,944.00
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$1,053,880.00	\$1,146,508.80	\$1,270,909.75	\$1,425,120.62	\$1,587,982.79

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs: WURMP Cost-Share Agreements

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$26,000.00	\$27,000.00	\$28,350.00	\$29,768.00	\$31,256.00
Del Mar	\$3,000.00	\$3,150.00	\$3,307.50	\$3,472.88	\$3,646.52
El Cajon	\$2,998.00	\$16,152.00	\$16,960.00	\$17,808.00	\$18,698.00
Encinitas	\$2,800.00	\$3,500.00	\$4,000.00	\$4,500.00	\$5,000.00
Escondido	\$6,125.00	\$10,250.00	\$10,760.00	\$11,300.00	\$11,865.00
Imperial Beach	\$28,000.00	\$29,400.00	\$30,870.00	\$32,414.00	\$34,035.00
La Mesa	\$1,305.00	\$2,000.00	\$2,100.00	\$2,205.00	\$2,315.00
Lemon Grove	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
National City	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Oceanside	\$3,349.00	\$3,482.00	\$3,621.00	\$3,765.00	\$3,915.00
Poway	\$8,000.00	\$4,900.00	\$5,100.00	\$5,300.00	\$5,511.00
San Diego	\$507,346.00	\$532,713.00	\$554,021.00	\$576,183.00	\$599,230.00
San Marcos	\$3,314.00	\$3,479.70	\$3,653.69	\$3,836.37	\$4,028.19
Santee	\$2,437.00	\$4,874.00	\$5,118.00	\$5,374.00	\$5,643.00
Solana Beach	\$12,000.00	\$12,600.00	\$13,230.00	\$13,891.50	\$14,586.08
Vista	\$4,000.00	\$5,600.00	\$6,048.00	\$6,350.00	\$6,668.00
Unincorporated	\$15,000.00	\$25,000.00	\$26,250.00	\$27,563.00	\$28,940.00
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$599,674.00	\$657,100.70	\$685,039.19	\$713,962.74	\$744,080.78

* Co-Permittee Not Participating in Test Claim

**Co-Permittee Costs: Staffing for Watershed URMP
Development and Implementation**

Copermittee	Fiscal Year Costs				
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	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$26,962.00	\$27,281.10	\$28,645.10	\$30,077.41	\$39,923.36
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$396.00	\$2,484.00	\$2,583.00	\$2,687.00	\$2,794.00
Del Mar	\$9,897.50	\$8,917.00	\$9,254.79	\$9,606.09	\$9,971.45
El Cajon	\$34,107.00	\$35,472.00	\$36,890.00	\$38,366.00	\$39,900.00
Encinitas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Escondido	\$59,280.00	\$59,280.00	\$61,585.00	\$62,890.00	\$64,775.00
Imperial Beach	\$452.00	\$1,584.00	\$1,656.00	\$1,728.00	\$1,800.00
La Mesa	\$44,437.12	\$46,215.00	\$48,064.00	\$49,987.00	\$51,986.00
Lemon Grove	\$1,968.00	\$2,047.00	\$2,129.00	\$2,214.00	\$2,302.00
National City	\$16,716.25	\$22,041.75	\$22,923.42	\$23,840.36	\$24,793.97
Oceanside	\$13,172.00	\$13,698.00	\$14,245.00	\$14,814.00	\$15,406.00
Poway	\$60,900.00	\$65,772.00	\$71,034.00	\$76,716.00	\$82,854.00
San Diego	\$253,652.00	\$308,505.00	\$320,845.00	\$333,679.00	\$347,026.00
San Marcos	\$37,232.00	\$38,721.28	\$40,270.13	\$41,880.94	\$43,556.17
Santee	\$4,408.00	\$4,606.00	\$4,836.00	\$5,078.00	\$5,332.00
Solana Beach	\$10,415.52	\$10,832.14	\$11,265.43	\$11,716.04	\$12,184.69
Vista	\$22,822.80	\$41,102.10	\$42,746.18	\$44,456.03	\$46,234.27
Unincorporated Airport Authority	\$436,394.00	\$713,207.00	\$741,735.28	\$771,404.69	\$802,260.88
Port District	*	*	*	*	*
Program Totals	\$1,033,212.19	\$1,401,765.37	\$1,460,707.33	\$1,521,140.56	\$1,593,099.79

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs: 13.0 Effectiveness Assessment - Annual JURMP Assessment and Reporting

Copermittee	Fiscal Year Costs				
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	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$12,867.45	\$13,356.41	\$13,863.96	\$14,390.79	\$14,937.64
Chula Vista	\$73,112.00	\$152,072.00	\$158,155.00	\$164,481.00	\$171,060.00
Coronado	\$75,000.00	\$18,210.00	\$18,939.00	\$19,696.00	\$20,484.00
Del Mar	\$0.00	\$46,431.00	\$48,288.24	\$50,219.77	\$52,228.56
El Cajon	\$0.00	\$86,729.00	\$90,199.00	\$93,807.00	\$97,559.00
Encinitas	\$0.00	\$32,240.00	\$33,530.00	\$34,871.00	\$36,266.00
Escondido	\$7,638.00	\$6,830.00	\$7,814.00	\$8,939.00	\$10,226.00
Imperial Beach	\$0.00	\$42,900.00	\$44,850.00	\$46,800.00	\$48,750.00
La Mesa	\$79,609.00	\$84,609.68	\$90,993.16	\$97,431.72	\$103,928.60
Lemon Grove	\$0.00	\$39,975.00	\$41,574.00	\$43,237.00	\$44,966.00
National City	\$16,716.25	\$22,041.75	\$22,923.42	\$23,840.36	\$24,793.97
Oceanside	\$3,256.00	\$3,515.00	\$4,255.00	\$4,995.00	\$5,624.00
Poway	\$0.00	\$37,303.00	\$38,795.12	\$40,346.92	\$41,960.80
San Diego	\$35,820.00	\$77,127.00	\$80,212.00	\$83,420.00	\$86,757.00
San Marcos	\$16,250.00	\$17,062.50	\$17,915.63	\$18,811.41	\$19,751.98
Santee	\$51,220.00	\$52,965.00	\$55,086.00	\$56,765.00	\$59,033.00
Solana Beach	\$0.00	\$7,715.20	\$8,023.81	\$8,344.76	\$8,678.55
Vista	\$20,874.75	\$43,416.75	\$45,153.42	\$46,959.56	\$48,837.94
Unincorporated	\$0.00	\$77,794.08	\$80,905.84	\$84,142.08	\$87,507.76
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$392,363.45	\$862,293.37	\$901,476.59	\$941,498.36	\$983,350.80

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs: 10.0 Education - Educational Surveys and Tests

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$4,850.00	\$0.00	\$0.00	\$0.00	\$0.00
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$2,887.00	\$6,005.00	\$6,245.00	\$6,495.00	\$6,755.00
Del Mar	\$0.00	\$12,480.00	\$12,979.20	\$13,498.37	\$14,038.30
El Cajon	\$0.00	\$23,760.00	\$24,710.00	\$25,699.00	\$26,727.00
Encinitas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Escondido	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Imperial Beach	\$0.00	\$12,672.00	\$13,248.00	\$13,824.00	\$14,400.00
La Mesa	\$0.00	\$11,536.00	\$11,997.72	\$12,477.64	\$12,976.32
Lemon Grove	\$0.00	\$11,808.00	\$12,280.00	\$12,772.00	\$13,282.00
National City	\$1,769.78	\$5,521.71	\$5,742.58	\$5,972.28	\$6,211.17
Oceanside	\$10,656.00	\$11,082.00	\$11,525.00	\$11,986.00	\$12,465.00
Poway	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
San Diego	\$14,505.00	\$15,085.00	\$15,688.00	\$16,316.00	\$16,969.00
San Marcos	\$2,700.00	\$2,808.00	\$2,920.32	\$3,037.13	\$3,158.62
Santee	\$25,250.00	\$26,259.00	\$27,310.00	\$28,404.00	\$29,539.00
Solana Beach	\$0.00	\$5,207.76	\$5,416.07	\$5,632.71	\$5,858.02
Vista	\$0.00	\$5,000.00	\$5,200.00	\$5,408.00	\$5,624.00
Unincorporated Airport Authority	\$0.00	\$22,095.36	\$22,979.17	\$23,898.34	\$24,854.28
Port District	*	*	*	*	*
Program Totals	\$62,617.78	\$171,319.83	\$178,241.06	\$185,420.48	\$192,857.71

* Co-Permittee Not Participating in Test Claim

**CoPermittee Costs: 6.0 Municipal - Conveyance System
Cleaning**

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$56,000.00	\$58,128.00	\$60,336.86	\$62,629.66	\$65,009.59
Chula Vista	\$824,196.00	\$1,950,755.00	\$1,734,316.00	\$1,795,789.00	\$1,859,720.00
Coronado	\$12,000.00	\$42,480.00	\$44,179.00	\$45,946.00	\$47,784.00
Del Mar	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
El Cajon	\$0.00	\$269,424.00	\$280,151.00	\$291,307.00	\$302,909.00
Encinitas	\$48,573.20	\$50,516.13	\$52,536.77	\$54,638.24	\$56,824.00
Escondido	\$221,900.00	\$188,200.00	\$194,300.00	\$200,200.00	\$206,300.00
Imperial Beach	\$171,200.00	\$178,048.00	\$185,169.92	\$192,576.72	\$200,279.79
La Mesa	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Lemon Grove	\$14,924.00	\$15,520.96	\$16,141.80	\$16,787.47	\$17,458.97
National City	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Oceanside	\$351,910.00	\$360,580.00	\$369,597.00	\$523,000.00	\$544,000.00
Poway	\$365,214.00	\$376,170.00	\$387,456.00	\$399,080.00	\$411,052.00
San Diego	\$929,200.00	\$966,368.00	\$1,005,022.72	\$1,045,223.63	\$1,087,032.57
San Marcos	\$104,000.00	\$108,160.00	\$112,486.40	\$116,985.86	\$121,665.29
Santee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Solana Beach	\$1,766.88	\$1,837.56	\$1,911.06	\$1,987.50	\$2,067.00
Vista	\$117,611.85	\$130,062.60	\$135,265.10	\$140,675.71	\$146,302.74
Unincorporated	\$237,591.55	\$247,095.21	\$256,979.02	\$267,258.18	\$277,948.51
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$3,456,087.48	\$4,943,345.46	\$4,835,848.66	\$5,154,084.97	\$5,346,353.46

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs: 6.0 Municipal - (contract costs)

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Del Mar	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
El Cajon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Encinitas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Escondido	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Imperial Beach	\$48,000.00	\$49,920.00	\$51,917.00	\$56,070.00	\$58,313.00
La Mesa	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Lemon Grove	\$33,565.00	\$34,907.60	\$36,303.90	\$37,756.06	\$39,266.30
National City	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Oceanside	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Poway	\$221,092.00	\$227,725.00	\$234,557.00	\$241,593.00	\$248,841.00
San Diego	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
San Marcos	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Santee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Solana Beach	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Vista	\$79,967.52	\$83,166.22	\$86,492.87	\$89,952.58	\$93,550.69
Unincorporated	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$382,624.52	\$395,718.82	\$409,270.77	\$425,371.64	\$439,970.99

* Co-Permittee Not Participating in Test Claim

**Co-Permittee Costs: 6.0 Municipal - Street Sweeping
(staff costs)**

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$4,011.00	\$4,171.00	\$4,338.00	\$4,512.00	\$4,692.00
Del Mar	\$14,779.80	\$15,370.99	\$15,985.83	\$16,625.27	\$17,290.28
El Cajon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Encinitas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Escondido	\$90,000.00	\$92,700.00	\$95,500.00	\$98,300.00	\$101,000.00
Imperial Beach	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
La Mesa	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Lemon Grove	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
National City	\$1,379.09	\$2,868.51	\$2,983.25	\$3,102.58	\$3,226.68
Oceanside	\$465,000.00	\$484,000.00	\$503,000.00	\$523,000.00	\$544,000.00
Poway	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
San Diego	\$400,000.00	\$416,000.00	\$432,640.00	\$449,945.60	\$467,943.42
San Marcos	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Santee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Solana Beach	\$2,314.56	\$2,407.14	\$2,503.43	\$2,603.57	\$2,707.71
Vista	\$4,438.20	\$4,615.73	\$4,800.36	\$4,992.37	\$5,192.07
Unincorporated	\$32,398.85	\$127,291.47	\$132,383.13	\$137,678.46	\$143,185.60
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$1,014,321.50	\$1,149,424.85	\$1,194,134.00	\$1,240,759.84	\$1,289,237.76

* Co-Permittee Not Participating in Test Claim

**Co-Permittee Costs: Municipal- Street Sweeping
(equipment costs)**

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Chula Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Coronado	\$27,500.00	\$27,500.00	\$27,500.00	\$27,500.00	\$27,500.00
Del Mar	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
El Cajon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Encinitas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Escondido	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Imperial Beach	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
La Mesa	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Lemon Grove	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
National City	\$745.46	\$1,580.36	\$1,643.58	\$1,709.32	\$1,777.70
Oceanside	\$442,000.00	\$460,000.00	\$478,000.00	\$497,000.00	\$517,000.00
Poway	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
San Diego	\$1,210,000.00	\$218,400.00	\$227,136.00	\$236,221.44	\$245,670.30
San Marcos	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Santee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Solana Beach	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Vista	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Unincorporated	\$400,000.00	\$140,000.00	\$140,000.00	\$140,000.00	\$140,000.00
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$2,080,245.46	\$847,480.36	\$874,279.58	\$902,430.76	\$931,947.99

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs - Long-term Effectiveness Assessment

Copermittee	Fiscal Year Costs					MOU %
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	% of Total
Carlsbad	\$0.00	\$0.00	\$0.00	\$6,699.00	\$0.00	3.19%
Chula Vista	\$0.00	\$0.00	\$0.00	\$11,550.00	\$0.00	5.50%
Coronado	\$0.00	\$0.00	\$0.00	\$2,184.00	\$0.00	1.04%
Del Mar	\$0.00	\$0.00	\$0.00	\$1,281.00	\$0.00	0.61%
El Cajon	\$0.00	\$0.00	\$0.00	\$5,271.00	\$0.00	2.51%
Encinitas	\$0.00	\$0.00	\$0.00	\$4,410.00	\$0.00	2.10%
Escondido	\$0.00	\$0.00	\$0.00	\$7,896.00	\$0.00	3.76%
Imperial Beach	\$0.00	\$0.00	\$0.00	\$2,037.00	\$0.00	0.97%
La Mesa	\$0.00	\$0.00	\$0.00	\$3,528.00	\$0.00	1.68%
Lemon Grove	\$0.00	\$0.00	\$0.00	\$2,142.00	\$0.00	1.02%
National City	\$0.00	\$0.00	\$0.00	\$3,570.00	\$0.00	1.70%
Oceanside	\$0.00	\$0.00	\$0.00	\$9,912.00	\$0.00	4.72%
Poway	\$0.00	\$0.00	\$0.00	\$5,397.00	\$0.00	2.57%
San Diego	\$0.00	\$0.00	\$0.00	\$61,803.00	\$0.00	29.43%
San Marcos	\$0.00	\$0.00	\$0.00	\$5,208.00	\$0.00	2.48%
Santee	\$0.00	\$0.00	\$0.00	\$4,116.00	\$0.00	1.96%
Solana Beach	\$0.00	\$0.00	\$0.00	\$1,722.00	\$0.00	0.82%
Vista	\$0.00	\$0.00	\$0.00	\$5,502.00	\$0.00	2.62%
Unincorporated	\$0.00	\$0.00	\$0.00	\$62,454.00	\$0.00	29.74%
Airport Authority	\$0.00	\$0.00	\$0.00	\$1,575.00	\$0.00	0.75%
Port District	\$0.00	\$0.00	\$0.00	\$1,743.00	\$0.00	0.83%
Program Totals	\$0.00	\$0.00	\$0.00	\$210,000.00	\$0.00	100.0%

**** Please note Co-Permittee's Airport Authority and Port District are not participating in the Test Claim.**

Co-Permittee Costs - Low-Impact Development (LID) and Standard Urban Stormwater Mitigation Plan (SUSMP)

Copermittee	Fiscal Year Costs					MOU %
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	% of Total
Carlsbad	\$1,674.75	\$0.00	\$0.00	\$0.00	\$0.00	3.19%
Chula Vista	\$2,887.50	\$0.00	\$0.00	\$0.00	\$0.00	5.50%
Coronado	\$546.00	\$0.00	\$0.00	\$0.00	\$0.00	1.04%
Del Mar	\$320.25	\$0.00	\$0.00	\$0.00	\$0.00	0.61%
El Cajon	\$1,317.75	\$0.00	\$0.00	\$0.00	\$0.00	2.51%
Encinitas	\$1,102.50	\$0.00	\$0.00	\$0.00	\$0.00	2.10%
Escondido	\$1,974.00	\$0.00	\$0.00	\$0.00	\$0.00	3.76%
Imperial Beach	\$509.25	\$0.00	\$0.00	\$0.00	\$0.00	0.97%
La Mesa	\$882.00	\$0.00	\$0.00	\$0.00	\$0.00	1.68%
Lemon Grove	\$535.50	\$0.00	\$0.00	\$0.00	\$0.00	1.02%
National City	\$892.50	\$0.00	\$0.00	\$0.00	\$0.00	1.70%
Oceanside	\$2,478.00	\$0.00	\$0.00	\$0.00	\$0.00	4.72%
Poway	\$1,349.25	\$0.00	\$0.00	\$0.00	\$0.00	2.57%
San Diego	\$15,450.75	\$0.00	\$0.00	\$0.00	\$0.00	29.43%
San Marcos	\$1,302.00	\$0.00	\$0.00	\$0.00	\$0.00	2.48%
Santee	\$1,029.00	\$0.00	\$0.00	\$0.00	\$0.00	1.96%
Solana Beach	\$430.50	\$0.00	\$0.00	\$0.00	\$0.00	0.82%
Vista	\$1,375.50	\$0.00	\$0.00	\$0.00	\$0.00	2.62%
Unincorporated	\$15,613.50	\$0.00	\$0.00	\$0.00	\$0.00	29.74%
Airport Authority	\$393.75	\$0.00	\$0.00	\$0.00	\$0.00	0.75%
Port District	\$435.75	\$0.00	\$0.00	\$0.00	\$0.00	0.83%
Program Totals	\$52,500.00	\$0.00	\$0.00	\$0.00	\$0.00	100.0%

**** Please note Co-Permittee's Airport Authority and Port District are not participating in the Test Claim.**

Co-Permittee Costs - HMP Development

Copermittee	Fiscal Year Costs					MOU %
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	% of Total
Carlsbad	\$36,989.70	\$24,659.80	\$0.00	\$0.00	\$0.00	5.87%
Chula Vista	\$61,809.16	\$41,206.10	\$0.00	\$0.00	\$0.00	9.81%
Coronado	\$3,352.19	\$2,234.79	\$0.00	\$0.00	\$0.00	0.53%
Del Mar	\$3,511.67	\$2,341.12	\$0.00	\$0.00	\$0.00	0.56%
El Cajon	\$5,026.76	\$3,351.17	\$0.00	\$0.00	\$0.00	0.80%
Encinitas	\$9,319.49	\$6,212.99	\$0.00	\$0.00	\$0.00	1.48%
Escondido	\$17,898.32	\$11,932.21	\$0.00	\$0.00	\$0.00	2.84%
Imperial Beach	\$3,418.64	\$2,279.09	\$0.00	\$0.00	\$0.00	0.54%
La Mesa	\$6,614.94	\$4,409.96	\$0.00	\$0.00	\$0.00	1.05%
Lemon Grove	\$3,578.12	\$2,385.42	\$0.00	\$0.00	\$0.00	0.57%
National City	\$6,282.68	\$4,188.45	\$0.00	\$0.00	\$0.00	1.00%
Oceanside	\$22,510.02	\$15,006.68	\$0.00	\$0.00	\$0.00	3.57%
Poway	\$9,498.91	\$6,332.61	\$0.00	\$0.00	\$0.00	1.51%
San Diego	\$131,396.67	\$87,597.78	\$0.00	\$0.00	\$0.00	20.86%
San Marcos	\$33,108.96	\$22,072.64	\$0.00	\$0.00	\$0.00	5.26%
Santee	\$11,133.61	\$7,422.40	\$0.00	\$0.00	\$0.00	1.77%
Solana Beach	\$3,684.45	\$2,456.30	\$0.00	\$0.00	\$0.00	0.58%
Vista	\$11,612.05	\$7,741.37	\$0.00	\$0.00	\$0.00	1.84%
Unincorporated	\$243,253.67	\$162,169.12	\$0.00	\$0.00	\$0.00	38.61%
Airport Authority	\$3,000.00	\$2,000.00	\$0.00	\$0.00	\$0.00	0.48%
Port District	\$3,000.00	\$2,000.00	\$0.00	\$0.00	\$0.00	0.48%
Program Totals	630,000.00	420,000.00	0.00	0.00	0.00	100.0%

**** Please note Co-Permittee's Airport Authority and Port District are not participating in the Test Claim.**

Co-Permittee Costs -Regional Residential Education Program Development and Implementation

Copermittee	Fiscal Year Costs					MOU %
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	% of Total
Carlsbad	\$4,186.88	\$8,373.75	\$16,747.50	\$17,584.88	\$18,464.13	3.19%
Chula Vista	\$7,218.75	\$14,437.50	\$28,875.00	\$30,318.75	\$31,834.72	5.50%
Coronado	\$1,365.00	\$2,730.00	\$5,460.00	\$5,733.00	\$6,019.66	1.04%
Del Mar	\$800.63	\$1,601.25	\$3,202.50	\$3,362.63	\$3,530.76	0.61%
El Cajon	\$3,294.38	\$6,588.75	\$13,177.50	\$13,836.38	\$14,528.21	2.51%
Encinitas	\$2,756.25	\$5,512.50	\$11,025.00	\$11,576.25	\$12,155.07	2.10%
Escondido	\$4,935.00	\$9,870.00	\$19,740.00	\$20,727.00	\$21,763.37	3.76%
Imperial Beach	\$1,273.13	\$2,546.25	\$5,092.50	\$5,347.13	\$5,614.49	0.97%
La Mesa	\$2,205.00	\$4,410.00	\$8,820.00	\$9,261.00	\$9,724.06	1.68%
Lemon Grove	\$1,338.75	\$2,677.50	\$5,355.00	\$5,622.75	\$5,903.89	1.02%
National City	\$2,231.25	\$4,462.50	\$8,925.00	\$9,371.25	\$9,839.82	1.70%
Oceanside	\$6,195.00	\$12,390.00	\$24,780.00	\$26,019.00	\$27,319.97	4.72%
Poway	\$3,373.13	\$6,746.25	\$13,492.50	\$14,167.13	\$14,875.49	2.57%
San Diego	\$38,626.88	\$77,253.75	\$154,507.50	\$162,232.88	\$170,344.67	29.43%
San Marcos	\$3,255.00	\$6,510.00	\$13,020.00	\$13,671.00	\$14,354.56	2.48%
Santee	\$2,572.50	\$5,145.00	\$10,290.00	\$10,804.50	\$11,344.73	1.96%
Solana Beach	\$1,076.25	\$2,152.50	\$4,305.00	\$4,520.25	\$4,746.27	0.82%
Vista	\$3,438.75	\$6,877.50	\$13,755.00	\$14,442.75	\$15,164.90	2.62%
Unincorporated	\$39,033.75	\$78,067.50	\$156,135.00	\$163,941.75	\$172,138.99	29.74%
Airport Authority	\$984.38	\$1,968.75	\$3,937.50	\$4,134.38	\$4,341.10	0.75%
Port District	\$1,089.38	\$2,178.75	\$4,357.50	\$4,575.38	\$4,804.15	0.83%
Program Totals	\$131,250.00	\$262,500.00	\$525,000.00	\$551,250.00	\$578,813.00	100.0%

**** Please note Co-Permittee's Airport Authority and Port District are not participating in the Test Claim.**

Co-Permittee Costs: Working Body Participation

Copermittee	Fiscal Year Costs				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$45,973.20	\$47,720.18	\$32,593.54	\$33,832.10	\$35,117.72
Chula Vista	\$9,648.00	\$11,357.00	\$7,606.00	\$7,910.00	\$8,226.00
Coronado	\$10,186.00	\$11,678.00	\$11,755.00	\$12,225.00	\$12,714.00
Del Mar	\$14,640.12	\$16,084.22	\$16,655.10	\$17,248.81	\$17,866.27
El Cajon	\$14,958.57	\$21,430.97	\$19,364.64	\$20,139.23	\$20,944.80
Encinitas	\$13,806.00	\$16,339.00	\$14,060.00	\$14,622.00	\$15,207.00
Escondido	\$1,710.00	\$4,560.00	\$4,700.00	\$4,840.00	\$4,980.00
Imperial Beach	\$4,536.00	\$4,980.00	\$4,968.00	\$5,167.00	\$5,373.00
La Mesa	\$3,304.00	\$4,769.00	\$4,960.00	\$5,158.00	\$5,364.00
Lemon Grove	\$4,428.00	\$4,861.00	\$4,968.00	\$5,167.00	\$5,373.00
National City	\$14,345.40	\$10,208.64	\$10,616.99	\$11,041.67	\$11,483.33
Oceanside	\$10,620.00	\$13,578.00	\$11,798.00	\$12,270.00	\$12,761.00
Poway	\$8,097.00	\$14,650.00	\$13,128.00	\$13,653.00	\$14,199.00
San Diego	\$26,391.00	\$37,636.56	\$39,142.02	\$40,707.70	\$42,336.01
San Marcos	\$23,094.00	\$25,097.00	\$26,101.00	\$27,145.00	\$28,231.00
Santee	\$17,701.00	\$18,866.00	\$15,490.00	\$16,110.00	\$16,754.00
Solana Beach	\$5,786.00	\$6,017.44	\$6,258.14	\$6,508.46	\$6,768.80
Vista	\$4,818.00	\$10,309.85	\$7,872.01	\$11,264.25	\$8,514.37
Unincorporated	\$25,989.00	\$32,862.00	\$28,342.00	\$29,475.00	\$30,654.00
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$260,031.29	\$313,004.86	\$280,378.44	\$294,484.22	\$267,749.58

* Co-Permittee Not Participating in Test Claim

Co-Permittee Costs - Working Body Support

Copermittee	Fiscal Year Costs					MOU %
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	% of Total
Carlsbad	\$0.00	\$17,333.66	\$18,200.35	\$19,110.36	\$20,065.87	3.19%
Chula Vista	\$0.00	\$29,885.63	\$31,379.92	\$32,948.91	\$34,596.32	5.50%
Coronado	\$0.00	\$5,651.10	\$5,933.66	\$6,230.34	\$6,541.85	1.04%
Del Mar	\$0.00	\$3,314.59	\$3,480.32	\$3,654.33	\$3,837.05	0.61%
El Cajon	\$0.00	\$13,638.71	\$14,320.65	\$15,036.68	\$15,788.50	2.51%
Encinitas	\$0.00	\$11,410.88	\$11,981.42	\$12,580.49	\$13,209.50	2.10%
Escondido	\$0.00	\$20,430.90	\$21,452.45	\$22,525.07	\$23,651.30	3.76%
Imperial Beach	\$0.00	\$5,270.74	\$5,534.28	\$5,810.99	\$6,101.53	0.97%
La Mesa	\$0.00	\$9,128.70	\$9,585.14	\$10,064.39	\$10,567.60	1.68%
Lemon Grove	\$0.00	\$5,542.43	\$5,819.55	\$6,110.52	\$6,416.04	1.02%
National City	\$0.00	\$9,237.38	\$9,699.25	\$10,184.21	\$10,693.41	1.70%
Oceanside	\$0.00	\$25,647.30	\$26,929.68	\$28,276.15	\$29,689.93	4.72%
Poway	\$0.00	\$13,964.74	\$14,662.98	\$15,396.12	\$16,165.92	2.57%
San Diego	\$0.00	\$159,915.26	\$167,911.10	\$176,306.60	\$185,121.76	29.43%
San Marcos	\$0.00	\$13,475.70	\$14,149.49	\$14,856.96	\$15,599.80	2.48%
Santee	\$0.00	\$10,650.15	\$11,182.66	\$11,741.79	\$12,328.87	1.96%
Solana Beach	\$0.00	\$4,455.68	\$4,678.46	\$4,912.38	\$5,158.00	0.82%
Vista	\$0.00	\$14,236.43	\$14,948.25	\$15,695.66	\$16,480.43	2.62%
Unincorporated	\$0.00	\$161,599.73	\$169,679.79	\$178,163.72	\$187,071.74	29.74%
Airport Authority	\$0.00	\$4,075.31	\$4,279.08	\$4,493.03	\$4,717.68	0.75%
Port District	\$0.00	\$4,510.01	\$4,735.52	\$4,972.29	\$5,220.90	0.83%
Program Totals	\$0.00	\$543,375.00	\$570,544.00	\$599,071.00	\$629,024.00	100.0%

**** Please note Co-Permittee's Airport Authority and Port District are not participating in the Test Claim.**

Copermittee	Total Fiscal Year Costs for Each Co-Permittee				
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	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Carlsbad	\$199,503.98	\$208,852.90	\$184,787.31	\$201,604.20	\$214,254.30
Chula Vista	\$1,013,871.41	\$2,236,213.23	\$1,998,331.92	\$2,082,497.66	\$2,146,437.04
Coronado	\$166,243.19	\$148,092.79	\$153,669.00	\$159,746.00	\$166,219.66
Del Mar	\$54,449.97	\$119,190.17	\$123,603.48	\$130,464.14	\$135,053.69
El Cajon	\$113,704.46	\$515,394.60	\$544,812.79	\$595,862.29	\$629,236.51
Encinitas	\$81,357.44	\$129,331.50	\$131,453.19	\$142,381.98	\$144,883.57
Escondido	\$431,460.32	\$428,053.11	\$444,651.45	\$472,177.07	\$486,030.67
Imperial Beach	\$260,389.02	\$327,929.34	\$342,091.42	\$361,147.85	\$374,786.28
La Mesa	\$168,357.06	\$197,078.34	\$212,520.02	\$233,312.75	\$248,701.58
Lemon Grove	\$60,337.37	\$114,182.48	\$118,751.70	\$125,698.28	\$128,552.16
National City	\$260,548.65	\$289,599.85	\$301,204.23	\$317,008.64	\$326,171.74
Oceanside	\$1,356,146.02	\$1,432,978.98	\$1,483,750.68	\$1,698,237.15	\$1,764,020.90
Poway	\$681,174.29	\$761,839.60	\$787,632.64	\$822,392.50	\$847,784.27
San Diego	\$4,162,388.30	\$3,556,601.35	\$3,723,125.34	\$3,980,638.85	\$4,126,890.74
San Marcos	\$234,255.96	\$249,386.82	\$244,916.65	\$262,712.66	\$271,081.61
Santee	\$120,159.11	\$139,999.55	\$138,985.66	\$148,550.29	\$150,712.60
Solana Beach	\$38,474.16	\$52,426.04	\$59,031.39	\$58,654.80	\$50,992.16
Vista	\$280,959.42	\$364,128.55	\$376,681.19	\$402,978.91	\$413,305.40
Unincorporated	\$1,485,274	\$1,835,181	\$1,812,989	\$1,955,099	\$1,977,506
Airport Authority	*	*	*	*	*
Port District	*	*	*	*	*
Program Totals	\$11,169,054.45	\$13,106,460.68	\$13,182,989.32	\$14,151,165.24	\$14,602,620.61

TOTAL
\$1,009,002.70
\$9,477,351.24
\$793,970.64
\$562,761.46
\$2,399,010.64
\$629,407.69
\$2,262,372.62
\$1,666,343.90
\$1,059,969.75
\$547,521.99
\$1,494,533.12
\$7,735,133.73
\$3,900,823.29
\$19,549,644.58
\$1,262,353.70
\$698,407.21
\$259,578.54
\$1,838,053.47
\$9,066,050.01
\$0.00
\$0.00
\$66,212,290.30

* -Co-Permittee Not Participating in Test Claim



May 14, 2009

Via US Mail and E-mail

Mayor
Mark Tettemer

Mayor Pro Tem
Peter Herzog

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Council Members
Richard Dixon
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Subject: Comments on Tentative Order No. R9-2009-0002, NPDES No. CAS0108740, Waste Discharge Requirements for Discharges for 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

Dear Mr. Robertus:

The City of Lake Forest ("City") submits this letter to the California Regional Water Quality Control Board, San Diego Region ("SDRWQCB") to convey the City's formal written comments for Tentative Order No. R9-2009-0002/NPDES Permit No. CAS0108740 ("Draft Permit"). The City is additionally aware that the County of Orange ("County") is submitting a similar comment letter regarding specific conditions contained in the Draft Permit. The City would like to express its full support for the County's comments and intends the comments contained in this letter to supplement those submitted by the County. Accordingly, please consider the County's comments to be incorporated in the City's letter by this reference. The City's comments follow.

GLOBAL COMMENTS

During the last public hearing on the Draft Permit, in February, 2008, the SDRWQCB Board directed Board Staff to revise the permit to achieve greater consistency with Phase I MS4 permits throughout the state, and to provide stakeholders and the regulated community with a meaningful opportunity to assist in the development of the revisions. Unfortunately, the Draft Permit was released without cooperative input from the regulated community prior to its release and, more significantly, is entirely inconsistent with other Large MS4 Permits issued throughout the state.

Indeed, a brief comparison of the Draft Permit with the North Orange County MS4 Permit that is likely to be adopted by the California Regional Water Quality Control Board, Santa Ana Region ("SARWQCB") on May 22, 2009, reveals that there is a significant disparity between the two permits. The North Orange County MS4 Permit is of particular concern because many of the Copermittees, including the City, are subject to



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both the North Orange County Permit, and the Draft Permit. Inconsistencies between the two permits create bureaucratic hurdles that cost the City time and valuable resources. Furthermore, the conspicuous disparity between the permits are likely to cause confusion among the public, and discourage public acceptance and participation in clean water efforts.

In addition to the consistency issues, the Draft Permit largely conflicts with guidance from the State Water Resources Control Board ("State Board") and the United States Environmental Protection Agency ("EPA"). This deviation from agency guidance, and industry practice is most stark in the Draft Permit's Numeric Effluent Limits ("NEL") and Municipal Action Level ("MAL") requirements. As described more fully below, these aspects of the Draft Permit exceed the standards for municipal discharges set forth in the Clean Water Act and/or completely ignore State Board studies on whether such provisions can be feasibly implemented in MS4 permits. The City's specific comments on the Draft Permit follow.

SPECIFIC COMMENTS

HOLDING DRY WEATHER FLOWS TO A DIFFERENT COMPLIANCE STANDARD VIOLATES THE CLEAN WATER ACT

The Draft Permit attempts to impose a higher compliance standard for dry weather discharges. Pursuant to this heightened standard, the Draft Permit imposes NELs for dry weather discharges from the MS4. The Draft Permit states that this heightened standard is warranted because the Clean Water Act requires MS4 permits to prohibit discharges of non-stormwater, and dry weather flows constituted non-stormwater.

The Clean Water Act clearly defines the discharge requirements for MS4 permits. Pursuant to the Clean Water Act, NPDES permits may be issued on a system or jurisdiction-wide basis, and must include a requirement to effectively prohibit non-stormwater discharges into the storm sewer, and must require controls to reduce the discharge of pollutants from the storm sewer to the maximum extent practicable. (33 U.S.C. § 1342(p)(3)(B).) The Clean Water Act does not distinguish between wet weather and dry weather discharges, and thus does not support a heightened standard for discharges of non-stormwater from MS4s.

Moreover, the NELs in the Draft Permit directly conflict with the findings of the State Water Resources Control Board's ("State Board") Blue-Ribbon Panel Report on the feasibility of numeric effluent limits in MS4 permits. After an exhaustive investigation into the feasibility of numeric effluent limits and action levels, the Blue Ribbon Panel found "[i]t is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." (Blue Ribbon Panel Report, pp. 8.) Nonetheless, the Draft Permit includes NELs for dry weather flows. When this inconsistency was brought to the attention of Regional Board staff, it was dismissed on

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the grounds that the Blue Ribbon Panel report applied only to wet weather flows. As stated above, the Clean Water Act makes no such distinction.

While the SDRWQCB may have the authority to impose restrictions in Waste Discharge Requirements that exceed the requirements of the Clean Water Act, when imposing such restrictions, the SDRWQCB must comply with applicable State laws. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613; *see also Defenders of Wildlife v. Brown* (9th Cir. 1999) 191 F.3d, 1159, 1166.) These include but are not limited to the California Environmental Quality Act, and Water Code sections 13241 and 13000. The Draft Permit does not comply with these requirements.

Imposing NELs in the Draft permit will result in numerous unintended consequences, including the possibility that the Copermittees will be held liable for mandatory minimum penalties for exceeding the NELs. For that reason, the City requests that the SDRWQCB remove the NEL requirements from the Draft Permit.

IMPOSING MUNICIPAL ACTION LEVELS IS UNNECESSARY AND CONTRARY TO EPA AND STATE WATER RESOURCES CONTROL BOARD GUIDANCE

The Draft Permit includes MALs. Pursuant to the Draft permit, beginning in the fourth year after adoption of the permit, discharges from the MS4 that exceed the MALs create a presumption that the permittee is not complying with the Maximum Extent Practicable ("MEP") standard. In other words, the permittee would be presumed to be in violation of the permit. The decision to include MALs in the Draft Permit ignores guidance from the State Board and the EPA, as well as the MS4 Permits adopted by other Regional Boards.

The MALs in the Draft Permit directly conflict with the State Board's Blue-Ribbon Panel Report findings. The MALs recommended by the Blue Ribbon Report were to be used as a management tool to indicate when additional Best Management Practices ("BMPs") are necessary, not a point of compliance. In contrast, the MALs in the Draft Permit are tied to MEP compliance and as a result are effectively NELs. As stated above, the Blue Ribbon Panel found that NELs for municipal BMPs and urban discharges are not feasible. By imposing NELs by a different name, the Draft Permit flatly ignores the Blue Ribbon Report's recommendations.

Additionally, the Draft Permit's attempt to tie compliance with the MEP standard to non-compliance with MALs is not supported by the Clean Water Act. The MEP standard is designed to allow the Copermittees flexibility to implement effective and feasible BMPs to address stormwater pollution. This interpretation of the MEP standard is supported by the EPA. (*See* 64 Fed. Reg. 68721, 68754 (Dec. 8, 1999) ["EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in stormwater pollutants on a location-by-location basis"].) It is also endorsed by the State Board. (State Water Board Order WQ 2000-11 at p. 20 ["MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive"].)

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Defining MEP compliance with a single MAL standard violates the intent of the Clean Water Act to give the municipal permittees the discretion and flexibility to do use BMPs to prevent and/or treat discharges from their MS4s. This is the approach taken by the other Regional Boards in Southern California when issuing MS4 Permits. Neither the recently adopted Ventura County Large MS4 Permit, nor the North Orange County Large MS4 Permit includes NELs or MALs.¹ The Draft permit should reflect the national and statewide guidelines on MALs. For that reason, the SDRWQCB should either revise the Draft Permit to meet the recommendations from the Blue Ribbon Panel, or remove the MALs from the Draft Permit.

THE DRAFT PERMIT IMPERMISSIBLY ATTEMPTS TO REGULATE AGRICULTURAL SOURCES, NATURAL SOURCES, AND OTHER NON-POINT SOURCE DISCHARGES

The Draft permit has removed the word "urban" from everywhere it formerly modified the word "runoff". This universal change suggests that the Copermittees are responsible not just for urban runoff, but all runoff. Holding the Copermittees to this heightened standard exceeds the jurisdiction and intent of the Clean Water Act.

MS4 Permits are NPDES Permits. Pursuant to the Clean Water Act, NPDES permits regulate point source discharges. By definition, agricultural discharges are not point sources, even when they are discharged from a conveyance that would meet the definition of a point source. By removing the term "urban" from the Draft permit, the Draft Permit would hold the Copermittees liable for agricultural and other non-point source discharges that enter and exit their MS4. Because agricultural discharges are not point sources, they are not subject to regulation with NPDES permits. Attempting to include agricultural discharges in the Draft Permit therefore exceeds the Clean Water Act's jurisdiction.

The history of the Clean Water Act demonstrates that it was intended to regulate urban runoff rather than agricultural sources and other non-point discharges. Indeed, when issuing the MS4 Permit regulations in 1990, EPA stated, "it is the intent of EPA that [stormwater] management plans and other components of the programs focus on the urbanized and developing areas of the county." (55 Fed. Reg. 47989, 48041 (Nov. 16, 1990).) The urban discharge focus is reflected in the San Diego Region Basin Plan which discusses the problem of stormwater runoff in terms of urbanization and cites to EPA Guidance limiting regulation of stormwater to urban sources. (See San Diego Basin Plan, pp. 4-78, 4-79.) There is simply no support for the Draft permit's attempt to expand the scope of regulation by adding additional sources of regulated discharges.

By removing the term "urban" from the Draft Permit, the SDRWQCB has potentially enlarged the scope of regulation to include agricultural discharges, other traditional non-point source discharges, and naturally occurring pollutant discharges. As stated above,

¹ While the North Orange County permit incorporates Total Maximum Daily Loads ("TMDLs") that have specific waste load allocations, these TMDLs are being implemented through an iterative BMP process. Thus there are no direct effluent limits in the permit at this time.