State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 10, 2010

ITEM: 6

SUBJECT: PUBLIC HEARING: Reissuance of NPDES Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) draining the County of Riverside, the Incorporated Cities of Riverside County, and the Riverside County Flood Control and Water Conservation District, within the San Diego Region. (Tentative Order No. R9-2010-0016, (NPDES Permit No. CAS0108766) *(Chad Loflen, Ben Neill, Wayne Chiu)*

PURPOSE: Today's public hearing provides the San Diego Water Board the opportunity to hear public testimony on, and consider adoption of the Tentative Order No. R9-2010-0016.

PUBLIC NOTICE: The public review and comment period for the Tentative Order began on July 23, 2010. Interested persons and the public have been notified in accordance with California Water Code Section 13167.5, the State Water Resources Control Board Administrative Procedures Manual (Chapter 1), and Code of Federal Regulations Title 40 CFR Part 25 (Supporting Document No. 7).

- A notice of this item was distributed to all known interested persons and posted on the San Diego Water Board web site on July 23, 2010;
- The original notice of the October 13, 2010 meeting was posted for the general public in the Orange County Register on September 10, 2010; in the Riverside Press-Enterprise on September 8, 2010; in the San Diego North County Times on September 9, 2010; and in the San Diego Union Tribune on September 8, 2010;
- A notice of the rescheduled November 10, 2010 meeting date was sent electronically to all interested parties on October 11, 2010, and subsequently posted for the general public in the Orange County Register, the Riverside Press-Enterprise, the San

Diego North County Times, and the San Diego Union Tribune.

- In addition, notice was included on the November 10, 2010 San Diego Water Board meeting agenda.

DISCUSSION:

Tentative Order No. R9-2010-0016 is the proposed reissuance of the Municipal Storm Water Permit (Order No. R9-2004-0001) for portions of Riverside County within the San Diego Region. The Tentative Order serves as both Waste Discharge Requirements and as a federal National Pollutant Discharge Elimination System permit.

The Tentative Order would, if adopted, require the County of Riverside, the incorporated cities of Riverside County, and the Riverside County Flood Control and Water Conservation District (Copermittees), within the San Diego Region to continue to prohibit the discharge of non-storm water from their separate storm sewer systems (MS4s) and to reduce the discharge of pollutants in storm water from their MS4 to the maximum extent practicable (MEP). These requirements are mandated by Clean Water Act Section 402(p).

In lieu of numeric effluent limitations, pollutant discharge reduction is accomplished through the Copermittees' implementation of comprehensive runoff management programs. These runoff management programs are to be implemented on jurisdictional and watershed levels, depending upon the scale of the water quality issues being addressed.

<u>Background and Permitting Approach Summary</u>

The Tentative Order (No. R9-2010-0016) with the Fact Sheet (Supporting Document Nos. 1 & 2) builds upon the current Riverside County MS4 Permit, R9-2004-001, while tailoring similar requirements from the South Orange County MS4 permit (R9-2009-0002), to meet the unique needs of the Copermittees and the conditions of the Santa Margarita Watershed (Supporting Document 4). The Tentative Order includes changes made in response to (1) the Report of Waste Discharge (ROWD); (2) new information; and (3) knowledge and experience gained by the Copermittees and the San Diego Water Board during the current permit cycle.

To draft a permit that is sufficiently protective of water quality and enforceable (i.e. all parties are easily able to assess

compliance in the same manner), the Tentative Order addresses issues known to exist in Riverside County (e.g. unpaved roads, insufficient monitoring, etc.) and brings the MS4 requirements in this Tentative Order to the current standard set forth in other southern California MS4 permits (e.g. for Low Impact Development, retrofit, hydromodification, etc.). This consistency in the San Diego Water Board's approach to MS4 regulation is not only beneficial to developing a regional permit; but more importantly, it is essential in meeting the maximum extent practicable standard.

Prior to the issuance of the Tentative Order, San Diego Water Board staff met with the Copermittees seventeen (17) separate times over six months to discuss at length the conditions to be included in the Tentative Order (Please see the timeline in Supporting Document No. 5). The Tentative Order being considered today was then distributed to the public for review and comment on July 23, 2010. Following the issuance of the Tentative Order, San Diego Water Board staff held six more meetings with the Copermittees and/or interested parties to discuss the proposed requirements.

Staff is sensitive to the cost considerations raised by the Copermittees. To the extent that the Copermittee recommendations did not conflict with the goals of the Clean Water Act and the mission of the San Diego Water Board, the requested changes were made. Many of the changes were made prior to public release and/or as a result of discussions with the Copermittees.

Examples of these include:

1. Finalizing an agreement with the Santa Ana Water Board, Region 8, at the request of the Cities of Murrieta, Wildomar, and Menifee in order to streamline regulation, that allows the Cities of Murrieta and Wildomar to be wholly regulated under this Tentative Order, and the City of Menifee to be wholly regulated with the Region 8 MS4 permit, pursuant to CWC Section 13228. (Supporting Document No. 6)
2. Staggering and delaying reporting deadlines as much as practicable, while still obtaining the necessary information during the term of the Tentative Order, to make informed decisions.

3. Decreasing monitoring frequency for Stream Assessment Stations (from twice annually to once annually) in return for Copermittee participation in Stormwater Monitoring Coalition monitoring efforts.
4. Consolidating and streamlining permitting language in the Low Impact Development, Education and Effectiveness Assessment sections.
5. Allowing the development of a standard roadway design/section in lieu of a post-construction storm water mitigation plan.
6. Reducing the scope and magnitude of the required retrofit program.
7. Removing a special study on unpaved roads.
8. Revising requirements on hydromodification to (a) match interim criteria with existing efforts, (b) allow utilization of data prepared by San Diego and Orange Counties, and (c) provide a waiver for redevelopment projects.
9. Removing requirements to use Geographical Information Systems in mapping.
10. Removing requirements to individually inventory roads, streets, or highways.
11. Providing allowances for either Active or Passive Sediment Treatment systems at construction sites.
12. Providing greater flexibility in utilizing third-party inspections of commercial and industrial sites.
13. Reducing inventory and inspection requirements, as related to 303(d) listed water bodies.
14. Revising inspection requirements for private retrofit projects to occur as necessary.
15. Removing language requiring the oversight and enforcement of unpaved private roads maintenance.

Comments on the Revised Tentative Order

The San Diego Water Board has received fourteen letters containing written comments and responded in writing to over 350 comments, which includes 244 comments from the Riverside County Flood Control and Water Conservation District. Written comments received by September 7, 2010 are included as Supporting Document No. 9. The San Diego Water Board's response to these comments is included as Supporting Document No. 8.

Revisions to Tentative Order No. R9-2010-0016

Minor revisions to Tentative Order No. R9-2010-0016 and its Fact Sheet are included as Supporting Document No. 3. The changes are made either in response to comments received and/or to correct typographical errors.

Procedures for Today's Meeting

The purpose of today's item is to consider comments and adoption on Tentative Order No. R9-2010-0016, as modified. Oral comments will be accepted as part of the hearing. Staff will provide verbal responses to significant public comments raised on revisions to the Tentative Order. Time allotted for oral comments may be limited at the discretion of the San Diego Water Board.

On September 28, 2010 the Copermittees submitted a letter requesting unspecified alternative hearing procedures and the opportunity to meet and discuss these procedures with staff. On October 5, 2010, staff met with the Copermittees to discuss the responses to comments and hearing procedures. The Copermittees refined their request to include testimony by elected officials (3-5 minutes, each), a joint Copermittee technical presentation (1 hour), and closing remarks (15 minutes) (Supporting Document No. 11).

KEY ISSUES: Based upon review of written comments, the following issues are of significant concern.

1. Economic Considerations – The Copermittees expressed concerns that the new requirements in the Tentative Order are cost prohibitive to implement. The San Diego Water Board staff has considered the economic information provided by the Copermittees and made appropriate changes in the Tentative Order's requirements. Please see the discussion above; the Fact Sheet Section VI pages 12 to 17 and discussion about Finding E.6 on pages 94 to 96; and responses to comments Nos. 8, 9, 52, 77, 78, 86, 88, 115, 122, 126, 130, 134, and 208.

2. Over irrigation prohibition – The Copermittees are opposed to removal of the current exemption of the prohibition against over-irrigation discharges. The Tentative Order appropriately removed the exemption of over-irrigation discharged according to federal

regulations. USEPA and non-governmental environmental organizations support removal of the exemption. Please see the Fact Sheet discussion about Finding C.15 on pages 50 to 54 and about Section B.2 on pages 108 to 112; and also responses to comments Nos. 15, 27, 73, 83, 100, 201, 202, 230 and 257.

3. Monitoring Requirements – The Copermittees believe that the monitoring requirements are excessive and unwarranted and have proposed alternatives to scale down associated costs. The monitoring proposed (with proposed changes) is appropriate in consideration of the Copermittee's record of noncompliance and limited monitoring data available for the watershed. USEPA supports the currently proposed requirements and finds them "consistent with requirements of other recent MS4 permits adopted." Please see Attachment E; the Fact Sheet discussion on pages 188 to 201; and responses to comments Nos. 20, 90, 92, 95, 142, 144, 150, 152-159, 165, 167-169, 172, 173, 177, 180, 181, 193-197, 338, 339, and 340.

4. Unpaved roads requirement – The Copermittees believe that regulation of unpaved roads should be removed and vetted through a separate general order. The Tentative Order includes requirements to minimize pollution discharges from unpaved roads that are based on similar requirements in the San Franciso Bay Water Board, Region 2, Multi-region MS4 Permit. Where appropriate, the requirements have been modified to address the Copermittees' concerns. USEPA, non-governmental environmental organizations, and a local resident have written in support of the originally proposed language. Please see the Fact Sheet discussion about Finding D.1.c on pages 58 and 59, Section F.1.i on page 146, Section F.3.a.(10) on page 155, and Section F.3.c.(5) on page 160; and also please see response to comments Nos. 1, 19, 69, 101-104, 138-141, 174, 176, 178, 182, 185, 186, 282, and 300.

5. Low-Impact Development – The USEPA and the Natural Resources Defense Council recommended that requirements pertaining to low-impact development (LID) be more consistent with those in other Southern California MS4 permits. To accommodate these comments, minor modifications have been proposed that

give preference to onsite retention and allow equivalent biofiltration practices. Please see the Fact Sheet discussion about Finding D.2.c on pages 71 to 73, Section F.1.d.(4) on pages 132 to 135, and Section F.1.d.(7) on pages 136 to 138. Please also see response to comments Nos. 7, 12, 13, 85, 105, 107, 108, 112, 117, and 118.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2010-0016, with attachments
2. Fact Sheet / Technical Report for Tentative Order No. R9-2010-0016
3. Draft Updates and Errata for the revised Tentative Order
4. Map of Riverside County within the San Diego Region
5. Timeline of Events
6. Letters of Agreement from Santa Ana Water Board and San Diego Water Board Executive Officers
7. Notice of Public Hearing
8. Draft Responses to written comments on Tentative Order No. R9-2010-0016 received between July 23, 2010 and September 7, 2010
9. Written Comment letters received between July 23, 2010 and September 7, 2010 on the Tentative Order
10. Table of Deliverable Due Dates
11. Copermittee letters requesting alternative hearing procedures, dated September 28, 2010 and October 4, 2010.
12. Memo from Catherine George Hagan, Senior Staff Counsel to the San Diego Water Board.

Supporting Document Nos. 1-4, 6, 8, 9, and 11 remain unchanged from the October 13, 2010 Agenda materials

mailed out (Item 5). Therefore, these documents are being provided only on CD. Supporting Document Nos. 5, 7, 10, and 12 contain minor modifications. The updated versions of these documents have been provided in hard copy.

RECOMMENDATION: It is recommended that the Board receive public testimony at today's hearing, close the public comment period, and adopt the Tentative Order (with updates and errata).