

Lim, Joann@Waterboards

From: Marco Gonzalez <marco@coastlawgroup.com>
Sent: Friday, February 24, 2017 3:36 PM
To: Kozelka, Peter@epa.gov; Lim, Joann@Waterboards; Gibson, David@Waterboards
Cc: Jim Peugh; Julia Chunn-Heer; Matt J. O'Malley (matt@sdcoastkeeper.org)
Subject: Coastal Environmental Rights Foundation comments on revised Order 2017-0007
Attachments: Comment - Tentative Order No. R9-2017-0007-c1.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Coast Law Group LLP represents the interests of Coastal Environmental Rights Foundation (CERF) with regard to Revised Tentative Order No. R9-2017-0007. CERF's support for the Tentative Order was previously expressed to the Regional Water Quality Control Board, and this correspondence is to reiterate the organization's support for the order with recent revisions. Specifically, CERF believes the order must include the language offered in the revised Tentative Order incorporating expedited timelines for achieving maximum potable reuse of treated sanitary sewer flows within the greater San Diego Metro system.

We would also like to expressly oppose the continuance requested by the Metro Wastewater JPA in its attached comment letter. CERF representatives have sat at the negotiating table with Metro JPA representatives for many years during which its concerns with the "secondary equivalency" issues were discussed. Stated in simple terms, the JPA is worried that federal or state regulators (EPA, RWQCB, or California Coastal Commission) or an as-of-yet unidentified non-governmental organization is going to seek to require the Point Loma Wastewater Treatment Plant to be upgraded to full secondary standards notwithstanding significant investment in an the Pure Water potable recycling program. CERF and its environmental organization partners do not share the JPA's concerns. In the driving agreement between the environmental stakeholders and the City of San Diego, it is clear that secondary treatment at Point Loma will not be required by the only local stakeholder who have ever challenged the waiver (namely, Surfriider, Coastkeeper, and CERF) unless the plant in the future proves unable to meet the biological narrative criteria for the Clean Water Act section 301(h) waiver. Given the history of waivers and recommendations from state and federal regulators, the only plausible scenario where secondary treatment would be required is where the receiving waters show the inability to meet these 301(h) standards. Under no version of "secondary equivalency" as that term is used in our agreements or the JPA's letter would the City avoid having to construct secondary treatment upgrades if it does not continue to meet these standards. And the converse is also true. If these standards for 301(h) waiver continue to be met, as they have for approximately two decades now, there is no legal rationale for any entity to require the feared, costly treatment upgrade. In other words, the JPA's entire concern is much ado about nothing, unless the plant can't meet 301(h) standards in which case there is no avoiding the upgrades anyway.

While we can appreciate the goals of ratepayer protection and fiscal conservatism, in light of dwindling imported water resources, rising costs of alternative water sources, lost opportunity costs of discharging partially treated sewage, and the uncertainties associated with global climate change and greenhouse gas emissions, we do not have the luxury of further delay of the Pure Water program. There is nothing to be gained by the continuance that cannot be achieved as the matter is awaiting subsequent required approvals.

Hence, to ensure the Pure Water program remains at the most aggressive reasonable pace, and to assure statewide stakeholders and the California Coastal Commission of the City's and regulators' commitment to do so, please move forward with the permit as drafted in the revised Tentative Order.

-Marco



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METRO WASTEWATER JPA



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James Peasley, Chair

February 24, 2017

Via Email: Kozelka.Peter@epa.gov and Joann.Lim@waterboards.ca.gov

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**Subject: Comment – Tentative Order No. R9-2017-0007 (“Tentative Order”)
REQUEST FOR CONTINUANCE OF THE PUBLIC HEARING
Draft Revised NPDES Permit No. CA0107409 (“Permit”)
Revised Compliance Schedule Point Loma Wastewater Treatment Plant
NPDES Modified Permit Renewal**

Dear Mr. Kozelka and Ms. Lim:

The Metro Wastewater Joint Powers Authority (“Metro JPA”) appreciates the opportunity to comment on the revised compliance schedule for the Point Loma Wastewater Treatment Plant Modified Permit Renewal. As you recall, in our letter dated December 16, 2016, (attached) the Metro JPA supported the approval of the Modified NPDES Permit as originally submitted. The Metro JPA was not informed of the proposed changes to the Permit prior to issuance of the draft, and as such has not had a chance to review and approve the revised Compliance Schedule. Until Metro JPA’s governing board and technical advisory committee have that opportunity, Metro JPA has no choice but to oppose the proposed schedule revisions based on the concerns stated in this letter.

The Metro JPA hereby formally requests a continuance of the public hearing on the Tentative Order, which is currently scheduled for the RWQCB’s April 12, 2017 meeting. A continuance would allow the Metro JPA, its Participating Agencies, and the City of San Diego adequate time to discuss and work through the concerns expressed in this letter, and the information from those discussions would better inform the RWQCB for making a decision on the City of San Diego’s Permit.

The Joint Powers Authority Proactively Addressing Regional Wastewater Issues

Chula Vista • Coronado • Del Mar • El Cajon • Imperial Beach • La Mesa • Lemon Grove Sanitation District
National City • Otay Water District • Poway • Padre Dam Municipal Water District • San Diego County Sanitation District

Our opposition to the revisions does not reflect a change in the Metro JPA's commitment to environmental and ocean water quality protection and our otherwise firm support for renewing the City of San Diego's variance from Secondary Treatment requirements in Section 301(b)(1)(B) of the Clean Water Act. Rather, consistent with our prior comments to the City of San Diego and San Diego Regional Water Board, at this point, Metro JPA does not support the modified schedule because it would impede Metro JPA's efforts to cooperatively develop an equitable and affordable approach to achieving long term Clean Water Act compliance, and it would result in significantly less flexibility to address potential cost issues or other complexities that may arise and that would adversely impact the Metro system ratepayers.

Metro JPA is comprised of twelve public agencies that additionally comprise the Metro Commission to the City of San Diego ("Metro Commission"). Metro JPA/Metro Commission member agencies are the cities of Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, La Mesa, National City and Poway; the Lemon Grove Sanitation District; Padre Dam Municipal Water District; Otay Water District; and the San Diego County Sanitation District ("Participating Agencies").¹ The Participating Agencies make up about one-third of the Metro Wastewater System (including the Point Loma Wastewater Treatment Plant) flows and finances. The Participating Agencies have a long and productive history of working together with the City of San Diego since the Clean Water Program of the early 1990s to address regional issues of wastewater treatment, disposal and reuse. As we noted in our previous letter, the Participating Agencies have consistently supported and partnered with the City of San Diego to develop a successful strategy that will lead to long term Clean Water Act compliance for the Metro system in the most affordable manner to the rate payers. The Metro JPA has been a partner with the City of San Diego in the development and implementation of the Pure Water Program and in October 2014 adopted a Resolution supporting the City of San Diego's Point Loma Wastewater Treatment Plant NPDES Modified Permit application. The original application included the near term goal of producing 15 mgd of potable reuse water by 2023.

From the perspective of ratepayer affordability, long term Clean Water Act compliance for the Metro Wastewater System rests on efficient implementation of the Pure Water Program and the cost savings that would be realized if Secondary Equivalency for the Metro System is achieved and the Point Loma Wastewater Treatment Plant remains at Advanced Primary treatment. For the wastewater ratepayers, this balance between wastewater treatment and disposal and water supply enhancement requires that we have identified the least cost path to long term Clean Water Act compliance. The original schedule and scope of Phase 1 recognized that time was needed to determine the feasibility of Secondary Equivalency as a compliance strategy. As Secondary Equivalency is pursued, the cost to wastewater ratepayers would be minimized to ensure that funds are only expended on activities that lead to long term Clean Water Act compliance. Phase 1 of the Pure Water Program, as originally conceived, would utilize the existing 30 MGD investment in primary, secondary, and tertiary treatment paid for by the wastewater users at the North City Water Reclamation Plant. It was anticipated that there would be little cost to Phase 1 wastewater rate payers because the necessary wastewater facilities were existing.

The significant and long term reduction being experienced in wastewater flows from water conservation requires us to revisit the current planning for Pure Water implementation. Including the accelerated schedule in the Modified Permit ignores the time that Metro JPA needs to assess the feasibility of Secondary Equivalency and thoughtfully arrive at the best and most affordable compliance strategy given current conditions. If Secondary equivalency is not achievable then it is our obligation to

¹ Please note that Metro JPA members were misidentified on page 36, footnote 2 of the Revised Tentative Order, and that the City of San Diego is not a member of the Metro JPA.

the ratepayers we represent to determine if there is a lower cost alternative for long term Clean Water Act compliance than the currently contemplated Pure Water Program. Wastewater ratepayers cannot be expected to make an aggressive upfront investment that magnifies rate impacts when long term Clean Water Act compliance may require upgrading the Point Loma Wastewater Treatment Plant to Secondary standards.

We recognize that Pure Water will also deliver a new, highly reliable water supply for the San Diego County region. That is a goal we all support but, it is not the cost responsibility of wastewater ratepayers. It is our responsibility to determine if there is a less costly path to Clean Water Act compliance. The original schedule would have provided the time necessary to make that determination.

We urge the Regional Board to revert to the original schedule contained in the Modified Permit Application, as we had previously commented, which will provide the Metro JPA Participating Agencies the time we need to work with the City of San Diego and other stakeholders on achieving approval of Secondary Equivalence as a compliance approach and working diligently with the City to achieve ratepayer equity for our constituents.

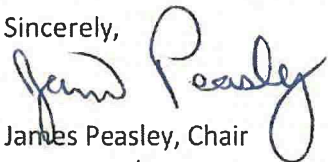
The Metro JPA has not been able to review and approve the revised Compliance Schedule, and therefore, if the RWQCB does not revert to the original schedule within the initial permit application, the Metro JPA has no choice but to oppose the modified permit application with the revised schedule for the reasons stated above. The revised compliance schedule additionally appears to be inconsistent with the terms of the agreement between the City of San Diego and the environmental community entities.

The Pure Water Program tasks identified in the revised schedule will involve decisions and approvals impacting the timing, cost, and scope of the overall project, including approvals related the California Environmental Quality Act, and public financing for the project. The City of San Diego will not be able to implement the Pure Water Program without these approvals, and the Metro JPA will play an integral role in such decisions, particularly with respect to developing a cost allocation framework, financing plan, and regulations for implementing the Pure Water Program.

We believe it is important for the partners in the Metro System to work together on solutions for the region. Therefore, we urge that the RWQCB only approve the prior, originally proposed Compliance Schedule and oppose the revised Compliance Schedule.

Again, the Mero JPA respectfully requests that the RWQCB continue the public hearing currently scheduled for April 12, 2017, so that the Metro JPA and City of San Diego can work through the above-noted concerns and provide additional comments to help the RWQCB with its decision at the hearing.

Sincerely,



James Peasley, Chair
Metro JPA/Metro Commission



Jerry Jones, Vice Chair
Metro JPA/Metro Commission

Cc: Mayor Falconer, City of San Diego
Halla Razak, Director of Public Utilities, City of San Diego
Diane Jacob, County of San Diego
David Gibson, RWQCB Executive Officer