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El Toro Water District
Irvine Ranch Water District
OC Sanitation District
OC Transportation Authority
OC Water District
Transportation Corridor Agencies

April 4, 2007

Via E-mail and U.S. Mail

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353

Subject: Tentative Order No. R9-2007-0002; NPDES No. CAS0108740

Dear Mr. Robertus:

The Board of Directors of the Orange County Council of Governments (OCCOG) overviewed the South Orange County Municipal Stormwater Permit Renewal Process at its meeting of March 22, 2007. In conjunction with this overview and discussion, the OCCOG Board unanimously supported transmittal of comments to your agency regarding the renewal of the NPDES permit.

As background, the Orange County Council of Governments (OCCOG) is a voluntary advisory association representing member local governments and agencies throughout Orange County seeking cooperative subregional and regional planning, coordination and technical assistance on issues of mutual concern.

OCCOG's member agencies include 34 cities, the County of Orange, and board representation including transportation agencies, sanitation and water districts, as well as the local air district.

As you are aware, good water quality at our beaches and creeks benefits everyone and is essential to the economic vitality and tourism industry in South Orange County. As such, OCCOG shares many of the same objectives of the Regional Water Quality Control Board such as to preserve and protect our natural resources. However, some provisions included in the subject Tentative Order are problematic and we believe will hinder the ability of the municipalities in South Orange County in achieving the overall goal of cleaner water. Therefore, on behalf of the OCCOG Board of Directors, we are providing comments which we hope the Regional Board will take into consideration prior to adopting the new NPDES Permit for South Orange County. Please also note that the majority of our comments are supportive of those comments being submitted to the Regional Board by the County of Orange as the Principal Permittee, and further supporting documentation regarding our comments can be obtained by referring to the County's comment letter. Our comments are as follows:

1. The Tentative Order Restricts the Ability of the Permittees to Implement Watershed Restoration Projects

Finding E.7 (Page 14) states that, "Urban runoff treatment and/or mitigation must occur prior to the discharge of urban runoff into a receiving water."

This restriction will likely preclude the Permittees from improving water quality by restoring watershed receiving waters. In addition, this restriction may very likely result in the deterioration of water quality rather than improvement. We are unaware of any other Regional Board in the State that discourages improving receiving waters.

The language in the Tentative Order could seriously limit watershed restoration activities because it severely limits potential locations for installation of treatment control BMPs, which include many watershed restoration activities. For example, this Finding may have unintended adverse effects on watershed restoration projects that are currently being planned, such as the Aliso Creek Water Quality SUPER Project.

The Aliso Creek Water Quality SUPER Project proposes a multi-objective approach to Aliso Creek watershed development and enhancement, accommodating channel stabilization, flood hazard reduction, economic uses, aesthetic and recreational opportunities, water quality improvements, and habitat concerns. The project is aimed at water supply efficiency and system reliability through reclamation, along with benefits for flood control and overall watershed management and protection. The ecosystem restoration and stabilization component of the project will include:

- Construction of a series of low-grade control structures and reestablishment of aquatic habitat connectivity;
- Shaving of side slopes to reduce vertical banks; and
- Invasive species removal and riparian revegetation and restoration of floodplain moisture.

The Permittees are concerned that some of these activities may be deemed as allowing urban runoff treatment and/or mitigation in a receiving water and, thus, may not be allowed.

In addition, this Finding seems to conflict with the Existing Development Provision 3.a.(4) which requires the Permittees to evaluate the flood control devices and identify the feasibility of retrofitting the devices to provide for more water quality benefits.

Given the lack of any proper legal or factual basis for these limitations as well as the adverse impacts on watershed restoration efforts, we respectfully request that this Finding be deleted from the Tentative Order.

2. The Tentative Order Is Overly Prescriptive and Dismisses the Importance of the Drainage Area Management Plan (DAMP)

All of the municipalities within Orange County have actively participated in the development of the Drainage Area Management Plan (DAMP), and this document forms the backbone of Orange County's NPDES Stormwater Program. In addition, the Permittees have spent a significant

amount of taxpayer dollars developing and refining the DAMP into a document that works effectively with local NPDES programs. We are concerned that the Tentative Order Fact Sheet states that the Order includes sufficient detailed requirements to ensure compliance and seemingly dismisses the DAMP as "procedural correspondence" which guides implementation and is not a substantive component of the Order.

This permitting approach fundamentally shifts the level of detail within the program to the permit provisions instead of the DAMP and sets up a scenario for increasingly prescriptive permits while eliminating the flexibility and local responsibility of the MS4 program. This shift also downplays the importance of the DAMP and the role that it has in defining local performance standards for the stormwater program and is counter to the purpose and intent of the stormwater management program.

The DAMP sets the foundation for a more flexible permitting approach for the Orange County NPDES Stormwater Program and places upon the Permittees the continuing responsibility of weighing economic, societal, and equity issues as they define the policies, standards and priorities to be employed in implementing the program. In fact, the DAMP and local JURMPs are fundamental and necessary elements of the MS4 program since they serve as the primary policy and guidance documents for the program and describe the methods and procedures which will be implemented to reduce the discharge of pollutants to the maximum extent practicable and in compliance with the MS4 permit provisions. While the management plans must effectively address and be in compliance with the permit requirements, the necessary detail and prioritization of efforts in doing so must remain at the local level and be described within the DAMP—not the permit.

3. The Tentative Order Implies That Permittees are Responsible for Anything That Enters Their Storm Drain System

Finding D.3(d) (Page 11) identifies that "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." Since the Permittees own and operate the majority of the storm drain systems within their respective jurisdictions, this statement has profound implications regarding the Permittees' potential liability for any pollutant that enters the MS4.

This Finding needs to be modified to recognize that the Permittees lack legal jurisdiction over stormwater discharges into their systems from certain State and Federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies, and other point and non-point source discharges otherwise permitted by the Regional Water Board. In addition, the Regional Water Board should recognize that the Permittees do not have any control over many facilities and/or discharges. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally occurring minerals from local geography.

4. The Tentative Order Unreasonably Requires That Each Permittee Develop a Long-Term Funding Strategy and Business Plan

The Tentative Order requires that each Permittee submit a funding business plan that identifies the long-term strategy for program funding decisions. The Fact Sheet identifies that this requirement is based on the need to improve the long-term viability of the program and is based on the 2006 *Guidance for Municipal Stormwater Funding* from the National Association of Flood and Stormwater Management Agencies (NAFSMA). The Fact Sheet further indicates that, without a clear plan, the Board has uncertainty regarding the implementation of the program.

OCCOG believes that this requirement (which is, perhaps, more reasonable for a newly developing stormwater program) is an unnecessary and burdensome requirement for the Orange County Permittees which will yield no commensurate benefit to water quality and divert precious resources away from the implementation of the program.

5. The Tentative Order Creates Duplication of Efforts Regarding Responding to Sewage Spills

On Page 64, Part D.3.h. of the Tentative Order states:

"Each Copermittee must prevent, respond to, contain and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems.) Spill response teams must prevent entry of spills into the MS4 and contamination of surface water, ground water and soil to the maximum extent practicable. Each Copermittee must coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies so that maximum water quality protection is available at all times."

For many cities, implementation of this provision is simply not feasible. Many cities in South Orange County do not own or operate the sewer systems. In these cities, the sewer system is owned and operated by water districts. The affected cities do not have the equipment or expertise to manage a sewage spill of any size, and their staffs are not adequately trained to respond to potential spills. Furthermore, this provision is duplicative in the sense that the Regional Board is seeking to make the Permittees responsible for a task already delegated to the water districts. Such an act would result in a tremendous waste of scarce public resources.

This issue is made even more troubling by the fact that the State Water Resources Control Board ("State Board") previously issued a stay of this very same issue in the prior generation of the NPDES Permit. After extensive hearings and briefing on the matter, the State Board issued Order WQO 2002-0014 on August 15, 2002, granting a stay as to this provision.

In deciding to grant a stay as to this provision, the State Board concluded:

"The regulation of sanitary sewer overflows by municipal storm water entities, while other public entities are already charged with that responsibility in separate NPDES permits, may result in significant confusion and unnecessary control activities. For example, the Permit appears to assign primary spill prevention and response coordination authority to the copermittees. While the federal regulations clearly assign some spill prevention and response duties to the copermittees, we find that the extent of these duties is a substantial question of law and fact."

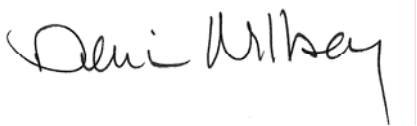
[State Board Order WQO 2002-0014, p. 8. (emphasis added.)]

Given the previous findings of the State Board on this same issue, and given that none of the factual reasons supporting this decision have changed, the Regional Board should remove or modify this provision so as to reduce duplicity of effort and the implementation of unnecessary control activities.

Please note that the aforementioned comments are just some of the concerns expressed by the Permittees. It is our hope that the Regional Board will work closely with the Permittees to make the necessary modifications so that the permit meets the objectives of both the Regional Board and the Permittees and, more importantly, ultimately results in cleaner water for Orange County.

If you have any questions regarding this letter, I may be reached at (949) 470-3007.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Wilberg", is written over a vertical red line.

Dennis R. Wilberg, P.E.
Interim Executive Director
Orange County Council of Governments

cc OCCOG Board of Directors
 Larry McKinney, County of Orange
 Richard Boon, County of Orange
 Mary Anne Skorpanich, County of Orange
 Richard Schlesinger, City of Mission Viejo
 Mike Recupero, Recupero and Associates
 Gail Shiimoto-Lohr, GSL Associates