

**SEPARATE COMMENTS OF CITIES OF
DANA POINT AND LAGUNA BEACH**

**Tentative Order No. R0-2015-0100
Adoption Hearing
Nov. 18, 2015**

Technical Comment:

Disconnect with Current Interpretation of Requirements for Delisted Waterbodies & TMDL CLRPS/BLRPS

- Response to comment AttE6-2: Staff indicates that even delisted waterbodies were always envisioned to have BLRP/CLRP, “just not within 18 months.”
 - Conflicts w/specific direction given by Chairman King & Board Members Anderson & Rayfield in 2010 to not spend additional resources on delisted waterbodies.
 - Prior Board concerned about ambiguity in permit language in 2010; now response to comments utilized that ambiguity to reach a different conclusion.
 - Dana Point requests that the Response to Comments and/or Staff Report be updated to reflect the actual intent and direction given by previous Board Members. *Please refer and review: Transcript of Proceedings, February 10, 2010, Pages 14-31, Job No.: B3908WQSD, Kennedy Court Reporters*
- Illustrates why clarity of language in permit is so important, and why clarification of “effectively prohibit” language in Section E.2 is needed.

Requested Revision to Staff Report

- Revise Staff Report to state:

“Where a Copermittee is fully implementing the requirements of Provision E.2, then the Copermittee is deemed in compliance with the effective prohibition of non-storm water discharges to the MS4 required under Provision A.1.b.”

- Replaces “If the San Diego Water Board finds that” with “Where a.”
- Requiring “prior finding” by the Board eliminates presumption of compliance associated with full, and good faith, implementation of illicit discharge and prevention program.

Requested Revision to Permit

- Revise Permit to add footnote to prohibition language in Section II.A.1.b (page 16) reading:

“Where a Copermittee fully implements the requirements of Provision E.2, then the Copermittee is deemed in compliance with the effective prohibition of non-storm water discharges to the MS4 required under Provision II.A.1.b.”

- This will provide protection against third party allegations that every non-permitted discharge by third parties to the MS4 is a permit violation by the Co-Permittee.

Strict Compliance with Numbers in Current Permit Raises Concerns

- Laguna Beach and Dana Point have strong programs. They will continue during the WQIP process.
- Cities generally support the goals of the Regional Board's practical vision—but the means chosen to achieve the vision may cause unintended harms.
- The draft permit raises concerns with utilizing RWLs as final numeric effluent limits.
 - Permit terms must be attainable and consider cost of implementation.
 - For example, numbers for nutrients and bacteria may not be attainable in some locations

Strict Compliance with Numbers in Current Permit not Required by State or Federal Law

- The Board has flexibility on how it can achieve water quality objectives in the SD Region.
- Strict compliance with numbers in municipal permits is a choice the Board can make (per State Board order), but it is not the only choice.
- Action taken today on Permit is taken under state law.
- Additional policy considerations for Current Approach:
 - Has the potential to send mixed messages. Good actors are lumped in with the bad. All are assumed out of compliance.
 - The WQIP process is helpful, but it requires greater certainty on when a permittee will be deemed in compliance.

Strict Compliance with Numbers in Current Permit Not Required by State or Federal Law

- Cost: Cost of attainment of RWLs estimated at \$1.6-\$2.1 billion dollars for southern Orange County.
 - With eleven cities in SOC costs to individual cities changes from tens of millions to hundreds of millions.
 - No assurances that beneficial uses will be significantly enhanced.
 - At end of WQIP and \$1.6-\$2B in expenditures, no greater assurance of “compliance.”
 - Co-Permittees need such assurances. It is only fair.
- Dana Point & Laguna Beach will nevertheless aggressively pursue WQIP Development, and continue to improve water quality, because it is the right thing to do.