

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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TENTATIVE ORDER NO. R9-2015-0001

**AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE
WATERSHEDS WITHIN THE SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

ENROLLMENT OF ORANGE COUNTY COPERMITTEES

- 1. Enrollment Process.** On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS019266, *National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Order No. R9-2013-0001, Order or Regional MS4 Permit). Provision F.5 of that Order outlines a process to designate (enroll) the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano (collectively Orange County) as Copermittees under Order No. R9-2013-0001, responsible for compliance with the terms and the conditions of the Order. Provision F.5 provides that prior to such enrollment the San Diego Water Board must first review and consider a Report of Waste Discharge (RoWD), submitted by the Orange County Copermittees under their current MS4 NPDES Order No. R9-2009-0002, to determine whether the Copermittees should be enrolled under Order No. R9-2013-0001 and what changes to the Order proposed in the RoWD are appropriate.
- 2. Report of Waste Discharge.** By letter dated May 20, 2014, the Orange County Copermittees jointly submitted a RoWD in application for the reissuance of waste discharge requirements, pursuant to the requirements of section K.2.b of Order No. R9-2009-0002, for MS4 discharges draining the San Juan Hydraulic Unit within the San Diego Region. The RoWD discusses the MS4 Permit compliance activities and accomplishments of the Orange County Copermittees over the period June 2009 through June 2013. The RoWD also identifies all of the activities, research, and pilot studies the Copermittees propose to undertake during the next permit term based

upon consideration of the effectiveness of the Orange County Storm Water Program and the need for additional pollutant control initiatives. Development of a watershed-based planning approach is portrayed in the RoWD as the most important next step to take in the development of the storm water programs in Orange County. The RoWD concludes that such a comprehensive approach offers the opportunity to identify the environmental and recreational benefits that can be realized in each watershed and the management strategies that will most effectively ensure their realization. Among several recommendations, the RoWD included a request that permit requirements be amended to provide an initial or time limited exemption from hydromodification control best management practices (BMPs) for conveyance channels that are engineered and regularly maintained with the capacity to convey peak flows generated from the 10-year or greater storm event from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean. The County of Orange also separately requested a second exemption for discharges to "large river" low gradient reaches with a very wide flood plain by letter dated November 22, 2013. The San Diego Water Board has reviewed the RoWD and determined it is complete.

3. **Permit Hydromodification Control Requirement Modifications.** The hydromodification control BMP requirements in Provision E.3.c.(2) of Order No. R9-2013-0001 require modification to address the hydromodification exemption issues identified in the Orange County Copermittees' RoWD application and November 22, 2013 letter. To facilitate the transition of the Orange County Copermittees (and eventually the Riverside County Copermittees) to the Regional MS4 Permit from the current Phase I MS4 NPDES permit (Order No. R9-2009-0002), two temporary exemptions from hydromodification control BMP requirements should be provided. The first temporary exemption would allow relief from hydromodification control BMP requirements for Priority Development Projects discharging directly to an engineered channel conveyance system with a capacity to convey peak flows generate by the 10-year storm event all the way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean. The second temporary exemption would allow relief from hydromodification control BMP requirements for Priority Development Projects discharging directly to large river reaches with drainage areas larger than 100 square miles and a 100-year flow capacity in excess of 20,000 cubic feet per second.
4. **Orange County Copermittees Enrollment.** After consideration of the Orange County RoWD and changes needed to Order No. R9-2013-0001, the San Diego Water Board has determined that the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano should be enrolled as Copermittees under Order No. R9-2013-0001 (Order) and responsible for compliance with the terms and the conditions of the Order. Enrolling the Orange County Copermittees into Order No. R9-2013-0001 (and the eventual enrollment of Riverside County Copermittees upon expiration of their current MS4 permit) will

provide regulatory consistency in the implementation of MS4 permit requirements throughout the San Diego Region, improve communication and coordination among Copermitttees within watersheds crossing multiple jurisdictions, and maximize efficiency and economy of resources for the San Diego Water Board achieved through the redirection of staff permitting resources to better advance the storm water program. The enrollment of the Cities of Laguna Hills, Laguna Woods and Lake Forest is subject to a California Water Code (Water Code) section 13228 agreement as set forth in the findings of this Order.

DESIGNATION OF A REGIONAL WATER BOARD

5. **Regional Water Board Designation.** The Cities of Laguna Woods, Laguna Hills and Lake Forest (Cities) are located partially within the jurisdictions of both the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) and the San Diego Water Board. Written requests for designation of a single Regional Water Board to regulate matters pertaining to permitting of Phase I MS4 discharges were submitted to the San Diego Water Board by the City of Laguna Woods by letter dated September 8, 2014, the City of Laguna Hills by letter dated March 12, 2014, and the City of Lake Forest by letters dated January 14, 2013, and April 4, 2014. The Cities of Laguna Hills and Laguna Woods requested designation of the San Diego Water Board, and the City of Lake Forest requested designation of the Santa Ana Water Board. Water Code section 13228 specifies the circumstances that allow, and the process for, designation of a Regional Water Board.
6. **Factual Considerations.** The Santa Ana Water Board and San Diego Water Board establish generally consistent requirements for MS4 discharges to meet the technology-based standard of reducing pollutants in the discharge to the maximum extent practicable (MEP), a related iterative process to ensure MS4 discharges meet receiving water quality standards, and non-storm water discharges to be effectively prohibited from entering the MS4. However due to the unique nature of watersheds and water quality issues in the San Diego Region and Santa Ana Region, MS4 permit requirements between the two Regional Water Boards may also vary to address region specific pollutant discharges and watershed conditions. The Cities of Laguna Woods, Laguna Hills, and Lake Forest report that management and implementation of municipal programs to comply with two different MS4 permits creates a significant administrative and financial burden that is not contributing to greater overall water quality improvements in either region.
7. **Regional Water Board Agreement.** In an effort to address the concerns of the Cities, the San Diego Water Board and the Santa Ana Water Board have entered into an agreement whereby the San Diego Water Board is designated to regulate Phase I MS4 discharges within the jurisdiction of the Cities of Laguna Woods and Laguna Hills and the Santa Ana Water Board is designated to regulate Phase I MS4 discharges within the jurisdiction of the City of Lake Forest. Both the Santa Ana Water Board and the San Diego Water Board Phase I MS4 permits for Orange

County Copermittees, including Cities, require amendments to make the designations effective. To avoid gaps or duplication in regulation for the Cities, the agreement, dated January XX, 2015, is effective on the later effective date of this Order or the Santa Ana Water Board's reissuance (Tentative Order No. R8-2015-0001).

Under the terms of the agreement the City of Lake Forest will be required to retain and continue implementing the prohibition of over-irrigation discharges identified in Title 15, Chapter 15, Section 14.030 of the City Municipal Code for regulating storm water quality throughout its jurisdiction, which was established during the permit term of Order No. R9-2009-0002. The City of Lake Forest will also be required to actively participate in the development and implementation of the Aliso Creek Watershed Management Area Water Quality Improvement Plan required pursuant to the San Diego Water Board's Regional MS4 Permit, Order No. R9-2013-0001. Under the terms of the agreement, any Total Maximum Daily Load (TMDL) and associated MS4 permit requirements issued by the San Diego Water Board or the Santa Ana Water Board which include the Cities of Laguna Woods, Laguna Hills or Lake Forest as a responsible party, will be incorporated into the appropriate MS4 permit by reference. Enforcement of the applicable TMDL would remain with the Regional Water Board which has jurisdiction over the targeted impaired water body. Applicable TMDLs subject to the terms of the agreement include, but are not limited to, the Santa Ana Water Board's San Diego Creek/Newport Bay TMDL and the San Diego Water Board's Indicator Bacteria Project I Beaches and Creeks TMDL.

8. **Periodic Review of Regional Water Board Agreement.** The basis supporting the Cities of Laguna Woods, Laguna Hills, and Lake Forest requests to designate a specific Regional Water Board for regulatory oversight of MS4 discharges may change under future conditions and circumstances. Therefore the San Diego Water Board will periodically review the effectiveness of the agreement during each MS4 permit reissuance. Based on this periodic review the San Diego Water Board may terminate the agreement with the Santa Ana Water Board or otherwise modify the agreement subject to the approval of the Santa Ana Water Board.

WATER QUALITY CONTROL PLANS AND POLICIES

9. **Cause for Modification.** Federal NPDES regulations at 40 CFR 122.62(a)(3) provide that NPDES permits may be modified when the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Standard Permit Provision 1.f of Attachment B to Order No. R9-2013-0001 provides in relevant part that the Order may be modified for cause. Section II.H.4.d. of the Order provides that the Order may be reopened during its term for cause including when the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) is amended by the San Diego Water Board to incorporate a new TMDL, and the amendment is approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and the United State Environmental Protection Agency (USEPA). The amended changes to water quality control plans and policies set forth in the findings below represent changes to standards on which Order No.

R9-2013-0001 was based.

10. **Special Conditions for Areas of Special Biological Significance.** On March 20, 2012, in Resolution No. 2012-0012, the State Water Board adopted a General Exception to the Ocean Plan Areas of Special Biological Significance (ASBS) waste discharge prohibition for storm water and nonpoint source discharges, including Special Protections for Beneficial Uses. On June 19, 2012, in Resolution No. 2012-0031, the State Water Board amended the General Exception to require pollutant load reductions to be achieved over a six year term. The City of San Diego's municipal storm water discharges to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's municipal storm water discharges to the Heisler Park ASBS are subject to the terms and conditions of State Water Board General Exception, as amended.
11. **Total Maximum Daily Loads (TMDLs).** On June 13 2012 the San Diego Water Board in Resolution No. R9-2012-0033 amended the Basin Plan to incorporate the Los Penasquitos Lagoon Sediment TMDL. This TMDL Basin Plan amendment was approved by the State Water Board on January 21, 2014, by the Office of Administrative Law (OAL) on July 14, 2014, and USEPA on ~~Month XX, Year~~October 30, 2014. The County of San Diego, City of San Diego, City of Del Mar, and the City of Poway are among the responsible parties collectively assigned a single wasteload allocation applicable to MS4 discharges under the terms and conditions of the TMDL.

BEACH WATER QUALITY MONITORING AND ASSESSMENT PROGRAM

12. **Unified Approach Beach Water Quality Monitoring.** In November 2010, the State Water Board adopted Resolution No. 2010-0053, directing regional water boards to work with dischargers to modify beach water quality monitoring programs required by regional water board-issued permits in order to eliminate redundancies and incorporate beach water quality monitoring required by applicable statutes, where appropriate. Beginning in 2012, the San Diego Water Board reviewed the various beach water quality monitoring programs conducted in south Orange County and convened a stakeholder workgroup to develop a unified regional beach water quality monitoring and assessment program (Unified Program). The Unified Program is outlined in the San Diego Water Board report entitled "*Workgroup Recommendation for a Unified Beach Water Quality Monitoring and Assessment Program in South Orange County*," dated September 2014. The Unified Program is consistent with and will meet or exceed the minimum requirements for beach water quality monitoring and related public notification and reporting established by State law, including the California Ocean Plan. The Unified Program will help protect the health of swimmers, surfers, and others who use south Orange County beach waters for water contact recreational activities.

13. Monitoring Framework Consistency. The Unified Program is consistent with and will help implement “*A Framework for Monitoring and Assessment in the San Diego Region*,” which emphasizes the need for question-driven, beneficial use-oriented monitoring and assessment. The primary purpose of the Unified Program will be to answer the question “Does beach water quality meet standards for the beneficial use of water contact recreation?”

14. Unified Program Implementation. The San Diego Water Board Executive Officer has issued a written directive, pursuant to California Water Code sections 13225, 13267, and 13383, for the South Orange County Wastewater Authority (SOCWA) and the south Orange County Copermittees to implement the Unified Program, in cooperation with the Orange County Health Care Agency (OCHCA). After appropriate opportunity for public input, the Executive Officer may make revisions to the Unified Program, provided that the Unified Program, as revised, continues to be consistent with and meet the requirements of State law, including the California Ocean Plan, for beach water quality monitoring and related public notification and reporting. The Unified Program will supersede the existing routine, ongoing, beach water quality monitoring programs in south Orange County that are conducted in accordance with the existing requirements of the NPDES permits for discharges from SOCWA ocean outfalls and the south Orange County Copermittees’ MS4s. The requirement for the Orange County Copermittees to participate in “regional monitoring” of beach water quality replaces requirements to conduct “core monitoring” of beach water quality, as provided for in Appendix III of the 2012 California Ocean Plan.

DEFINITION OF PRIOR LAWFUL APPROVAL

14-15. Prior Lawful Approval. Provision E.3.e.(1) of Order No. R9-2013-0001 requires Copermittees to impose the structural BMP requirements of Provision E.3.c on Priority Development Projects that have not received prior lawful approval by the effective date of the BMP Design Manual. The San Diego Water Board has determined that a definition of the term “prior lawful approval” should be included in Order No. R9-2013-0001 to provide clarity to the San Diego, Orange, and Riverside County Copermittees, the land development community, and the general public on how the term should be interpreted in determining structural BMP requirements for Priority Development Projects. A definition of the term “prior lawful approval” will also assist the San Diego Water Board in assessing Copermittee compliance with implementing the structural BMP requirements for Priority Development Projects to the maximum extent practicable (MEP) standard.

ADMINISTRATIVE FINDINGS

15-16. Effect of this Order. This Order amends Order No. R9-2013-0001 to:

- a. Enroll the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano as Copermittees responsible for compliance with the terms and conditions of Order No. R9-2013-0001, as amended by this Order;
- b. Designate the San Diego Water Board to regulate all Phase I MS4 discharges within the jurisdiction of the Cities of Laguna Woods and Laguna Hills and the Santa Ana Water Board to regulate all Phase I MS4 discharges within the jurisdiction of the City of Lake Forest, subject to the terms of the agreement between San Diego Water Board and the Santa Ana Water Board described in Finding 7 of this Order;
- c. Establish interim exceptions to land development requirements for those Priority Development Projects that discharge to engineered channels and large river reaches described in Finding 3 of this Order;
- d. Incorporate the amended requirements of the State Water Board's General Exception to require that pollutant reductions be achieved within 6 years for storm water and nonpoint source discharges to ASBS;
- e. Incorporate applicable requirements of the Los Peñasquitos Lagoon Sediment TMDL; **and**
- f. Require the Orange County Copermittees to implement the "*Workgroup Recommendation for a Unified Beach Water Quality Monitoring and Assessment Program in South Orange County*," dated September 2014, made effective in the Monitoring and Reporting Program/Order issued pursuant to California Water Code sections 13225, 13267, and 13383 and subject to future revisions by the Executive Officer after appropriate public input; **and**
- g. Include additional language that clarifies the term "prior lawful approval" for the implementation of appropriate structural BMP requirements to Priority Development Projects.

17. Effect of this Order. Order No. R9-2013-0001 is not being reopened for any other purpose than the revisions contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all of the previous findings and directives of Order No. R9-2013-0001 shall remain in full force and effect.

18. Future Consideration of Alternative Compliance Option. San Diego, Orange County, and Riverside County Copermittees have asserted that the prohibitions and receiving water limitations in Provision A.1.a, A.1.c, and A.2 of Order No. R9-2013-0001 may result in many years of noncompliance because years of technical efforts may ultimately be required to achieve compliance with the receiving water limitations, especially for wet weather discharges. To address this issue, the San Diego Water Board plans to consider the incorporation of a well-defined, transparent, and finite alternative path to compliance in Order No. R9-2013-0001, as amended by Order No. R9-2015-0001, during the MS4 NPDES permit reissuance proceedings for the Riverside County Copermittees scheduled for fiscal year 2015-16. This alternative compliance option would allow the Copermittees that are willing to pursue significant receiving water quality improvements beyond the iterative process to be deemed in compliance with the receiving water limitations. An alternative compliance option of this type was previously considered by the San Diego Water Board during the adoption proceedings for Order No. R9-2013-0001.

~~16-19.~~ **California Environmental Quality Act.** This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act [Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.] in accordance with California Water Code section 13389.

~~17-20.~~ **Public Notice.** In accordance with State and federal laws and regulations, the San Diego Water Board has notified San Diego County, Orange County and Riverside County Copermittees, and all known interested agencies and persons of its intent to adopt this Order and has provided them with an opportunity to submit their written comments and recommendations.

~~18-21.~~ **Public Hearing.** The San Diego Water Board held a public hearing on February 11, 2015 and heard and considered all comments pertaining to the adoption of this Order.

~~19-22.~~ **Notification.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED,

1. This Order amends the Regional MS4 Permit, Order No. R9-2013-0001 and the Fact Sheet (Attachment F of the Order) as described in the revised versions of Order No. R9-2013-0001 and Fact Sheet included as Attachments 1 and 2 to this Order. Added text to Order No. R9-2013-0001 and the Fact Sheet is displayed in [blue](#).

underline text and deleted text is displayed as ~~red-strikeout~~ text.

2. The amended version of Order No. 2013-0001 and Fact Sheet included as Attachments 1 and 2 to this Order shall become effective on April 1, 2015.
3. Amended Order No. R9-2013-0001 shall supersede Order No. R9-2009-0002 for the Orange County Copermittees except for enforcement purposes.
4. San Diego Water Board staff is directed to prepare and post a conformed copy of Order No. R9-2013-0001 and the Fact Sheet incorporating the revisions made by this Order.

I, David W. Gibson, 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 February 11, 2015.

David W. Gibson
Executive Officer