

April 5, 2007

John Robertus, Executive Officer  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego CA 92123-4340

**RE: TENTATIVE ORDER NO. R9-2007-0002 – NPDES PERMIT  
REISSUANCE FOR SOUTH ORANGE COUNTY**

Dear Mr. Robertus:

As South Orange County's representative to the Bacteria TMDL I Stakeholder Advisory Group, I appreciate this opportunity to comment on Tentative Order No. R9-2007-0002, the Fourth-Term NPDES Permit for South Orange County.

I am particularly concerned about *the risk of unnecessary and imprudent constraints on our beneficial use re-establishment and TMDL compliance efforts* that would or could result from certain interpretations of critical Permit provisions. The problematic provisions include:

- Finding D-3(c) (on page 10 of the Tentative Order), which reads:  
*Historic and current development makes use of natural drainage patterns and features as conveyances for urban runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, manmade or partially modified features. In these cases, the urban stream is both an MS4 and a receiving water.*
- Consideration E-7 (page 14 of the Tentative Order), which reads:  
*Urban runoff treatment and/or mitigation must occur prior to the discharge of urban runoff into a receiving water. Federal regulations at 40 CFR 131.10(a) state that in no case must a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an urban runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. This is consistent with USEPA guidance to avoid locating structural controls in natural wetlands.*

Specifically, I believe these provisions should either be deleted, modified or clarified to explicitly allow *treatments or mitigations in receiving water channels or urban streams that protect and restore beneficial use, including the removal of anthropogenically-*

*induced excess flows for treatment and/or beneficial re-use.* Without this or a comparable change, my concern is that these provisions, as written, will prohibit (or could be interpreted to prohibit) exactly the kinds of improvements that have been and should be supported as effective watershed management approaches and that may be our only hope to achieve compliance with TMDL requirements. Fecal indicator bacteria, in particular, are increasingly recognized as contaminating runoff *after* it leaves land use sites – the bacteria can come from rotting leaf litter in the gutter, from MS4-pipe biofilm, and from re-suspended streambed sediments. The *Draft Bacteria TMDL I Report* requires bacteria reductions of up to *100% at the mouth of the creeks*. As part of the multi-step iterative treatment sequence that the Permit expects us to implement, we need the ability to:

- Divert excess flows from creeks or modified channels to treatment *at strategic and technically feasible locations*. South Orange County is already mostly fully developed, and much of it is less than 20 years old, so it will not be redeveloped to SUSMP or hydromodification criteria anytime soon. Where space and opportunity for treatment were not historically “planned in” on-site or in subdrainages, we will need to retrofit treatment capabilities (extended-detention basins, infiltration beds, technological process units, etc.) wherever they will fit and be cost-effective.
- Construct multipurpose stream- and wetland-restoration and stabilization projects that have pollutant control or reduction capacities. Would future variations of Laguna Niguel’s WetCAT Network, Narco Channel Restoration Project, and Upper Sulphur Creek Restoration Project, or the Aliso SUPER Project, be prohibited because all these SWRCB-grant-supported projects improve pollutant removal capabilities in-stream? What, after all, is an “in-stream hydromodification control” (required under your proposed New Development provisions) but an erosion and sedimentation treatment and mitigation BMP in a receiving water? The current draft Permit language seems internally contradictory and could be construed to prohibit on the one hand what it is requiring on the other.

The prohibitions, as written, could be reasonably interpreted by Cities as making the range of “maximum extent practicable” solutions significantly *smaller*. In contradiction to the intent of the WURMP provisions, these prohibitions may provide an excuse to upstream Cities not to contribute to downstream collaborative projects.

I appreciate your attention to these concerns. Please feel free to call me at (949)362-4384 or email [npalmer@ci.laguna-niguel.ca.us](mailto:npalmer@ci.laguna-niguel.ca.us).

Sincerely,

Nancy R. Palmer  
Senior Watershed Manager  
City of Laguna Niguel

