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December 14, 2016

Sent via email: sandiego@waterboards.ca.gov

Ms. Christina Arias
RWQCB – San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Dear Ms. Arias:

Re: Comment – Tentative Order
No. R9-2016-0205 (786088 C. Arias)

The County of Riverside (County) appreciates this opportunity to provide comment on the Draft Investigative Order to address State Water Board Resolution No. 2015-0019 (the Trash Amendments), Tentative Order No. R9-2016-0205 (Draft IO). The County is submitting this comment letter on behalf of itself and the Cities of Murrieta, Temecula, and Wildomar (the "upper Santa Margarita Co-Permittees"), the Municipal Separate Storm Sewer System (MS4) Co-Permittees located within the Riverside County portion of the Santa Margarita Watershed Management Area. The Riverside County Flood Control and Water Conservation District and the City of Menifee are submitting separate comment letters to address their unique concerns. The San Diego Regional Water Board's (Regional Board) careful consideration of each of these comments is appreciated.

The upper Santa Margarita Co-Permittees' comments pertain to several key areas of the Draft IO. Specifically, we request the following modifications:

1. Revise Draft IO Finding 13 to allow flexibility for Co-Permittees to address the Trash Amendments either within a Water Quality Improvement Plan (WQIP) or in their respective Jurisdictional Runoff Management Programs (JRMPS);
2. Delete Draft IO Finding 9.d and Directive A.4, the proposed requirement to address transient encampments under the Regional MS4 Permit for the San Diego River Watershed Management Area (WMA);
3. Assure that the language of the Draft IO is consistent with the language of the Trash Amendments;
4. Clarify a Co-Permittee's ability to change compliance tracks, with justification; and
5. Modify Draft IO Directive A.3 to remove the requirement to report coordination with Caltrans to the Regional Board.

These modifications are requested to ensure that, upon adoption, the requirements of the Draft IO are consistent with the State Board's Trash Amendments.

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COMMENT # 1 – REVISE DRAFT IO FINDING 13 TO ALLOW FLEXIBILITY FOR CO-PERMITTEES TO ADDRESS THE TRASH AMENDMENTS WITHIN THE WQIP, OR RESPECTIVE JRMPS

Finding 13 states that the Regional Board intends that MS4 permittees would "incorporate the requirements of the Trash Amendments into the [WQIPs] after renewal of the regional MS4 Permit." Incorporation of trash controls into WQIPs would effectively require that trash be addressed on a watershed scale. We believe that this proposed approach would be inconsistent with the intent of the State Board in adopting the Trash Amendments and the wrong policy choice for the following reasons.

First, the State Board intended for the Trash Amendments to be addressed at the jurisdictional level. For example, Trash Amendments Chapter IV.A.3.a(1) states that Track 1 shall be implemented by MS4 permittees, "in their jurisdictions." Chapter IV.A.3.a(2) states that Track 2 shall be implemented "within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4 permittees." This language indicates a clear State Board intent that trash controls be adopted within jurisdictions, not watersheds. This makes sense, as many areas which are sources for trash in a watershed are not within MS4 permittee jurisdiction (e.g., federal, state, and tribal lands).

Second, incorporation of trash control provisions into the WQIP could result in requirements which exceed the scope of the efforts intended by the State Board in adopting the Trash Amendments. For example, Regional MS4 Permit Provisions B3.b(1)(b)-(2) set forth that in developing or revising a WQIP, watershed Co-Permittees must collaborate to develop jurisdictional strategies, optional jurisdictional strategies, and watershed management area strategies, to be implemented in a tiered fashion to address the watershed's identified highest priority water quality conditions. Placing Trash Amendment requirements into the WQIP would require that all Co-Permittees perform these steps to address trash. However, Trash Amendments Chapter IV.A.3.a(1)-(2) provides that compliance with the trash discharge prohibition shall be achieved through implementation of Track 1 or 2, and clearly prescribes and defines the trash control strategies which must be implemented. These prescribed strategies do not include requirements for development or implementation of tiered optional jurisdictional or watershed management area strategies.

This regulatory misfit also applies to monitoring. Regional MS4 Permit Provisions B.4 and B.5 require that WQIPs include watershed monitoring for the highest priority water quality conditions. Trash Amendments Chapter IV.A.6 also sets forth trash monitoring and reporting programs, the requirements of which vary depending upon which Track a Co-Permittee chooses and the specifics detailed within each individual Co-Permittee's developed monitoring plan. The upper Santa Margarita Co-Permittees anticipate that within the Santa Margarita WMA, different Co-Permittees may select different Tracks. Further, it is anticipated that significant differences will exist among the Co-Permittees' respective Track 2 strategies and their resultant monitoring programs. This anticipated level of specificity in individual jurisdictional trash monitoring programs will be significantly and unnecessarily burdensome to incorporate into a watershed-wide monitoring program, which aims to measure attainment of watershed goals for trash.

The upper Santa Margarita Co-Permittees submit that the State Board adopted the Trash Amendments with the intent that they would be implemented at the jurisdictional scale, so as to avoid conflicts with watershed-based planning documents both in terms of the development and implementation of trash control strategies, and in monitoring and reporting. For these reasons, the Draft IO should not require that the Trash Amendment requirements be incorporated into WQIPs, but instead Co-Permittees should have the flexibility to address trash on a jurisdictional or watershed scale, at their discretion. Therefore, our request is that the Regional Board revise the last sentence of Draft IO Finding 13 as follows (recommended revision in *italics*):

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Through the issuance of this Order pursuant to Water Code section 13267, the San Diego Water Board intends the MS4 permittees *either* to incorporate the requirements of the Trash Amendments into the Water Quality Improvement Plans *or into their Jurisdictional Runoff Management Plans* after renewal of the Regional MS4 Permit.

COMMENT # 2: DELETE DRAFT IO FINDINGS 9.d AND DIRECTIVE A.4, THE PROPOSED REQUIREMENT TO ADDRESS TRANSIENT ENCAMPMENTS UNDER THE REGIONAL MS4 PERMIT FOR THE SAN DIEGO RIVER WMA

Draft IO Finding 9.d and Directive A.4 requires certain Co-Permittees within the San Diego River WMA to address trash from transient encampments. While this requirement does not apply to the upper Santa Margarita Co-Permittees, we believe that this requirement should not be contained in the IO.

Transient encampments are just that, transient. Encampment locations, size, and the numbers of inhabitants within them cannot be known by MS4 Co-Permittees at any given moment, because these factors are constantly in flux. Thus, these encampments are fundamentally non-point sources of trash, and not appropriate for regulation in an NPDES permit. In fact, as the comment letter being filed concurrently by the California Stormwater Quality Association (CASQA) sets forth, the State Board in responses to comments on the Trash Amendments suggested that non-point source trash should be addressed by specific waste discharge requirements or waivers. (See CASQA comment letter, Issue #3.)

It is evident in the language of Chapter IV.A.3.d of the Trash Amendments that the State Board did not intend to require Co-Permittees to address non-point, mobile sources of trash throughout an entire watershed. Instead, the State Board focused on the targeting of specific locations or land uses which might generate high amounts of trash. This is evidenced in the Chapter's language, which directs Regional Boards to include "specific *land uses* or *locations* (e.g., parks, stadia, schools, campuses, or roads leading to landfills)" (emphasis added), if those specific locations have been determined to generate substantial amounts of trash. Transient encampments which move throughout a watershed are neither a specific land use nor a specific location.

Moreover, transient encampment locations may be located in areas that are not under MS4 Co-Permittee control (e.g., such as on Federal, tribal, state or private lands); this severely limits the Co-Permittees' capability to address trash from transient encampments. Similarly, as the Trash Amendments' Track 1 compliance option requires installation of full capture devices to treat MS4 discharges from priority land use areas, the Co-Permittees' ability to implement Track 1 to address transient encampments would be limited. Also, transient encampments often can be located within receiving waters themselves. Trash generated in encampments under these conditions does not ever enter the MS4, and would thereby constitute a discharge which is beyond the scope of the MS4 permit. Last, we note that a Track 2 approach requiring monitoring and demonstration of full capture would be extremely challenging given the diffuse and constantly mobile nature of transient encampments. Therefore, we request that the Regional Board *delete Draft IO Finding 9.d and Directive A.4 and instead regulate trash from transient encampments pursuant to Trash Amendments Chapter IV.A.4.*

COMMENT # 3: ASSURE THAT THE LANGUAGE OF THE DRAFT IO IS CONSISTENT WITH THE LANGUAGE OF THE TRASH AMENDMENTS

CASQA's comment letter, as filed concurrently on this matter, sets forth in Issue #2 how the findings in the Draft IO need to be modified to be consistent with the Trash Amendments. We incorporate such comments

as if set forth in full and respectfully request the Regional Board to make the language modifications requested by CASQA.

COMMENT # 4: PROVIDE CLARIFICATION OF A CO-PERMITTEE'S ABILITY TO CHANGE COMPLIANCE TRACKS, WITH JUSTIFICATION

Co-Permittees must be provided with the ability to change their initial determination of which compliance Track to pursue, without being at risk of non-compliance with the trash discharge prohibition. California is a pioneer in implementing statewide requirements for MS4s to address trash, and because of that "leading edge" stance, the Co-Permittees will face challenges and the need to absorb lessons learned. For example, while we understand that some Co-Permittees have expressed an initial preference for Track 1 because of its simplicity and the compliance certainty it provides, due to structural differences among various drainage and flow collection structures in a watershed, installation of full capture systems may be cost-prohibitive or not structurally possible in certain areas. It is highly likely that a discovery like this would occur after a Co-Permittee's selection of compliance Track.

Enabling Co-Permittees to change tracks during the implementation period, so long as sufficient justification is provided, would provide appropriate flexibility to implement this 10-year program. Therefore, our recommendation is that the Regional Board *revise the Draft IO to provide clarification of a Co-Permittee's ability to change compliance Tracks, with justification.*

COMMENT # 5: MODIFY DRAFT IO DIRECTIVE 3 TO REMOVE REQUIREMENTS TO REPORT COORDINATION WITH CALTRANS TO THE REGIONAL BOARD

Trash Amendments Chapter IV.A.3.b requires that "the Department and MS4 permittees that are subject to the provisions of Chapter IV.A.3.a herein shall coordinate their efforts" in the implementation of Track 1 or 2. Additionally, various Regional MS4 Permit provisions require coordination with Caltrans. The upper Santa Margarita Co-Permittees currently coordinate with Caltrans on various issues, and will continue to coordinate with them, including, as required on implementation of the Trash Amendments.

Directive A.3 of the Draft IO requires the Co-Permittees subject to the Order to provide a report describing how they will coordinate with Caltrans. The upper Santa Margarita Co-Permittees submit that the requirement to produce yet another report and plan for coordination is over-burdensome, unnecessary, and not required under the Trash Amendments. Further, the Regional Board does not specify how it intends to utilize this submittal. Our recommendation is that the Regional Board *revise Draft IO Directive A.3 to require coordination with Caltrans, as applicable, but remove the requirement to describe this coordination in a submittal to the Regional Board.*

In summary, the upper Santa Margarita Co-Permittees request that the Regional Board revise the Draft IO to be consistent with the Trash Amendments by (1) revising Draft IO Finding 13 to allow flexibility for Co-Permittees to address the Trash Amendments either within the WQIP or their respective JRMPs, (2) deleting Draft IO Finding 9.d, and Directive A.4, and instead regulating trash from transient encampments pursuant to Trash Amendments Chapter IV.A.4, (3) assuring that the language of the Draft IO is consistent with the language of the Trash Amendments, (4) revising the Draft IO to provide clarification of a Co-Permittee's ability to change compliance Tracks, with justification, and (5) revising Draft IO Directive A.3 to require coordination with Caltrans, as applicable, but removing the requirement to describe this coordination in a submittal to the Regional Board.

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The upper Santa Margarita Co-Permittees are committed to water quality in the Santa Margarita WMA, and look forward to the continued collaboration with Regional Board staff. Thank you for your consideration of these comments. If you have any questions, please contact me at shorn@rceo.org or 951.955.1110.

Very truly yours,



STEVE HORN
Principal Management Analyst