



CITY of LAGUNA NIGUEL

30111 Crown Valley Parkway • Laguna Niguel, California 92677
Phone/949•362•4300 Fax/949•362•4340



Via Email

December 5, 2016

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor 95814
P.O. Box 100
Sacramento, California, 95812-0100
Commentletters@waterboards.ca.gov

**Re: Comments to A-2456 – December 6 Board Item [Own Motion Order];
Comments from City of Laguna Niguel**

Dear Ms. Townsend:

The City of Laguna Niguel ("Petitioner") submits the following comments to the State Water Resources Control Board ("State Board") on the State Board's proposed "Own Motion Order" ("Proposed Order"). The Proposed Order pertains to the State Board's review of the San Diego Regional Water Quality Control Board (SDRWQCB) November 18, 2015, approval of the San Diego Regional MS4 Permit (Petition SWRCB/OCC File No. A-2456(h)).¹

On March 15, 2016, the State Board issued a Notice ("March 15 Notice") that the City's petition, along with the petitions submitted by the County of Orange and the Orange County Flood Control District, and eight other southern Orange County cities (collectively, the "OC Co-Permittees"), were complete and consolidated for State Board review. The March 15 Notice also "activated" the petitions of the City (and other OC Co-Permittees) that were initially held in an abeyance status.²

¹ On May 8, 2013, the SDRWQCB adopted Order No. R9-2013-0001 ("2013 Regional Permit") regulating municipal separate storm sewer systems ("MS4") discharges within the watersheds of the "San Diego Region." Order No. R9-2013-0001 was amended and readopted by the SDRWQCB on February 11, 2015, via Order No. R9-2015-0001 ("First Amended Permit") which brought southern Orange County under the Regional Permit, and on November 18, 2015, by Order No. R9-2015-0100 ("Second Amended Permit") which brought southern Riverside County under the Regional Permit. The State Board accepted review of all of the petitions filed in response to the Second Amended Permit.

² The State Board agreed by letter of January 19, 2016, to hold the Petition of the City on the Second Amended Permit in abeyance.

Ms. Jeanine Townsend
Clerk to the Board
December 5, 2016
Page 2

On November 4, 2016, the State Board issued a subsequent Notice ("November 4 Notice") indicating that the State Board had not completed its review of the OC Co-Permittee petitions, and would not likely review the OC Co-Permittees petitions until such time as the State Board completed its review of certain petitions filed in the Los Angeles Region. Because the State Board's review would not finish prior to the 270-day deadline imposed on the State Board by Cal. Code Regs., tit. 23, § 2050.5(b), the State Board has proposed reviewing the OC Co-Permittee petitions (and other petitions filed on the Second Amended Permit) on its own motion, thereby preventing these petitions from being deemed denied by operation of law on December 9, 2016, upon the expiration of the 270 day review period. The Propose Order memorializes the State Board's proposed course of action described in the November 4, Notice.

The City supports the Proposed Order subject to the following observations:

1. The City Petition on the Second Amended Permit should be returned by the SWRCB to an abeyance status pursuant to the request submitted by the City concurrently with this letter until such time as the State Board (a) issues an order dismissing the City's Petition, or (b) issues an order that resolves all of the issues raised in the City's Petition on its merits. The City reserves the right to remove its Petition from abeyance at its discretion.

2. The November 4 Notice and the Proposed Order create uncertainty on which issues raised in the OC Co-Permittee Petition, if any, will ultimately be reviewed by the State Board. The timeframe for such review, if it occurs, is also left open by the Proposed Order. It is this uncertainty, and the desire of the City to avoid any issue raised in its respective Petition from being prematurely deemed denied by operation of law, that led to the City's request to place its Petition back into an abeyance status. In order to address this uncertainty, the State Board should clarify in the Proposed Order which issues raised by the OC Co-Permittees the State Board intends to actively review, and when the State Board envisions conducting such review.

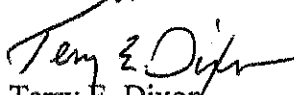
3. The City believes that all of the issues raised in its Petition are of vital importance, and they therefore respectfully request that the State Board review (on the State Board's own motion per Cal. Code Regs., tit. 23, §2050.5(c)), and resolve, all of the issues raised in the manner requested in the City's Petition. The Second Amended Permit goes above and beyond the requirements of federal law in a multitude of ways. Of particular concern, the Second Amended Permit imposes the mandate that the OC Co-Permittees achieve numeric effluent limitations ("NELs") in receiving waters that drain the OC Co-Permittees MS4s, a permit requirement imposed in violate of state and federal law, and a mandate which appears impossible to consistently achieve no matter how much money the OC Co-Permittees are mandated by the SDRWQCB to expend. Exacerbating the problem, the SDRWQCB has refused to provide interim compliance to the OC Co-Permittees that would shield them from third party citizen suit liability while the OC Co-Permittees develop the Water Quality Improvements Plans ("WQIPs") that the SDRWQCB has ordered the OC Co-Permittees to develop. These issues are of critical public importance and require rapid resolution by the State Board.

Ms. Jeanine Townsend
Clerk to the Board
December 5, 2016
Page 3

4. As reference in footnote 1, the SDRWQCB implemented its Regional Permit in three stages between May 2013 and November 2015, readopting the revised Regional Permit with each new amendment. Several of the Co-Permittees petitioned the Regional Permit at all three stages of the Regional Permit's development. However, the State Board has not activated the petitions filed on the 2013 Regional Permit and the First Amended Permit, and petitions on those permit iterations remain in abeyance. In order to eliminate future confusion on which petitioned issues have been resolved by any subsequent State Board order, and in order to avoid piecemeal litigation, the City strongly recommends that the State Board clearly resolve all petitions pertaining the Regional Permit (whether filed in 2013 or 2015) when the State Board ultimately takes action on its own motion.

Thank you for the opportunity to comment on the Proposed Order. Please do not hesitate to contact the undersigned with any questions, and thank you for your attention to this matter.

Sincerely,


Terry E. Dixon
City Attorney

cc: Service List

Ryan Mallory-Jones, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Ryan.Mallory-Jones@waterboards.ca.gov

San Diego Coastkeeper
Attn: Matt O'Malley, Esq.
2825 Dewey Road, Suite 200
San Diego, CA 92106
matt@sdcoastkeeper.org
[VIA EMAIL ONLY]

Coastal Environmental Rights Foundation
Attn: Marco A. Gonzalez
1140 South Coast Highway 101
Encinitas, CA 92024
marco@cerf.org
[VIA EMAIL ONLY]

Jennifer M. Cervantez
City Manager
City of Rancho Santa Margarita
22112 El Paseo
Rancho Santa Margarita, CA 92688
jcervantez@cityofrsm.org
[VIA EMAIL ONLY]

E. Maximous, P.E.
City Engineer
City of Rancho Santa Margarita
22112 El Paseo
Rancho Santa Margarita, CA 92688
emaximous@cityofrsm.org
[VIA EMAIL ONLY]

Gregory E. Simonian
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626-7670
gsimonian@wss-law.com
[VIA EMAIL ONLY]

James H. Eggart
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626-7670
jeggart@wss-law.com
[VIA EMAIL ONLY]

Bruce E. Channing
City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653
bchanning@ci.laguna-hills.ca.us
[VIA EMAIL ONLY]

Kenneth H. Rosenfield
Director of Public Services
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653
krosenfield@ci.laguna-hills.ca.us
[VIA EMAIL ONLY]

Gregory E. Simonian
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626-7670
gsimonian@wss-law.com
[VIA EMAIL ONLY]

James H. Eggart
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626-7670
jeggart@wss-law.com
[VIA EMAIL ONLY]

City of Dana Point
Attn: Brad Fowler
Director of Public Works & Engineering
33282 Golden Lantern
Dana Point, CA 92629
bfowler@danapoint.org
[VIA EMAIL ONLY]

Jeremy Jungreis
Patrick Munoz
Travis Van Ligten
611 Anton Blvd, 14th Floor
Costa Mesa, CA 92626
jjungreis@rutan.com
Dmunoz@rutan.com
tvanligten@rutan.com
[VIA EMAIL ONLY]

City of Laguna Beach
David Shissler, Director of Water Quality
505 Forest Avenue
Laguna Beach, CA 92651
dshissler@lagunabeachcity.net
[VIA EMAIL ONLY]

William P. Curley, III
Lozano Smith LLP
515 S. Figueroa Street, Suite 750
Los Angeles, CA 90071
wcurley@lozanosmith.com
[VIA EMAIL ONLY]

Rod Foster
City Manager
30111 Crown Valley Parkway Laguna
Niguel, CA 92677
rfoster@cityoflagunaniguel.org
[VIA EMAIL ONLY]

Nancy Palmer
Environmental Programs Manager
City Landscape Architect
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
npalmer@cityoflagunaniguel.org
[VIA EMAIL ONLY]

Terry E. Dixon
City Attorney
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
tdixon@cityoflagunaniguel.org
[VIA EMAIL ONLY]

Stuart E. McKibbin, P.E.
David H. Garcia, P.E.
Riverside County Flood Control &
Water Conservation District
1995 Market Street
Riverside, CA 92501
smckibbi@rcflood.org
dhgarcia@rcflood.org
[VIA EMAIL ONLY]

Aldo Licitra Associate
Engineer/NPDES
City of Temecula
41000 Main Street
Temecula, CA 92590
Aldo.licitra@cityoftemecula.org
[VIA EMAIL ONLY]

Matt Bennett
Deputy City Engineer
City of Wildomar
23873 Clinton Keith Rd, Ste 201
Wildomar, CA 92595
mbennett@cityofwildomar.org
[VIA EMAIL ONLY]

Steve Horn
County of Riverside
408 Lemon Street, 4th Floor
Riverside, CA 92501
shorn@rceo.org
[VIA EMAIL ONLY]

James Ozouf
Associate Civil Engineer
City of Murrieta
1 Town Square
24601 Jefferson Avenue
Murrieta, CA 92562
jozouf@murrieta.org
[VIA EMAIL ONLY]

Aaron C. Gettis, Esq.
Deputy County Counsel
County of Riverside
3960 Orange Street, Suite 500
Riverside, CA 92501
aoettisAco.riverside.ca.us

David W. Burhenn, Esq.
Burhenn & Gest LLP
624 S. Grand Avenue, Suite 2200
Los Angeles, CA 90017
dburhennburhennoest.com
[VIA EMAIL ONLY]

James Makshanoff
City Manager
City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672
CityManagera@San-Clemente.org
[VIA EMAIL ONLY]

Cameron William
Director of Public Works
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
CameronW@San-Clemente.org
[VIA EMAIL ONLY]

Shawn Hagerty
J.G. Andre Monette
Rebecca Andrews
655 West Broadway, 15th Floor
San Diego, CA 92101
Shawn.Hagerty@bbklaw.com
Andre.Monette@bbklaw.com
Rebecca.Andrews@bbklaw.com
[VIA EMAIL ONLY]

Ben Siegel
Interim City Manager
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
BSiegel@sanjuancapistrano.org
[VIA EMAIL ONLY]

Hossein Ajideh, PhD., P.E.
Senior Civil Engineer
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
HAjidel@sanjuancapistrano.org
[VIA EMAIL ONLY]

David Doyle
City Manager
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335
DDovlea@cityofalisoviejo.com
[VIA EMAIL ONLY]

Shaun Pelletier [via email only]
Director of Public Works
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335
SPelletier@cityofalisoviejo.com
[VIA EMAIL ONLY]

Wayne Chiu [via email only]
Water Resources Control Engineer San
Diego Regional Water Quality
Control Board
2375 Northside Drive #100
San Diego, CA 92108
Wayne.Chiu@waterboards.ca.gov
[VIA EMAIL ONLY]

David W. Gibson
Executive Officer
San Diego Regional Water
Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
David.Gibson@waterboards.ca.gov
[VIA EMAIL ONLY]

James Smith
Assistant Executive Officer
San Diego Regional Water
Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
James.Smith@waterboards.ca.gov
[VIA EMAIL ONLY]

Lori T. Okun, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Lori.Okun@waterboards.ca.gov
[VIA EMAIL ONLY]

Catherine George Hagan, Esq.
Office of Chief Counsel, State Water Board
c/o San Diego Region, Regional Water
Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Catherine.Hagan@waterboards.ca.gov
[VIA EMAIL ONLY]

Adriana Nunez, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Adriana.Nunez@waterboards.ca.gov
[VIA EMAIL ONLY]

Philip G. Wyels, Esq.
Office of Chief Counsel
State Water Resources Control Board 1001
I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Philip.Wyels@waterboards.ca.gov
[VIA EMAIL ONLY]

Mr. David W. Smith, Chief
Permits Office
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.david@epa.gov
[VIA EMAIL ONLY]

Mr. Ken Greenberg, Chief
Clean Water Act Compliance (NPDES)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
greenberg.ken@epa.gov
[VIA EMAIL ONLY]

