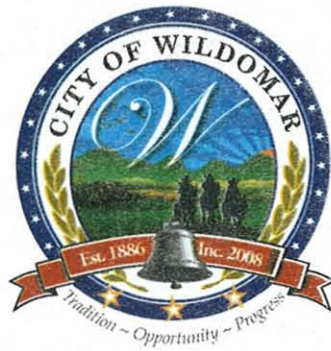


Bridgette Moore, Mayor  
Marsha Swanson, Mayor Pro Tem  
Sheryl Ade, Council Member  
Bob Cashman, Council Member  
Scott Farnam, Council Member



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September 7<sup>th</sup>, 2010

Mr. David King  
Chairman  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4353

Re: Tentative Order R9-2010-0016, NPDES No. CAS0108740, Riverside County Municipal Separate Storm Sewer System Permit Reissuance *NWU:749045:bneill*

Chairman King:

The City of Wildomar is providing these comments on the above listed Tentative Order, and appreciates the Board's consideration of the issues described herein. Tentative Order R9-2010-0016 (draft Permit) has been drafted by Board staff to serve as the reissuance of Order R9-2004-0001 (existing Permit) which was originally issued to the County of Riverside, the Riverside County Flood Control and Water Conservation District (District), and the cities of Temecula and Murrieta. Additionally the draft Permit adds the recently incorporated City of Wildomar.

The City would like to thank the Board and the Executive Officer for committing their staff's time for a number of meetings with the City and fellow Copermittees in the development of the draft Permit. This collaborative approach to permit development is crucial to developing effective programs, and the City strongly believes that only through such effective communication and collaboration will our mutual goals of protecting water quality be realized. As a result of the meetings, the Permittees and Regional Board staff worked collaboratively to develop language for consideration in the Tentative Order.

We are most appreciative of the Board staff's consideration of allowing Wildomar to be regulated by one region with respect to the MS4 permit requirements. Although the City will still be mandated to participate in the Lake Elsinore/Canyon Lake TMDL as part of Region 8, the option of having the entire City regulated by one region will greatly help with the implementation of the permit requirements.

While the collaborative discussions have been fruitful and have resulted in a draft permit that is substantively improved over the initial draft, we unfortunately cannot support the tentative order as currently drafted due to (1) the projected cost exceeding our available resources and (2) shortcomings in the permit language itself.

The City therefore requests that the Board direct staff to work with the Copermittees to resolve the issues identified in this and the Riverside County Flood Control letter, including attachments, prior to considering adoption of the Permit.

This letter provides additional background, information and perspective specific to the City of Wildomar for the Board’s consideration.

## Background

### City of Wildomar

Wildomar is one of the newest cities in the state having officially become a city on July 1, 2008. It is home to approximately 25,000 residents and encompasses about 24 square miles between the cities of Murrieta and Lake Elsinore in south western Riverside County. Wildomar is a community of old and new, mature homes and property with horses and other animals mixed with modern housing tracts. The name Wildomar was coined from the names of its three original founders – the “WIL” from William Collier, the “DO” from Donald Graham and the “MAR” from Margaret Collier Graham.

### Economic Conditions

The adopted 2010-11 city budget reflects the harsh reality of the City having only 64% of the revenue shown in the Comprehensive Fiscal Analysis (CFA) that was used for incorporation. An examination of the major sources of revenue in the City reveals a grim picture:

Revenue Source	Estimate in Comprehensive Fiscal Analysis (CFA)	Revised Estimate for 2010-11 Budget	Difference
<b>Taxes</b> <i>(sales, property, franchise, etc.)</i>	\$7.9 million	\$5.1 million	<b>35% ↓</b>
<b>Permits, Licenses, Fees</b>	\$2.5 million	\$0.9 million	<b>25% ↓</b>
<b>Total General Fund</b>	\$14.1 million	\$9 million	<b>36% ↓</b>

The City is somewhat fortunate in that it can adjust to the demands of services and available funding because of its contract service arrangements for police and fire services provided to the community. However, the **City currently has only three authorized positions:** City Manager, Assistant City Manager/Finance Director and City Clerk. All other services are provided by contract services. The equivalent staff for city hall operations is approximately 13 staff members.

While it is difficult to estimate the exact cost of the permit, based on available budget estimates and assumptions made on the level of effort needed to implement and administer the permit as currently

drafted, the City's cost will be in the range of \$250,000 – \$350,000 in the first two years and \$150,000-\$250,000 in years three through five. **This cost was simply not contemplated in the Comprehensive Fiscal Analysis (CFA) that was used for incorporation.** While the collaborative process has resulted in successes that should not be overlooked, the shortcomings have resulted in a permit that cannot meet its core purpose of protecting water quality, by virtue of not being economically feasible for the City to implement.

### Shortcomings:

Despite the noteworthy and important improvements in the permit, the publically released draft remains **far beyond the economic reach of the City.** Further in as much as the requirements are unattainable, and the public's resources are spread too thin, the Permit cannot, and **will not be effective at protecting water quality.** There are several fundamental issues that have caused or contributed to the shortcomings of the collaborative process:

- The baseline OC permit was designed for a region with significantly more resources than Riverside County
- New programs were added which go well beyond the OC permit requirements
- Several major programmatic changes were introduced at the end of the process
- The continuing recession

### Priority Issues and Solutions

The Copermittees have identified specific and focused changes to the Permit that will allow the Copermittees to address staff's primary water quality concerns, while reducing compliance costs in a manner that is appropriate for the local watersheds. The City of Wildomar supports these changes. As previously noted, Board staff has directed the Copermittees to bring these changes directly to the Board for consideration, although we are hopeful that by summarizing them in writing that they may be addressed ahead of the scheduled October 13 hearing.

### Monitoring and Reporting Program

Prior to the submittal of the ROWD, the Copermittees met with Board staff to propose changes to the Monitoring and Reporting Program (MRP). In these discussions, Board staff identified two areas for needed improvement:

- Relocation of Illicit Connection / Illicit Discharge (IC/ID) monitoring stations to MS4 outfalls, and
- Incorporation of Action Levels

In more recent discussions, Board staff noted that the MRP needed significant modification to reflect the South Orange County MRP, but would be scaled to be appropriate to the smaller Santa Margarita Region.

Unfortunately, the final MRP requirements have been expanded well beyond the South Orange County MRP requirements, resulting in a program that is completely out of proportion with the needs and resources of the Santa Margarita Region. In fact, the proposed MRP requirements will result in a **500% increase in monitoring program costs**, costing our residents **over two and a half times the per capita costs for South Orange County.**

### Per Capita Monitoring Cost Comparison

Draft Permit	OC Permit
<b>\$5.13 per capita</b>	~\$2.00 per capita

The Copermittees recognize that monitoring and data collection is necessary. However, the MRP requirements exceed what is necessary to address management questions related to water quality, are beyond requirements dictated in the South Orange County MRP, and are beyond the Copermittees' ability to fund. Not only are the level of requirements inappropriate for the Santa Margarita Region, but they disregard the economic realities faced by the Copermittees. As such, the MRP falls far short of meeting the Executive Officer's stated goals of affordability.

In the interest of finding ways to offer Board staff a comparable program in a more cost effective and appropriate manner, the Copermittees have identified nine adjustments to the MRP that will **save approximately seven hundred and eighty thousand dollars (\$780,000) annually** and bring per capita monitoring costs more in line with the South Orange County MRP, while maintaining the core components of the MRP. Table 1 summarizes the key changes and the respective cost savings. It is important to note that any change highlighted in RED reflects bringing the program in line with the South Orange County MRP. Figure 1 below shows graphically the comparative costs for the draft MRP with and without the requested adjustments. Please note that the 100% baseline in Figure 2 reflects the current cost of the Copermittees' current MRP.

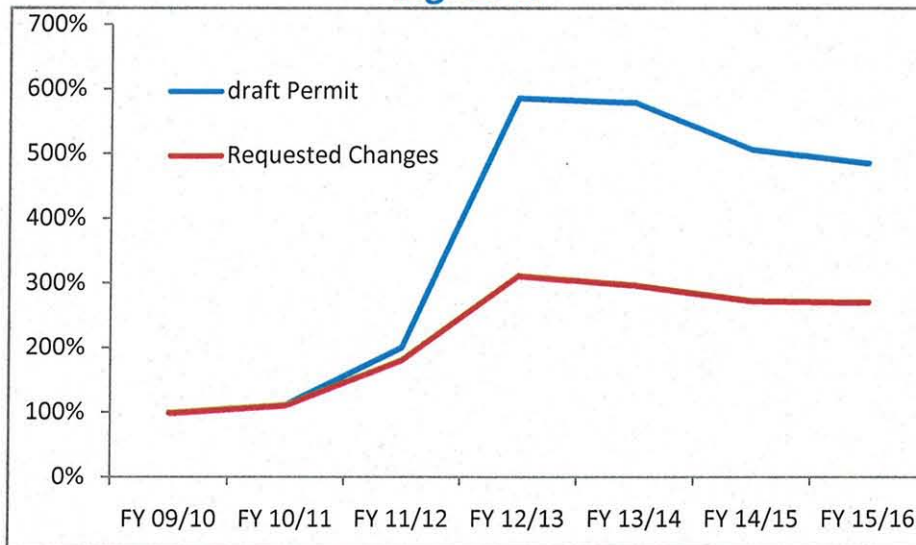
**Table 1 - Cost Savings resulting from proposed MRP changes<sup>1</sup>**

Component	Requested Change	Cost reduction
<b>Mass Loading Stations</b>	1) Wet Weather - 3 wet -> <b>2 wet</b>	~\$79,000
	2) Dry Weather - Composite -> Grab	~\$66,000
<b>Toxicity Testing (MLS and Bioassessment)</b>	3) 3 organisms -> <b>2 organisms</b>	~\$14,000
<b>Bioassessment</b>	4) 6 stations -> 3 stations	~\$158,000
	5) 2X each -> <b>1X each</b>	~\$95,000
<b>Action Levels</b>	6) 'Representative Number/Percent' -> Representative - and remove 'within each sub area'	~\$241,000
	7) SAL Composites -> Grab	~\$165,000
<b>Inland Aquatic Habitat Monitoring</b>	<b>8) Eliminate requirement</b>	~\$140,000
<b>Special Studies</b>	9) 6 special studies -> <b>4 studies</b> , and Replace with more locally appropriate	~\$220,000/year

	studies	
<b><u>TOTAL ESTIMATED SAVINGS</u></b>	Net savings of all recommended changes (annualized)	<b><u>~780,000/year</u></b>

Note: Red text refers to requirements currently in the South Orange County MRP.

**Figure 1**



Draft Permit	OC Permit	Proposed Changes
\$5.13/per capita	~\$2.00/per capita	<b>\$2.54/per capita</b>

Although the requested adjustments to the MRP will not eliminate cost increases, and will result in an MRP which is more expensive, on a per capita basis, than the South Orange County MRP, they provide a more manageable program for the Copermittees.

**The City requests that the Board make the adjustments identified above before Permit adoption.**

### Unpaved Roads Requirements (Sections F.1.i, F.3.a.(11), F.3.c.(5))

The requirements for unpaved roads are particularly cumbersome, onerous and unreasonable. In summary, the proposed unpaved road requirements may result in substantial and unnecessary additional Copermittee costs that are not justified by the facts in the Santa Margarita Region. The Copermittees believe that the existing MS4 Permit requirements for new development, construction, maintenance and IC/ID adequately address regulation of unpaved roads that threaten water quality. If the Regional Board believes that unpaved roads require further regulation, the Copermittees believe that the appropriate regulatory mechanism is a general permit (Waste Discharge Requirements or NPDES permit) that would

apply to *all* unpaved roads in the San Diego Region, rather than only those that are under the jurisdiction of the Copermittees.

**The City requests that Sections F.1.i, F.3.a.(11) and F.3.c.(5) regulating unpaved roads be deleted from the draft MS4 Permit.**

**However**, should the Water Board insist on retaining unpaved road requirements in this Permit, the Copermittees request the following revisions. These revisions are needed to ensure that all parties have a clear understanding of the requirements. In summary, the Copermittees request:

- Clarification that these requirements apply to those unpaved roads that the Copermittees maintain in their road system.
  - This should be commonly understood, but the clarification is important to include due to complex legal limitations and rights associated with access, ownership, and maintenance of unpaved roads.
- Removal of language that specifies specific BMPs that must be implemented.
  - Specifying the method of compliance is prohibited pursuant to CWC section 13360, and inappropriately forces the Copermittees to adopt particular solutions that may not best fit the situation.
- Removal of requirement for BMPs for private unpaved roads.
  - The proposed requirements would require the creation of an additional and unnecessary program element addressing privately owned unpaved roads. The Copermittees believe that a focused public outreach program should be implemented to educate property owners and associations about the need to properly maintain unpaved roads. This education program combined with existing IC/ID enforcement capabilities seems a more reasoned and responsible response to addressing this issue.

**Should Sections F.1.i, F.3.a.(11) and F.3.c.(5) regulating unpaved roads not be removed from the Permit, the City requests they be modified as noted above.**

### **Post-Construction BMP Inspections**

Section F.1.f of the draft MS4 Permit includes new requirements for the Copermittees to verify that Post-Construction BMPs are being appropriately maintained. The new requirements appropriately develop a risk-based approach to inspections, defining eight factors that the Copermittees must consider in determining ‘high-priority’ projects.

However, language in Section F.1.f.(2)(a) removes that discretion by stating:

{ *‘At a minimum, high priority projects include those projects that generate pollutants (prior to treatment) within the tributary area of a 303(d) listed waterbody impaired for that pollutant; or those projects generating pollutants within the tributary area*

*for an observed action level exceedance of that pollutant.'*

This language is excessively broad, and will require virtually all sites in the watershed to be designated as 'high priority' and therefore subject to annual inspections. This language is inconsistent with the goals of a socially responsible and affordable permit and should be modified for several reasons:

- Inspections frequencies should be based on risk of discharge. Annual inspections are not needed for all sites that *generate* a specific pollutant. For example, if a site generates a pollutant associated with 303(d) listing, but the site retains runoff onsite or stores those pollutants indoors, annual inspections would be unnecessary. However, sites that store 303(d) listed pollutants outdoors or otherwise have a high risk of discharge should be inspected more frequently.
- The language dilutes Copermittee resources by requiring annual inspections of low-risk sites, preventing the Copermittees from appropriately concentrating resources on problematic sites/sources. This is because when an action level is exceeded then all parties in the watershed are assumed guilty until proven innocent.

While the Copermittees are not opposed to implementing a program to verify that these BMPs are being maintained, it is critically important that they be provided the flexibility to determine which sites warrant annual inspections. **Specifically, the City requests that the language in F.1.f.(2)(a) be amended as follows prior to adoption of the Permit:**

*At a **minimum**, high priority projects include those projects that ~~generate pollutants (prior to treatment) within the tributary area of a 303(d) listed waterbody impaired for that pollutant; or those projects generating pollutants within the tributary area for~~ have been determined to be the source of an observed action level exceedance. ~~of that pollutant.~~*

## **Commercial and Industrial Inspections**

Section F.3.b. of the draft Permit includes requirements to inventory and inspect Commercial and Industrial businesses. The draft Permit expands upon existing inventory and inspection requirements in two problematic ways:

- It requires *significantly* more businesses to be inspected, and
- It includes new requirements specifying what the Copermittees are required to inspect when they are onsite.

### **More inspections**

Sections F.3.b.(1)(a)(i) and (ii) identify forty-two (42) categories of businesses that must be inventoried and inspected based on risk of pollutant discharge. However, Section F.3.b.(1)(a)(iii) adds virtually any business in the Permit area, independent of pollutant discharge risk:

*'**All other commercial or industrial sites/sources within or directly adjacent to or discharging directly to receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order) or that generate pollutants tributary to an observed exceedance of an action level.**' (Bold emphasis added)*

In effect, section F.3.b.(1)(a)(iii) adds the following additional businesses:

- EVERY business that is adjacent to (or within) an Environmentally Sensitive Area (ESA), regardless of whether the business generates or discharges *any* pollutants, and
- EVERY business that ‘*generates*’ pollutants which happens to be upstream of an action level exceedance, *regardless* of whether the site has ever *discharged any* pollutants.

This language expands the list of sites far beyond the current requirements, and well beyond those sites that actually pose a threat to water quality. This is clearly unnecessary and should be removed for several reasons:

- It inappropriately separates ‘risk’ from the ‘response’, by requiring the Copermittees to inspect businesses irrespective of the risk that the business poses to water quality. For example, this language would require the Copermittees to expend resources and time inspecting hair salons, office buildings and other activities that happen to be adjacent to an ESA. This inappropriate broad-brush approach to permitting actually works to discredit the Copermittees NPDES programs and dilute resources, rather than enhancing protection of water quality.
- It will further remove the flexibility that the Copermittees need to be able to re-allocate resources to inspecting and following up with sites/sources that are problematic.

**Therefore, the City requests that the language in F.3.b.(1)(a)(iii) be amended as follows prior to adoption of the Permit:**

*All other commercial or industrial sites/sources ~~within or directly adjacent to or discharging directly to receiving waters within environmentally sensitive areas (as defined in Attachment C of this Order) or that generate pollutants tributary to that~~ have been determined to be the source of an observed exceedance of an action level.*

#### ***Additional items to review during inspections***

Section F.3.b.(4)(a) specifies what the Copermittees must review when performing an inspection. The new requirements in sub sections (i) and (ii) to review BMP implementation plans, and review facility monitoring data, respectively, are an unnecessary new mandate. They should be removed for several reasons:

- The requirements burden the Copermittees with reviewing information that is required under General Permits and is the responsibility of the Regional Board to enforce.
- The requirements would significantly increase the inspection time for sites with General Permits and endanger an existing collaborative inspection program (Compliance/Assistance Program (CAP)) that leverages the time highly trained Environmental Health Inspectors spend onsite for Certified Unified Program Agencies (CUPA) and Food Services inspections to also conduct NPDES inspections. The CAP program not only utilizes highly trained Environmental Health inspectors, but also regionalizes the inspections and therefore provides multiple benefits including uniformity, reduction in total number of inspections and higher-quality inspections. The



Environmental Health HazMat inspection program administrators have indicated that they cannot accommodate the additional time required to implement the new requirements, as they would unduly cut into their ability to meet their own state-mandated inspection frequencies.

- By virtue of eliminating the CAP program, the requirements would effectively mandate a more fractured and disconnected set of inspections for the businesses, contrary to CAL EPA mandates for consolidated inspections, and in turn diluting the effectiveness of the program.

**The City requests that the language in F.3.b.(1)(a)(iii) be amended as follows prior to adoption of the Permit:**

(a) *Inspection Procedures: Inspections must include but not be limited to:*

- (i) ~~*Review of BMP implementation plans, if the site uses or is required to use such a plan;*~~
- (ii) ~~*Review of facility monitoring data, if the site monitors its runoff;*~~
- (iii) *Check for coverage under the General Industrial Permit (Notice of Intent (NOI) and/or Waste Discharge Identification Number), if applicable;*
- (iv) *Assessment of compliance with Copermittee ordinances and Copermittee issued permits related to runoff;*
- (v) *Assessment of the implementation, maintenance and effectiveness of the designated minimum and/or enhanced BMPs;*

## Retrofit

Section F.3.d. proposes a program to develop an inventory of existing developments that may be candidates for future water quality retrofits. The requirement goes on to encourage the Copermittees to collaborate with local property owners to promote urban retrofit in an effort to accelerate reductions in pollutant loading from existing urban areas.

Although laudable, this requirement has two significant problems:

- 1) The program is self-defeating as it contains no “carrots” to lure private property owners into participating in the program. Any property owner that is interested in volunteering in this effort would be required to fully comply with all provisions of the draft MS4 Permit. This includes preparation of compliance documents such as SSMPs, LID and hydromodification studies, subjecting themselves to additional regulatory scrutiny through business and BMP inspection programs required by the MS4 Permit, and otherwise incurring a myriad of costs and requirements. These costs and requirements would provide a strong disincentive to participate in a retrofit program. This program will only work if it is modified to remove these disincentives.
- 2) Current and projected economic conditions will limit the interest and participation of private property owners. Long-term economic predictions for Riverside County indicate that assessed valuations and property values will likely remain stagnant for the term of this Permit. Similarly, sales tax and unemployment are not expected to significantly improve either.

Without Co-Permittee resources to supplement private retrofit projects, the current economic disincentives for private redevelopment that are built into the program and the current impact of the economy on private property owners, there is no real value to the program.

**PREFERRED POLICY CHOICE:** The City strongly requests that this program be deleted for the aforementioned reasons.

**Alternatively**, and at minimum, the Copermittees request that the schedule for completion of the retrofitting program be revised to provide for development during the term of the Permit and submittal of the proposed program with the next ROWD. This will allow the Copermittees to defer expenditures related to development of the program until later in the Permit term when it is hoped that economic conditions and local revenues will improve. The Copermittees expect few opportunities for retrofit until the economy improves. Due to the Copermittee's limited ability to require retrofit on private property, our best opportunities for retrofit may be associated with approvals of proposed modifications of existing developments.

**ALTERNATE POLICY CHOICE:** If the Retrofit requirements are not removed, the City requests that the Regional Board modify Section F.3.d. as follows:

*Each Copermittee must develop and implement a retrofitting program that meets the requirements of this section upon submittal of the ROWD.*

### Irrigation Runoff

The Draft MS4 Permit categorically prohibits the discharge of landscape irrigation; irrigation water; lawn watering; (collectively "irrigation runoff") and non-emergency fire fighting flow runoff to the MS4. The basis for this requirement comes from the current Orange County storm water permit within the San Diego Region (NPDES No. CAS0108740), which prohibits such discharges.

Although irrigation runoff may have been shown to be a problem in South Orange County, it has **not** been shown to be causing problems in receiving waters in the Santa Margarita Region. Attachment 6 summarizes the unique conditions and other facts that warrant the restoration of irrigation runoff as a non-prohibited non-storm water discharge category. It is important to reiterate the three key points made in Attachment 6

- Unlike the watersheds in South Orange County, the Santa Margarita Region is an ephemeral watershed;
- Unlike South Orange County, the Copermittees have **not** identified landscape irrigation, irrigation water or lawn water as an actual source of pollutants or conveyance of pollutants to waters of the U.S.;
- The draft MS4 Permit requires Copermittees to eliminate irrigation runoff **TO THE MS4**, which by definition, requires elimination of discharges to streets, curbs and gutters.

As noted above, the prohibition appears to hold the Copermittees responsible for any amount of irrigation runoff discharged to the curb and gutter, *regardless* of whether or not the discharge ever reaches receiving waters or causes or contributes to the exceedance of a water quality standard. This fact, combined with the fact that irrigation runoff has not been shown to be causing impairments in the local receiving waters, will make enforcement difficult to justify with residents and will likely result in community outrage over bans on irrigation. Further the Copermittees are not water purveyors, and as such, have little control over residential irrigation runoff outside of sending code enforcement officers out to look for incidents of

excessive irrigation runoff. This is a very inefficient use of resources. In any event, the provisions as written will do little for water quality but potentially much for community outrage against water quality programs. The Copermittees do not believe this is the intent of the Board.

It is further worth noting that the Permit already contains an investigation and remediation process via Non-Storm water Action Levels (NALs) by which the Copermittees will identify the source of problematic non-storm water discharges. . Should the source be found to be a conditionally exempt non-storm water discharge, the permit requires the Copermittees to address that discharge or the entire category of discharges as appropriate. By allowing the NAL process to determine when and where conditionally exempt discharges need to be prohibited, the Copermittees are better positioned to justify any enforcement actions.

**PREFERRED POLICY CHOICE: The City requests that the Regional Board restore the conditional exemption for landscape irrigation, irrigation water and lawn watering.**

**Alternatively**, if the Regional Board nevertheless insists on prohibiting Irrigation Runoff, the Copermittees request that the draft MS4 Permit be revised to allow for irrigation runoff to be managed as a JRMP program, rather than as a prohibited discharge to the MS4. This alternative request is consistent with how the Permit currently deals with non-emergency fire fighting discharges, which was also removed from the list of non-prohibited non-storm water discharges. The Executive Officer stated that he would be open to consideration of a program for irrigation runoff that would address discharges from the MS4. This alternative approach allows the Copermittees to develop a program that focuses on irrigation runoff problem areas, as opposed to holding the Copermittees responsible for eliminating any instant case of over-irrigation to a street independent of threat to receiving water quality.

**ALTERNATIVE POLICY CHOICE: The City requests that the Regional Board clarify that irrigation runoff is only prohibited where it is discharged *from* an MS4 (into receiving waters) by adding the following language:**

***B.4. As part of the JRMP, the Copermittees must develop and implement a program to address pollutants from landscape irrigation, irrigation water and lawn watering identified as significant sources of pollutants to waters of the United States.***

### **Legal Issues**

The Copermittees have identified legal issues that raise fundamental questions regarding several of the key elements of the Tentative Order.

**The City requests review of the legal issues raised in the RCFC comment letter and revision of the Tentative Order prior to adoption.**

## Conclusion

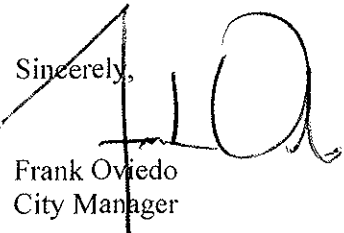
The City of Wildomar is very appreciative of the process and consideration given thus far to our concerns related to the draft permit. With very few exceptions, your staff has done an excellent job in communicating and explaining the proposed requirements. As a result of the discussions with your staff, we believe that sections of the permit have been refined in a manner that will benefit both the board and the city.

We understand that the federal regulations require that municipalities obtain a permit and renew it every 5 years. We understand that each city must develop a storm water management program designed to control the discharge of pollutants into and from the MS4 (or from being dumped directly into the MS4). We also understand that the purpose of the permit is to protect local waterbodies since storm drains typically dump their water into streams, bays, and/or the ocean without being treated.

However, at this time, we need the Board's help in meeting these requirements. **Specifically, we need time: time to fully flesh out new permit language (some that has never appeared in an MS4 permit before!) and time to allow the city (and the economy!) to recover from the devastating impacts of the recession – we simply can't afford the permit as currently drafted.**

Thank you in advance for your consideration of the issues raised in this comment letter. We look forward to the opportunity to continue working with you, your Executive Director and your staff on the refinement and implementation of this important permit.

Sincerely,



Frank Oviedo  
City Manager