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December 14, 2016

VIA EMAIL TO: sandiego@waterboards.ca.gov
Attn: Christina Arias

Christina Arias, PE
California Regional Water Quality Control Board, San Diego Region

Subject: Comment – Tentative Order No. R9-2016-0205
Reference 786088: CArias

Dear Ms. Arias:

The City of Menifee (City) would like to thank you for the opportunity to provide comments on Tentative Order No. R9-2016-0205, Investigative Order Directing the Owners and Operators of Phase I Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region to Submit Technical and Monitoring Reports Pertaining to the Control of Trash From Phase I MS4s to Ocean Waters, Inland Surface Waters, Enclosed Bays and Estuaries in the San Diego Region (Tentative Order). The City is committed to developing and implementing jurisdictional and regional programs and strategies that will improve overall water quality.

The City is located primarily within the jurisdiction of the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board), but a small portion of the City totaling less than 1.3 square miles is located within the jurisdiction of the San Diego Regional Water Quality Control Board (San Diego Regional Board). Finding 29.b. of the San Diego MS4 Permit (Order No. R9-2013-001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100) states:

“... the City of Menifee is largely regulated by the Santa Ana Water Board under Order No. R8- 2010-0033 as it may be amended or reissued, including those portions of the City of Menifee within the San Diego Water Board’s jurisdiction, upon the effective date of this Order. The agreement also requires the City of Menifee to actively participate during development and implementation of the Santa Margarita River Watershed Management Area Water Quality Improvement Plan required pursuant to this Order.”

In accordance with the above language, the City of Menifee is not included in Table 1c. at the beginning of the San Diego MS4 Permit, which lists the Riverside County Co-Permittees regulated by that order

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In contrast to Table 1c. of the San Diego MS4 Permit, Section 4 of the Tentative Order includes the City of Menifee in the list of agencies which it defines as “MS4 permittees.” The designation of the City as an MS4 permittee inaccurately implies that all of the requirements of the Tentative Order are applicable to the City. It is the City’s opinion that this designation is inconsistent with the San Diego Regional Board Designation described in Finding 29.b. of the San Diego MS4 Permit (quoted above). The City understands that both the San Diego Regional Board and the Santa Ana Regional Board will be required by the State to implement the requirements of the Trash Amendments (State Water Board Resolution No. 2015-0019) through MS4 permit reissuance or through a Water Code Section 13267 or 13383 Order. Therefore, there is the distinct possibility that the same or—even more troubling—conflicting, requirements of the Trash Amendments will be imposed on the City by both the Santa Ana Regional Board and the San Diego Regional Board, even though the City of Menifee believe it is not an MS4 discharger to the Santa Margarita River watershed. Since the State Board Trash Amendment requirements are not unique to the San Diego Region, and since the Regional Board’s two proposed compliance tracks are jurisdiction-based rather than watershed-based, designating two separate Regional Water Boards to regulate the Trash Amendments requirements within the City of Menifee has the potential to create confusion and increased burden on the City without providing water quality benefits to the Santa Margarita River Watershed.

For example, the City reports to the Santa Ana Regional Board on all of its jurisdiction-wide activities, including activities within the portion of the City in the Santa Margarita Watershed. By the San Diego Regional Board applying its monitoring and reporting requirements, and requiring the City to choose a compliance track that will be enforced via the *San Diego Regional MS4 Permit*, the San Diego Regional Board has arguably *de facto* brought Menifee under the San Diego Regional MS4 Permit without naming the City as a discharger. Proceeding in this manner simply raises more problems than it solves given the very small portion of the City within the Santa Margarita Watershed. The City will likely end up reporting on that same area to two separate Regional Water Boards under two separate MS4 permits, with potential conflicts in compliance timetables and performance standards. .

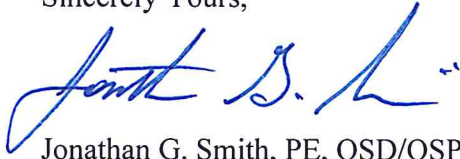
The small portion of the City within the Santa Margarita River WMA does not currently contain any Priority Land Use (PLU) areas, as defined by the Trash Amendments. Since the City of Menifee has no jurisdiction over any PLUs in the San Diego Region but does have jurisdiction over PLUs in the Santa Ana Region, it seems appropriate for only the Santa Ana Regional Board to issue the requirements of the Trash Amendments to the City on a jurisdictional basis.

Recommendation:

It is the City’s recommendation that the City of Menifee be removed from Section 4 of the draft order as indicated in Exhibit 1 attached hereto. Additionally, the Tentative Order should be amended to: (1) clarify that Menifee is not an MS4 discharger regulated by the San Diego Regional MS4 Permit; (2) specify which of the planning, implementation, and reporting requirements do not apply to the City of Menifee so as to prevent duplicative or contradicting requirements from two separate Regional Boards; 3) establish a compliance track for a City such as Menifee that does not have PLUs in the San Diego region and cannot feasibly select either Track 1 or Track 2 because the vast majority of the City falls outside the Santa Margarita Watershed.

If you have any questions or need additional information with regards to this comment letter, please contact me at 951-723-3704 or email at jsmith@cityofmenifee.us. You may also contact Yolanda Macalalad, Principal Engineer, Public Works-Engineering Department at 951-723-3718 or email at ymacalalad@cityofmenifee.us.

Sincerely Yours,



Jonathan G. Smith, PE, QSD/QSP

Public Works Director/City Engineer

Attachment: Exhibit 1 – City of Menifee Recommended Revisions to Tentative Order

Cc: Rob Johnson, City Manager

Yolanda Macalalad, Principal Engineer

Jeffrey Melching, Rutan & Tucker, LLP

Jeremy N. Jungreis, Rutan & Tucker, LLP

Tad Nakatani, DMax Engineering, Inc.

Jamie Richards, DMax Engineering, Inc.

EXHIBIT 1: CITY OF MENIFEE RECOMMENDED REVISIONS TO TENTATIVE ORDER

Persons Responsible for the Discharges of Trash. The owners and operators of Phase I MS4s are responsible for discharges of waste, including trash, from land uses and locations within their jurisdictions through their MS4s to ocean waters, inland surface waters, enclosed bays, and estuaries in the San Diego Region. In the San Diego Region, owners and operators of Phase I MS4s (herein referred to as MS4 permittees) include the following entities:

- County of Orange
 - City of Aliso Viejo
 - City of Dana Point
 - City of Laguna Beach
 - City of Laguna Hills
 - City of Laguna Niguel
 - City of Laguna Woods
- County of Riverside
 - ~~City of Menifee²~~
 - City of Murrieta
 - City of Temecula
 - City of Wildomar
- County of San Diego
 - City of Carlsbad
 - City of Chula Vista
 - City of Coronado
 - City of Del Mar
 - City of El Cajon
 - City of Encinitas
 - City of Escondido
 - City of Imperial Beach
 - City of La Mesa
 - City of Lemon Grove
 - City of Lake Forest¹
 - City of Mission Viejo
 - City of Ranch Santa Margarita
 - City of San Clemente
 - City of San Juan Capistrano
 - Orange County Flood Control District
 - Riverside County Flood Control and Water Conservation District
 - City of National City
 - City of Oceanside
 - City of Poway
 - City of San Diego
 - City of San Marcos
 - City of Santee
 - City of Solana Beach
 - City of Vista
 - San Diego County Regional Airport Authority
 - San Diego Unified Port District

¹ On February 10, 2015, the San Diego Water Board and the Santa Ana Water Board entered into an agreement, pursuant to Water Code section 13228, regarding MS4 discharges within the City of Lake Forest geographically located in the San Diego Region. According to the agreement, the City of Lake Forest must participate in preparation and implementation of the Water Quality Improvement Plan for the Aliso Creek Watershed Management Area. The requirements of the Trash Amendments will be incorporated into the Regional MS4 Permit during reissuance which may require an update to the Water Quality Improvement Plan.

~~² On October 26, 2015, the San Diego Water Board and the Santa Ana Water Board entered into an agreement, pursuant to Water Code section 13228, regarding MS4 discharges within the City of Menifee geographically located in the San Diego Region. According to the agreement, the City of Menifee must participate in preparation and implementation of the Water Quality Improvement Plan for the Santa Margarita River Watershed Management Area. The requirements of the Trash Amendments will be incorporated into the Regional MS4 Permit during reissuance which may require an update to the Water Quality Improvement Plan.~~