

May 16, 2016

**VIA E-MAIL & OVERNIGHT MAIL**

Ryan Mallory-Jones  
Attorney  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: SWRCB/OCC File A-2456(a thru l): Petitioners City of Dana Point and City of Laguna Beach's Response to Petitioners County of Orange & Orange County Flood Control District's Petition for Review, filed December 18, 2015

Dear Mr. Mallory-Jones:

Petitioners City of Dana Point and City of Laguna Beach appreciate the opportunity to respond to (and support) the Petition for Review filed by the County of Orange and the Orange County Flood Control District (collectively, the "County"). Both Dana Point and Laguna Beach (the "Cities") support and endorse the arguments raised by the County. Because the State Water Resources Control Board ("State Board") has determined it will only review the December 2015 petitions filed on the San Diego Regional Permit,<sup>1</sup> and not the petitions filed on the 2013 initial permit or first amended permit, the Cities write to clarify one procedural issue related to the State Board's review. For the first time the State Board has been squarely presented with the question of whether a Regional Board complied with Water Code sections 13000, 13263, and 13241 when it imposed numeric, zero discharge, and dry-weather runoff limits as final numeric effluent limits in the Regional Permit, where such numeric effluent limits went above and beyond the maximum extent practicable (MEP) standard required by federal law.<sup>2</sup>

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<sup>1</sup> Waste Discharge Requirements Order No. R9-2015-0100 [NPDES Permit CAS0109266], Municipal Regional Stormwater NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems Draining the Watersheds Within the San Diego Region, San Diego Regional Water Quality Control Board (hereinafter "Regional Permit").

<sup>2</sup> The County's December 2015 Petition explicitly raises the numerics issue, just as the County did in 2013. (*See* County's Petition for Review at p. 8 ["Issue of Concern #3: The Regional Board failed to provide for an alternative compliance pathway for discharge prohibitions and receiving water limitations, and went beyond the maximum extent practicable standard found in the Clean Water Act"]; County's Memorandum of Points and Authorities at pp. 1-2 [incorporating comments and evidence provided in response to the initial, amended, and final permit]; *id.*, at pp. 6-9

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The County accurately describes the interplay between federal and state law applicable here: “[t]he Clean Water Act does not mandate the MS4 dischargers strictly comply with numeric limits.” (County’s Petition for Review at p. 6.) As the Supreme Court has held, the Regional Board may require more rigorous numeric effluent limits than those required under the federal Clean Water Act *only* if it has complied with the requirements of Water Code sections 13000, 13263, and 13241. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 627.) Accordingly, both the Legislature and the Judiciary require the San Diego Regional Water Quality Control Board to “take into consideration . . . the water quality objectives *reasonably* required for that purpose . . . and the provisions of Section 13241,” which includes “[e]conomic considerations,” before it may impose strict compliance with numeric limits that exceed the requirements of the Clean Water Act. (Water Code § 13263, subd. (a), italics added; *id.*, § 13241, subd. (d).) As explained in more detail in Dana Point’s and Laguna Beach’s Petitions for Review, as well as in the Cities’ Joint Response to the San Diego Coastkeeper and Coastal Environmental Rights Foundation’s Petition for Review (filed concurrently with this letter), the Regional Board failed to comply with the applicable Water Code provisions, and the County’s petitions from 2015 and 2013 should be read to squarely raise this issue for the State Board’s resolution on review.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

RUTAN & TUCKER, LLP



Jeremy N. Jungreis

JNJ:md

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[describing that the Final Permit’s requirement for strict compliance with numeric limits exceeds that allowed under the Clean Water Act].) Both Cities raised this argument in their Petitions for Review on the Final Permit as well. (*See* Dana Point’s Mem. of Points and Authorities ISO Second Am. Petition for Review at pp. 28-32; Laguna Beach’s Mem. of Points and Authorities ISO Petition for Review at pp. 26-30.)