

EXECUTIVE OFFICER SUMMARY REPORT  
May 8, 2013

- ITEM: 9
- SUBJECT: Public Hearing (continued): Issuance of an NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Tentative Order No. R9-2013-0001, NPDES No. CAS0109266) (*Wayne Chiu, Laurie Walsh, Christina Arias*).
- PURPOSE: To receive public testimony and consider adoption of Tentative Order No. R9-2013-0001 (Tentative Order).
- RECOMMENDATION: Adoption of the revised Tentative Order No. R9-2013-0001, with Option 1 Errata or Option 2 Errata, is recommended.
- DISCUSSION: This Executive Officer Summary Report (EOSR) supplements the EOSR provided for Item 8 of the April 10 and 11, 2013 San Diego Water Board meeting. At that meeting, the San Diego Water Board opened a two-day public hearing to consider adoption of the Tentative Order which was attended by over 200 people each day. The San Diego Water Board heard extensive testimony on the Tentative Order from a large diverse group of stakeholders including USEPA, Copermitees, elected leaders, representatives from the building industry and various other industries, environmental non-governmental organizations, and other interested persons. The testimony included many requests that the San Diego Water Board postpone or extend the hearing to provide more time for parties and interested persons to review and respond to responses to comments and revisions to the Tentative Order prepared by San Diego Water Board staff.
- The testimony also covered a variety of topics on the Tentative Order pertaining to the land development requirements, the incorporation of total maximum daily loads (TMDLs), and the discharge prohibitions and receiving waters limitations. With respect to the discharge prohibitions and receiving waters limitations issue, the testimony focused

on whether or not it was appropriate to include the "Compliance Option" to meet water quality standards described in the revised Tentative Order at Provision II.B.3.c, Discharge Prohibition and Receiving Water Limitations Compliance Option. The Compliance Option provides the Copermitees with a pathway to achieve compliance with the discharge prohibitions and receiving waters limitations through development and implementation of technically sound, well supported strategies designed to attain compliance with water quality standards in receiving waters by a specified date. The Copermitees argued that the Compliance Option was too limited and asserted that that Tentative Order should instead define compliance with the discharge prohibitions and receiving waters limitations as being attained if the discharger is actively engaged in the iterative process of implementing the Water Quality Improvement Plan to comply with the Maximum Extent Practicable (MEP) discharge standard over time. Environmental groups asserted that the Compliance Option, or any other compliance option, was unnecessary and would inappropriately provide "safe harbor" to dischargers by creating a partial or complete exemption from San Diego Water Board enforcement action(s) and citizen lawsuits for violations of water quality standards.

At the conclusion of the hearing proceedings on April 11, the San Diego Water Board continued the public hearing to today's meeting to allow more time for discussion of proposed revisions to the Tentative Order. San Diego Water Board staff was directed to prepare any remaining revisions to the Tentative Order based on consideration of the testimony at the April 10 and 11 public hearing. The San Diego Water Board further directed that staff prepare two options discussed further below for the Tentative Order regarding the Compliance Option.

#### **Final Revisions to the Tentative Order**

San Diego Water Board staff is proposing final revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions include corrections for typographical errors and incorporate suggestions and clarifications offered by the stakeholders in their public testimony. The key revisions include:

- 1) A new Finding acknowledging improvements to water quality made as a result of municipal storm water programs in place since 1990;
- 2) Modifications to the treatment control best management practices (BMP) requirements to remove the requirement to retain "100 percent of" pollutants on a Priority Development Project site;
- 3) The addition of "redevelopment" road projects that may utilize USEPA Green Streets guidance for compliance;
- 4) The addition of the phrase "**and restore**" [the water quality and designated beneficial uses of waters of the state] in the introductory paragraph describing the purpose of the Water Quality Improvement Plan; and
- 5) An option for Responsible Copermittees to propose alternative monitoring procedures for beaches, creeks, and creek mouths that have been de-listed from the Clean Water Act Section 303(d) List.

#### **Option 1 and Option 2 Errata**

The above Tentative Order revisions are presented in an errata document that is formatted in the form of two options for consideration. Option 1 Errata (**Supporting Document 1**) incorporates the above "Final Revisions" but deletes the Compliance Option referenced above (Section Provision II. B.3.c of the revised Tentative Order) entirely. Option 2 Errata (**Supporting Document 2**) incorporates the above "Final Revisions" and retains the Compliance Option with some adjustments. The modifications to the Compliance Option include the addition of Areas of Special Biological Significance (ASBS), removal of the requirement for a majority concurrence from the Water Quality Improvement Consultation Panel, and clarification that Copermittees choosing the Compliance Option are doing so independent of neighboring Copermittees. A revised Tentative Order incorporating Option 1 and Option 2 Errata is contained in **Supporting Document 3**.

#### **Cost Benefit Analysis Report**

Finally, the San Diego County Copermittees requested that an additional cost benefit analysis report be added to the administrative record for the Tentative Order. The cost benefit analysis report prepared by the City of San Diego

Transportation and Storm Water Department and entitled *Meeting Water Quality Standards for San Diego's Recreational Waters: A Cost Benefit Analysis*, dated April 2011 (**Supporting Document 4**), examines the costs of compliance for the City of San Diego with TMDLs. The San Diego Water Board Chair invited designated parties wishing to submit comments on the cost benefit analysis report, to submit them to the San Diego Water Board no later than 5:00 p.m. on Friday, April 26, 2013. Copies of comments received will be included in a supplemental Executive Officer Summary Report.

SUPPORTING  
DOCUMENTS:

1. Option 1 Errata (removal of Provision II.B.3.c)
2. Option 2 Errata (retention of Provision II. B.3.c, with modifications)
3. Revised Tentative Order incorporating Option 1 and Option 2 Errata
4. City of San Diego Report, *Meeting Water Quality Standards for San Diego's Recreational Waters: A Cost Benefit Analysis* dated April 2011.

PUBLIC NOTICE:

Notice of continuance of this item was provided to interested persons via email on April 19, 2013. Notice was also provided in the Meeting Notice and Agenda for the May 8, 2013 Board meeting, which is posted on the San Diego Water Board website.