

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
DECEMBER 6, 2016**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED ORDER FOR STATE WATER BOARD REVIEW ON ITS OWN MOTION OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R9-2015-0100, AN ORDER AMENDING ORDER NO. R9-2013-0001 FOR DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DRAINING THE WATERSHEDS WITHIN THE SAN DIEGO REGION

SWRCB/OCC FILE A-2456(a) through (l)

DISCUSSION

On May 8, 2013, the San Diego Regional Water Quality Control Board (San Diego Water Board) adopted Waste Discharge Requirements Order No. R9-2013-0001 regulating MS4 discharges within the watersheds of the San Diego region. The MS4 Order was amended on November 18, 2015, by Order No. R9-2015-0100 (the San Diego MS4 Order Amendment). The twelve petitions above were timely filed, seeking review of the San Diego MS4 Order Amendment with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on March 15, 2016.

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete (i.e., by December 9, 2016 in this case). The State Water Board, however, needs additional time to review the large number of issues raised in the petition. Furthermore, the State Water Board is currently actively reviewing petitions on the Watershed Management Programs under a municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board and believes that it is appropriate to complete review of that matter prior to addressing the challenges to the San Diego MS4 Order Amendment.

When the State Water Board anticipates completing review of a petition after the 270-day period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation. Once an order is adopted addressing the Watershed Management Programs, the State Water Board will determine whether issuing an order addressing the petitions challenging the San Diego MS4 Order is appropriate. That determination or issuance of any order that may follow, however, will not occur by December 9, 2016. Therefore, the State Water Board has decided to adopt this order for review of the San Diego MS4 Order Amendment on its own motion.

POLICY ISSUE

Should the State Water Board adopt the proposed order to review the San Diego MS4 Order Amendment on its own motion?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

If the proposed order is not adopted, the San Diego Water Board would be subject to potential litigation on the San Diego MS4 Order Amendment. Adoption of the proposed order delays the prospect of litigation until the State Water Board adopts an order on the merits if it determines such an order is appropriate.

STAFF RECOMMENDATION

Adopt the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**ORDER WQ 2016-**

SAN DIEGO COASTKEEPER AND COASTAL ENVIRONMENTAL RIGHTS FOUNDATION; CITY OF RANCHO SANTA MARGARITA; CITY OF LAGUNA HILLS; COUNTY OF ORANGE AND ORANGE COUNTY FLOOD CONTROL DISTRICT; CITY OF DANA POINT; CITY OF LAGUNA BEACH; CITY OF MISSION VIEJO; CITY OF LAGUNA NIGUEL; RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, COUNTY OF RIVERSIDE, CITY OF MURRIETA, CITY OF TEMECULA, AND CITY OF WILDOMAR; CITY OF SAN CLEMENTE; CITY OF SAN JUAN CAPISTRANO; AND CITY OF ALISO VIEJO.

For Review of
Waste Discharge Requirements Order No. R9-2015-0100, an Order Amending
Order No. R9-2013-0001 for Discharges from the Municipal Separate Storm Sewer System (MS4)
Draining the Watersheds within the San Diego Region

Issued by the
San Diego Regional Water Quality Control Board

SWRCB/OCC FILE A-2456(a) through (l)

BY THE BOARD:

On May 8, 2013, the San Diego Regional Water Quality Control Board (San Diego Water Board) adopted Waste Discharge Requirements Order No. R9-2013-0001 (San Diego MS4 Order) regulating MS4 discharges within the watersheds of the San Diego region. The MS4 Order was amended on November 18, 2015, by Order No. R9-2015-0100 (San Diego MS4 Order Amendment). The seventeen petitioners listed above timely filed a total of twelve petitions seeking review of the San Diego MS4 Order Amendment with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on March 15, 2016.¹

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete (i.e., by December 9, 2016 in this case).² The State Water Board, however, needs additional time to review the large number of issues raised in the petition.

¹ Cal. Code Regs., tit. 23, § 2054.

² Cal. Code Regs., tit. 23, § 2050.5, subd. (a).

Furthermore, the State Water Board is currently actively reviewing petitions on the Watershed Management Programs under a municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board and believes that it is appropriate to complete review of that matter prior to addressing the challenges to the San Diego MS4 Order Amendment.

When the State Water Board anticipates completing review of a petition after the 270-day period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation. Once an order is adopted addressing the Watershed Management Programs, the State Water Board will determine whether issuing an order addressing issues raised in the petitions challenging the San Diego MS4 Order Amendment is appropriate. That determination or issuance of any order that may follow, however, will not occur by December 9, 2016. Therefore, the State Water Board has decided to adopt this order for review of the San Diego MS4 Order Amendment on its own motion.³

ORDER

IT IS HEREBY ORDERED that the State Water Board will review Order R9-2015-0100, an order amending Order R9-2013-0001, on its own motion.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 6, 2016.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board

³ See Wat. Code, § 13320, subd. (a); Cal. Code Regs., tit. 23, § 2050.5, subd. (c).