



Inland Empire Waterkeeper

Advocacy • Education • Restoration • Enforcement

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January 29, 2010

Via Hand Delivery: Regional Board Meeting, City of Loma Linda Chambers

California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

RE: Tentative San Bernardino County MS4 Permit Order No. R8-2010-0036 (NPDES No. CAS618036) and Tentative Riverside County MS4 Permit Order No. R8-2010-0033 (NPDES No. CAS618033)

Dear Chair Beswick and Members of the Board,

Inland Empire Waterkeeper (“Waterkeeper”) is an environmental organization with the mission to protect and enhance the water quality of the Upper Santa Ana River Watershed through programs of advocacy, education, research, restoration and enforcement. On behalf of our members, we submit the following comments on Draft Tentative Order No. R8-2009-0036, San Bernardino County Flood Control District, County of San Bernardino and Incorporated Cities of San Bernardino County, Area-Wide Urban Storm Water Runoff Management Program (“Permit”), NPDES Permit No. CAS618036. Our comments focus on technical and substantive areas of concern the modification of which would help to resolve San Bernardino County’s chronic water quality issues.

Waterkeeper has issued three previous comment letters describing our concerns with the development of the Permit on a variety of issues. One of those disputed issues revolved around the TMDLs for the Middle Santa Ana River, Lake Elsinore, Canyon Lake, and Big Bear Lake. Those sections have been significantly modified and we believe the latest iteration will likely result in achieving compliance with strict water quality standards. Waterkeeper will continue to participate in several task forces including the Middle Santa Ana River Pathogen TMDL task force and the Stormwater Quality Standards task force to help improve local waterways on behalf of our members.

However, Waterkeeper is concerned with portions of the tentative Permit and encourage the modification of sections to provide all parties with proper clarity and notice of the requirements mandated within the Permit.

Section XI.E – Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development/Significant Redevelopment

Section XI.E.1 – Waterkeeper strongly encourages the Regional Board to revise this worrisome section to reflect the importance of LID and its effective implementation. Despite the known benefits of LID techniques the San Bernardino MS4 permit hedges the responsibilities of the permittees via the alternating use of legally mandatory and permissive regulatory language. Currently, Permittees responsibilities are limited to “evaluat[ing] barriers for [the] implementation of LID.” Once those barriers have been “evaluated”, Permittees are merely encouraged, via the permissive regulatory language of “should,” consider revising those barriers to promote “green infrastructure/LID techniques.”

That permissive language is followed by mandatory language requiring the Permittee’s promotion of “green infrastructure/LID BMP implementation and the identific[ation] of applicable LID principles in project specific WQMPs.”

If adopted as written, the principal barriers to LID implementation are likely to remain upon the issuance of the San Bernardino County’s fourth MS4 permit. The coupling of a mandatory requirement for Permittees to review barriers to LID implementation with a permissive clause merely requesting that Permittees “*should consider revising*” those “ordinances, codes, building and landscape design standards” which act as those barriers fails to responsibly respond to the reality of cost-effective and environmentally proven LID technologies as a tool in water conservation and groundwater recharge in the third year of a multi-year statewide drought.

Therefore, Waterkeeper encourages the Regional Board to revise Section XI.E.1 for clarity and continuity to *require* the revision of “barriers for [the] implementation of LID” after they have been identified by the Permittees. [see ATTACHMENT A]

Section XI.E.7 – We are concerned with the dearth of information within the permit regarding the definition of “feasibility” as it relates to the implementation of LID in San Bernardino with New Development/Significant Redevelopment.

Section XI.E.7 is frequently referenced internally without providing a clear definition of what the Regional Board intends this legally significant term to mean. [see ATTACHMENT B] A finding of infeasibility is required in order for the LID BMP prioritization to operate meaningfully and effectively. For example, “feasibility” is used in Section XI.G.1, “Alternatives and In-Lieu Programs”, where it states: “Only those projects that have completed a feasibility analysis as specified in the WQMP Guidance and Template and approved by the Executive Officer shall be considered for alternatives and in-lieu programs.” Section XI.D.4, the applicable WQMP section within the Permit, refers the reader back to Section XI.E.7. These two sections, the only individual sections of the permit which could include the definition for the

term merely reference each other and provide no guidance on the Regional Board's understanding of the term.

Apart from the assertion that "feasibility" is intended to "includes technically-based" criteria and "groundwater protection assessments" the Permit fails to provide Permittees with the notice required to ensure compliance with the Permit's mandates. In sum, this section fails to provide a clear, measurable, and enforceable definition of what this analysis will consist of and how vigorous a "feasibility" analysis should be.

Previously, Waterkeeper and NRDC had encouraged the establishment of a prioritization of LID BMPs with the utilization of these principles unless their use was proven not to be "feasible" and an explanation of the finding of infeasibility was provided to defend this claim. The utilization of a LID BMP prioritization without a usable definition of "feasibility" fails to make enforceable the use LID BMP prioritization.

As such, Waterkeeper strongly encourages the Regional Board to adopt a clear, measurable, and enforceable "feasibility" definition to aid all parties in the purposeful performance of the LID BMP prioritization plan and the Permit in general.

Conclusion

Waterkeeper appreciates the effort the Regional Board and its staff have put towards developing an effective MS4 permit for San Bernardino County which effectively and efficiently addresses the environmental concerns of the watershed in a transparent and comprehensive approach.

If you would like to discuss these comments, please contact our Costa Mesa offices at (714) 850-1965, or Autumn DeWoody at our Riverside headquarters (951) 689-6842.

Sincerely,

A handwritten signature in black ink that reads "Garry Brown". The signature is written in a cursive, flowing style.

Garry Brown
Executive Director
Inland Empire Waterkeeper

Chair Beswick and Members of the Board
RWQCB Santa Ana Region
January 29, 2010

ATTACHMENT A

Riverside County's MS4 Permit Language on Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development/Significant Redevelopment

Section XII.E.4.- “Within 18 months of adoption of this Order, each Permittee shall revise, where feasible its ordinances, codes, building and landscape design standards to promote green infrastructure/LID techniques including, but not limited to, the following:” [*subsection same as San Bernardino*]

ATTACHMENT B

San Bernardino County's MS4 Permit Language on Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development / Significant Redevelopment

Section XII.E.7 – “A feasibility analysis that includes technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID.”

“i. The feasibility analysis shall include a groundwater protection assessment to determine if structural infiltration BMPs are appropriate for the site.” (*only one subsection*)