

San Diego Regional Stormwater Copermittees Regional Program Planning Subcommittee

Meeting Notes

Chairperson Jo Ann Weber

Date	Location	Agenda Summary
05/14/2015 Start time: 10:40 AM End time: 12:40 PM	County of San Diego 5560 Overland Ave, Room 171 San Diego, CA 92123	<ul style="list-style-type: none"> • Status Update on Regional MOU Amendment • Update on Prior Lawful Approval • Update on Receiving Water Limitations • PPS Meetings • Other Issues

Meeting Attendance:

Number of Voting Copermittees at this Meeting: 9

VOTING MEMBERS

<input checked="" type="checkbox"/> City of Carlsbad Jamie Wood	<input checked="" type="checkbox"/> City of El Cajon Jaime Campos	<input checked="" type="checkbox"/> City of Escondido Helen Davies	<input checked="" type="checkbox"/> City of Lemon Grove Malik Tamimi
<input checked="" type="checkbox"/> City of Oceanside Mo Lahsaie	<input checked="" type="checkbox"/> City of Poway Steve Strapac	<input type="checkbox"/> City of Vista	<input checked="" type="checkbox"/> Port of San Diego Allison Vosskuhler
<input checked="" type="checkbox"/> City of San Diego Ruth Kolb	<input checked="" type="checkbox"/> County of San Diego Jon Van Rhyn Jo Ann Weber	Ruth de la Rosa	

NON-VOTING MEMBERS/ATTENDEES

<input checked="" type="checkbox"/> City of Chula Vista Boushra Salem	<input checked="" type="checkbox"/> City of Coronado Rosanna Lacarra*	<input checked="" type="checkbox"/> City of Del Mar Kelly Barker*	<input type="checkbox"/> City of Encinitas
<input type="checkbox"/> City of Imperial Beach	<input type="checkbox"/> City of La Mesa	<input checked="" type="checkbox"/> City of National City John Quenzer*	<input checked="" type="checkbox"/> City of San Marcos Reed Thornberry
<input checked="" type="checkbox"/> City of Santee Cecilia Tipton	<input type="checkbox"/> City of Solana Beach	<input checked="" type="checkbox"/> Airport Authority Amanda Archenbold*	<input checked="" type="checkbox"/> Secretary Hilary Potter

*Indicates consultant representing copermittee

1. Status Update on Regional MOU Amendment

Jon Van Rhyn (County of San Diego) provided an update on the regional MOU amendment. The Copermittees are approximately 3 ½ months away from expiration of the current MOU. Jon received some valid comments from the City of Lemon Grove on the last iteration of the MOU amendment. There is a meeting set with the City of Lemon Grove for May 27 to discuss the comments and hopefully reach a resolution. Jon will provide another update to the PPS after that meeting.

The latest iteration of the MOU amendment includes a definition for regional principal permittee, clarification on what a representative is, and values filled into the not-to-exceed limits table. The overall issue raised by the City of Lemon Grove is in regard to applicability of the Brown Act. One of the primary purposes of the MOU modifications

was to allow watershed workgroups to use the MOU to share funds. This entailed providing clarification that watershed workgroups can adopt budgets, invoice, manage, and expend funds. Since this clarification has been made, Brown Act issues have been raised.

Jon does not anticipate the Brown Act issues will be resolved in time to get the regional MOU amendment through the necessary approval processes. If the regional MOU amendment is not in place by August 31, 2015, there will be a lapse in work until the amendment receives the last of the 21 signatures.

There are 4 places in the MOU amendment where there are working bodies: Regional Management Committee, Program Planning Subcommittee, workgroups subordinate to the RMC and PPS, and watershed workgroups. The MOU amendment includes the same language as the current MOU with regard to the RMC. It is not clear whether the Brown Act applies to the RMC, so the Copermittees voluntarily comply with the Brown Act for the RMC. The Copermittees assume that the PPS, as currently constituted and empowered, does not require Brown Act compliance. This arrangement has not been questioned to date. The MOU amendment does include a critical sentence with regard to the PPS: "The PPS may approve changes to approved annual regional work plans and shared costs budgets within approved annual budget limits." The addition of this sentence raises a Brown Act compliance issue for the City of Lemon Grove. For the workgroups subordinate to the RMC and PPS, they are all ad hoc workgroups so the Brown Act does not apply. For the watershed workgroups, they are not subordinate to the RMC or PPS, and they are provided the independence to adopt and manage their own budgets. This also raises a Brown Act compliance issue for the City of Lemon Grove.

Rosanna Lacarra (City of Coronado) commented that the budgets used by all the workgroups are approved by City Councils and other boards. Governing bodies and elected officials approve the budgets. The workgroups are not approving budgets; the workgroups are managing budgets. With this interpretation, the Brown Act would not apply. Jon will bring up this interpretation at the meeting with the City of Lemon Grove.

Jon described the Copermittees' options moving forward:

1. *Do not modify the draft MOU amendment.*

The MOU amendment cannot be executed without signatures from all 21 copermittees. Individual copermittees could decide to opt out of working bodies or not support decisions. This has not happened before but it is at the discretion of the copermittees regardless of whether they have signed the MOU. By not modifying the draft MOU amendment, there is a risk to being legally challenged on Brown Act compliance.

2. *Modify the draft MOU amendment to require PPS and watershed workgroups to comply with the Brown Act.*

This would require 72 hours noticing before all workgroup meetings, and the meetings would be open to the public.

3. *Modify specific authorities and responsibilities of the PPS and watershed workgroups to eliminate the areas of concern.*

Currently, the PPS takes all budget modifications to the RMC for approval. The draft MOU amendment would allow the PPS to make budget modifications without RMC approval so long as the budget modifications were made within the original RMC-approved overall budget limit. If the process is reverted to current status quo, then the Brown Act would not apply to the PPS.

For the watershed workgroups, there is no other management structure for passing through budget recommendations. This would have to be resolved within the watershed groups.

4. *Eliminate the independent standing of the watershed workgroups and make them subordinate to the RMC.*

By placing the watershed workgroups subordinate to the RMC and maintaining the Brown Act compliance of the RMC, the watershed workgroup meetings would not have to comply with the Brown Act. However, this would potentially give copermittees who are not involved in a watershed voting control over the work plan and budget of that watershed.

John Quenzer (City of National City) suggested if the watershed workgroups were subordinate to the RMC, then voting requirements for the RMC could be written such that on budget items, only those Copermittees financially involved in the budget item would vote. Jon Van Rhyn (County of San Diego) believes the current language allows for this, but may need minor modification.

Jo Ann Weber (County of San Diego) questioned if the Brown Act would apply to all meetings or only to meetings where budgets are voted on. John Quenzer (City of National City) suggested it would be difficult to clearly communicate which meetings were open to the public and which were closed. It would be more consistent to always have an open public meeting of the workgroup followed by a closed meeting of the workgroup. Jon Van Rhyn (County of San Diego) will check with counsel on the applicability of Brown Act only when budgets are decided.

Boushra Salem (City of Chula Vista) requested to have her counsel attend the next meeting with the City of Lemon Grove.

2. Update on Prior Lawful Approval

The first Regional Board workshop was held in April. Another workshop is scheduled for next Thursday. During the April workshop, draft language was presented by the Regional Board and by the Building Industry Association (BIA). The four Copermittees seated at the table for the workshop expressed support for the BIA language but did not advocate for either version. Laurie Walsh (Regional Board) stated at the beginning of the workshop that the Regional Board would be happy to restore the 2007 footnote if the workshop was not productive. There was a lot of back-and-forth discussion between

Marco Gonzalez (representing the NGOs) and the BIA. It is expected the Regional Board Staff will recommend revising the permit on this issue, but it is unknown if they will recommend new language or revert to the 2007 footnote. Reed Thornberry (City of San Marcos) noted that the Regional Board did push the NGOs to bring proposed language of their own since they did not agree with the other proposals.

At the April Workshop, the Copermittees opened by mentioning the timeframe issue. Adopting new language in December won't help the San Diego Copermittees. It is believed the Regional Board Staff heard the Copermittees' concern and will bring something to the next workshop to address the issue.

3. Update on Receiving Water Limitations

Jo Ann Weber (County of San Diego) explained that the City of San Diego, specifically Clem Brown, is taking the lead on this issue; however, Clem was unable to attend the meeting today.

The purpose of the receiving water limitations language is to establish an iterative pathway that provides compliance from the beginning. The L.A. petition does have bearing on this issue for the San Diego Copermittees. Generally, the State Board is staying silent on formal ruling, but on the side they are encouraging Regional Boards to use this as a possible precedent.

Counsel for the City of San Diego has reviewed proposed redlines, and meetings have been held with Orange County and Riverside County, including their attorneys. The goal is to have a consensus on the redlines from the engaged parties and forward the redlines to the Regional Board soon.

Copermittee representatives met with Regional Board Staff last Friday for more in-depth discussion. The NGOs have also met separately with Regional Board Staff.

The current proposed redlines include revisions to Provision A. Regional Board Staff have only proposed changes in Provision B, as recommended by the State Board. The State Board suggests that if the Board knows the permittee has a plan and the plan is being implemented in good faith, then the Board will not pursue legal action so no protection is necessary in Provision A. NGOs repeatedly indicated at the April workshop that they would take legal action based on other issues, not on this. Regional Board Staff will be releasing new language this afternoon. Based on comments from last Friday's meeting, they do not plan to make changes to Provision A.

The Copermittees are trying to make the linkage between Provision A and Provision B with revised language in B.3.c, where the process for determination of compliance is defined. TMDL compliance is outlined in Attachment E.

Regional Board Staff seemed agreeable to the following changes for Provision B.3.c.(1)(a) at the meeting last Friday:

- No change to part (i) – compliance with TMDLs is measured by WQBELs in Attachment E.

- Revise part (ii) to remove effluent limitations (relatable to TMDLs) and replace with numeric goals (relatable to Water Quality Improvement Plan process).
- Delete part (iii) and include it as an “or” statement at the end of part (ii).

Regional Board Staff made a significant note that if a receiving water is out of compliance but the MS4 is in compliance, then it is not the Copermittees’ problem. If the MS4 is out of compliance but the receiving water is not impaired, it is the same thing. As long as the MS4 is not contributing to an exceedance, the Copermittees are fine.

Additional proposed redlines to receiving water limitation language address the following:

- Clarifying that the Water Quality Improvement Plans are oriented toward MS4 discharges,
- Clarifying the footnote reference to the most recent 303(d) list instead of the “2002 and subsequent 303(d) lists,”
- Adding language to address the persistent and non-persistent problem, paralleling language from Provision A,
- Clarifying that Provision B.3.c.(1)(b) (now (c) in the redline) refers to wet weather, not dry weather,
- Allowing for Copermittees to be in compliance prior to a full Water Quality Improvement Plan Update rather than necessitating an update immediately after a revised Permit is adopted, and
- Consistency with the acceptance process in Provision F.

The latest redline language was emailed to the PPS prior to today’s meeting. The embedded comments provide good explanations for the revisions.

Jo Ann commented that the San Diego Regional Board would rather not contradict any direction from the USEPA. Also, the San Diego Regional Board considers non-numbered paragraphs as introductions in Provision A, not as regulations.

The overall goal is to have all three counties reach a consensus on the proposed redlines. The main points that were approved by the PPS a few weeks ago are addressed by these redlines. Additional changes are attorney driven.

4. PPS Meetings

The next PPS meeting will probably be in July. Copermittees are asked to think about efforts that should be done regionally with respect to the Riverside re-opener or other regional efforts related to WQIP Reporting, upcoming Trash Amendment or other issues.

5. Other Issues

The PPS discussed that the projected timeline from Wayne regarding the trash amendments may be too loose. San Diego is the second most populated county in the State, which makes San Diego the biggest target under the trash amendments. The Regional Board may be pressured for faster implementation. However, the trash amendments are not yet effective and this delay may play in our favor.

The Regional Board will be doing audits on cities to see how they are implementing drought restrictions via their stormwater programs. The only way the Regional Board can enforce the drought requirements mandated by the Governor is through the stormwater permits. They will be checking municipalities to see how they are enforcing the restrictions on over irrigation and other non-storm water discharges. The PPS discussed the difficulties of finding the sources of non-storm water discharges and the importance of documenting all testing, site investigations, and CCTV inspections to prove that persistent flows are not from over irrigation.

Action Item		Responsible Party	Timeline
1	Update the PPS on the Regional MOU Amendment after May 27 meeting with the City of Lemon Grove.	Jon Van Rhyne	
2	Think about efforts to be done regionally with respect to the Riverside re-opener or other efforts such as WQIP Reporting and approaches to Trash Amendments.	All Copermittees	

Next Meeting

PPS Meeting: June 11, 2015