



NOTICE AND CALL OF SPECIAL MEETING

TO: THE MEMBERS OF THE CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY, PUBLIC FINANCE AUTHORITY, PUBLIC UTILITY AUTHORITY, HOUSING AUTHORITY, PERRIS JOINT POWERS AUTHORITY AND THE PERRIS COMMUNITY ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF PERRIS AND TO THE CITY CLERK

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council, Successor Agency to the Redevelopment Agency, Public Finance Authority, Public Utility Authority, Housing Authority, Perris Joint Powers Authority and the Perris Community Economic Development Corporation is hereby called to be held on August 22, 2023, commencing at 6:00 p.m. at the City Council Chambers, 101 N. D Street, Perris, CA (corner of San Jacinto Ave. and Perris Blvd.), Perris, CA 92570

Said Special Meeting shall be for the purpose of conducting:

5. CLOSED SESSION:

- A. Conference with Legal Counsel - Potential Litigation - Government
Code Section 54956.9 (d)(2) - 1 case

Dated: August 18, 2023


Michael M. Vargas, Mayor

ATTEST:


Nancy Salazar, City Clerk



*For further information on an agenda item, please contact
the City at 101 North "D" Street, or call (951) 943-6100*

AGENDA
**SPECIAL JOINT MEETING OF THE CITY COUNCIL, SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY, PUBLIC FINANCE AUTHORITY,
PUBLIC UTILITY AUTHORITY, HOUSING AUTHORITY, PERRIS JOINT POWERS
AUTHORITY AND PERRIS COMMUNITY ECONOMIC DEVELOPMENT
CORPORATION OF THE CITY OF PERRIS**

**Tuesday, August 22, 2023
6:00 P.M.**

**City Council Chambers Conference Room
(Corner of San Jacinto and Perris Boulevard)
101 North "D" Street
Perris, California**

1. CALL TO ORDER: 6:00 P.M.

2. ROLL CALL:

Rabb, Rogers, Nava, Corona, Vargas

3. PLEDGE OF ALLEGIANCE:

Councilmember Rabb will lead the Pledge of Allegiance.

4. PUBLIC COMMENT:

5. CLOSED SESSION:

A. Conference with Legal Counsel - Potential Litigation - Government Code Section 54956.9 (d)(2) - 1 case
(See Attachment 1 for additional information relating to Closed Session Item Number 5.A. Attachment 1 is also on file in the City Clerk's Office)

6. ADJOURNMENT:

*In compliance with the Americans with Disabilities Act and Government Code Section 54953(g),
the City Council has adopted a reasonable accommodations policy to swiftly resolve*

accommodation requests. The policy can also be found on the City's website at: <https://www.cityofperris.org/home/showpublisheddocument/15875/638102339679387909>. Please contact the City Clerk's Office at (951) 943-6100 to make an accommodation request, or to obtain an electronic or printed copy of the policy.

ATTACHMENT 1

Letter-June 28, 2023-Environmental Law Group, LLP

ATTORNEYS AT LAW
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San Diego, CA 92101
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23-061

**ENVIRONMENTAL
LAW GROUP LLP
Varco & Rosenbaum**

June 28, 2023

Via U.S. Certified Mail

Michael Vargas
Mayor
City of Perris
101 North D Street
Perris, CA 92570

Clara Miramontes
City Manager
City of Perris
135 North D Street
Perris, CA 92570



Rec'd by em
8/20/23

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (Clean Water Act)

Dear Mr. Vargas and Ms. Miramontes:

Varco & Rosenbaum Environmental Law Group LLP represents Joe McKay and JM Realty Group Inc. (collectively, "JM"), the owner of property located at APN 302-060-041, Perris 92571 (the "Property"). This Notice is provided on behalf of JM in regard to violations of the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, that JM alleges are occurring through the ownership and/or operation of portions of the municipal separate storm water sewer system ("MS4") in the City of Perris.

JM hereby places the City of Perris ("City"), as owner and operator of portions of the municipal separate storm water system and Co-Permittee and Discharger under National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS 618033 ("MS4 Permit"), on notice that following the expiration of sixty (60) days from the date of this Notice, JM will be entitled under CWA § 505, 33 U.S.C. § 1365(a), to bring suit in the United States District Court against the City for continuing violations of effluent standards or limitations pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Santa Ana Region, Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan"), as the result of violation(s) of the MS4 Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured to prohibit all discharges of pollutants unless excepted by certain enumerated statutory provisions. One such exception authorizes a discharger, who has been issued or enrolled under a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated

pollutants at certain levels subject to specified conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. JM alleges the City is in violation of the CWA by violating the terms of the MS4 Permit.

The CWA provides that the authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which a local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted such authorization to the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City’s operation of its storm water infrastructure in the region at issue in this Notice is the Regional Water Quality Control Board for the Santa Ana Region (“RWQCB”).

While delegating to Regional Boards to administer the NPDES permitting scheme, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be performed by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). JM is exercising this citizen enforcement to ensure compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

JM contends the order being violated is NPDES Permit No. CAS 618033, the MS4 Permit. JM has identified specific violations of the MS4 Permit including 1) urban runoff discharges causing or contributing to exceedances of Receiving Water Quality Standards for surface or ground waters (§ VII.A.), 2) failure to implement Best Management Practices (“BMP”) to reduce pollutants in urban runoff in accordance with the Drainage Area Management Plan (“DAMP”) (§ VII.B.), 3) failure to ensure that runoff from development projects it approves does not cause nuisance to adjoining downstream properties (§ XII.A.), 4) failure to provide a report to the Executive Officer describing the BMPs that are currently being and will be implemented to prevent or reduce those pollutants causing or contributing to the exceedance of applicable Receiving Water Quality Standards (§ VII.D.), 5) failure to submit annual reports (§ IV.B.2.), 6) failure to annually review facilities and activities (§ XIV.A.), and failure to submit valid Annual Reports (§ XIX).

2. The Activity Alleged to Constitute a Violation

JM contends that from August 2020 to present, the City has violated the Act as described in this Notice. JM contends these violations are continuing or have a likelihood of occurring in the future.

Many of these violations are the result of the City's failure to implement adequate storm drain infrastructure at and near the Property, including but not limited to the City's failure to construct the Line E storm drain project pursuant to the City's Capital Improvement Program ("CIP"), which allocated funds specifically for the construction of Line E in 2019. Currently, the drain pipe at the southeast corner of the Property, adjacent to the Blue Oasis Car Wash at 34 Ramona Expressway, is incapable of draining the stormwater flow rate associated with only 0.1 inches of precipitation and is at perpetual risk of becoming plugged during every storm event. Consequently, stormwater flows onto both the Property and Ramona Expressway. This flooding of the Property and Ramona Expressway, and the resulting nutrient and sediment contamination that discharges to Lake Elsinore, is a direct result of the City's failure to construct Line E. As explained below, the City actions (and inaction) constitute violations of the MS4 Permit and the Clean Water Act.

1. Section V.E. Discharges of Urban Runoff Causing or Contributing to a Condition of Pollution, Contamination, or Nuisance.

The City's MS4 collects, channels, and transports storm water and effluent at, around, and to the Property. A concrete brow ditch runs along the southern border of the Property and connects to culverts at the southwest corner of the Property and near the southeast corner of the Property, which convey storm water flows from off-site through the Property and into the Perris Valley Channel. The Perris Valley Channel drains into the San Jacinto River in the San Jacinto River Watershed, which terminates in Lake Elsinore.

Flows from the culvert at the southwest corner of the Property enter the Property uncontrolled due to the City's failure to construct the Line E storm drain project pursuant to the CIP. As a result, pools have formed on the Property, including a large pool at the southeast corner of the Property which is a potential water of the State.

JM contends that the discharges of urban runoff to and through the Property have caused or contributed to a condition of pollution, contamination, or nuisance by impacting the San Jacinto River Watershed and the potential water of the State on the Property.

2. Section VII. Receiving Water Limitations.

Each Permittee is required to implement control measures and other actions to reduce pollutants in urban runoff in order to prevent exceedances of Receiving Water Quality Standards for surface and groundwaters. (MS4 Permit § VII.A-C.) If exceedances of Water

Quality Standards persist notwithstanding implementation of the DAMP and other requirements, Permittees shall submit a report to the Executive Officer describing BMPs that are currently being implemented and the additional BMPs that will be implemented to prevent or reduce those pollutants that are causing or contributing to the exceedance of the applicable Receiving Water Quality Standards. (MS4 Permit § VII.D.1.a.)

JM contends that the City has failed to satisfy these requirements because it has failed to implement control measures or other BMPs, including but not limited to Line E, to prevent or reduce the pollutants flowing to and through the Property that have contaminated the San Jacinto River Watershed as well as the potential water of the State on the Property.

3. Section XII.A. New Development Requirements.

Each Permittee shall ensure that appropriate BMPs to reduce erosion and mitigate Hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP. (MS4 Permit § XII.A.5.) Each Permittee shall ensure, consistent with the MEP standard, that runoff from development projects it approves, does not cause nuisance to adjoining downstream properties and stream channels. (MS4 Permit § XII.A.6.)

By failing to construct Line E, thereby allowing runoff from development projects upstream of the Property to cause nuisance to the Property, the City has failed to implement appropriate BMPs. JM therefore alleges that the City has violated § XII.A. of the MS4 Permit.

4. Section XIV. Permittee Facilities and Activities.

The Permittees must annually review their activities and facilities to determine the need for revisions to Section 5 of the DAMP and to their Local Implementation Plan ("LIP"). The Annual Report shall include the findings of this review and a schedule for any needed revisions. (MS4 Permit § XIV.A.) As of the date of this Notice, the last document referencing the City's DAMP or LIP is the 2019-2020 Annual Report, available on the SWRCB's Stormwater Multiple Application & Report Tracking System ("SMARTS"). JM therefore alleges that the City failed to annually review their activities and facilities to determine the need for revisions to the DAMP and the City's LIP pursuant to § XIV. of the MS4 Permit for the past two years.

5. Section XIX. Monitoring and Reporting Program; and Appendix 3, Section IV.B. Annual Report/Local Implementation Plan Development and Submission.

The Permittees must comply with Monitoring and Reporting Program No. R8-2010-0033, Appendix 3, and any revisions thereto, which are hereby made a part of this Order. (MS4 Permit § XIX.) The Permittees shall submit an Annual Report to the Executive Officer and to the Regional Administrator of the USEPA, Region 9, no later than

November 30th, of each year. (MS4 Permit, Appendix 3 § IV.B.2.) As of the date of this Notice, the last Annual Report available on SMARTS is for the 2019-2020 reporting year. JM therefore alleges that the City failed to submit valid Annual Reports pursuant to § XIX. of the MS4 Permit for the 2020/2021 and 2021/2022 reporting years.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of Perris, as owner and operator of portions of the MS4, as well as those City employees and City contractors responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The City's violations of the MS4 Permit and the CWA have occurred at developments upstream from the Property, at the Property, and along Ramona Expressway at and near its intersection with North Perris Blvd. The location or locations of various violations alleged in this Notice are also identified in records created and/or maintained by or for the City which relate to its ownership and operation of portions of the MS4.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is August 2020 through the present. This Notice also includes all violations of the CWA by the City which occur during and after this Notice period up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The person and entity giving notice are Joe McKay, a California resident, and JM Realty Group Inc., a corporation duly organized under the laws of the State of California with its headquarters and main office is located in Ontario. Their mailing address is 3535 Inland Empire Blvd., Ontario, CA 91764, and their telephone number is (714) 313-1452. Both may be contacted through their attorneys, Varco & Rosenbaum Environmental Law Group ("ELG"). JM has retained ELG with respect to the issues raised in this Notice, and all communications related to this Notice should be directed to counsel identified below:

S. Wayne Rosenbaum
Varco & Rosenbaum Environmental Law Group LLP
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CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. JM therefore encourages the City to contact counsel for JM shortly after receipt of this Notice to initiate a discussion regarding the allegations detailed herein and avenues to resolution of JM's claims under the CWA. In the absence of productive discussions to resolve this dispute, JM will have cause to file a citizen's suit pursuant to CWA § 505(a) when the 60-day notice period ends.

Yours very truly,

VARCO & ROSENBAUM
ENVIRONMENTAL LAW GROUP LLP



S. Wayne Rosenbaum

SWR:gro

cc:

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