



## **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 **October 24, 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.**

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
- B. Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(d)(1); 3 cases:
  - 1. City of Menifee v. City of Perris CVRI2203040
  - 2. Panattoni Development Company, Inc. v. City of Perris CVRI2203028
  - 3. City of Perris v. City of Menifee, et al CVR12303456

Dated: **October 23, 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, October 24, 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)
  - B. Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(d)(1); 3 cases:
    1. City of Menifee v. City of Perris CVRI2203040

2. Panattoni Development Company, Inc. v. City of Perris  
CVRI2203028
3. City of Perris v. City of Menifee, et al CVR12303456

**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

23-061



ATTORNEYS AT LAW  
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SUZANNE R. VARCO  
svarco@envirolawyer.com

S.WAYNE ROSENBAUM  
swr@envirolawyer.com

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  
lpc/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 30<sup>th</sup>, 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  
225 Broadway, Suite 1900  
San Diego, CA 92101  
Tel. (619) 231-5858  
Email: swr@envirolawyer.com

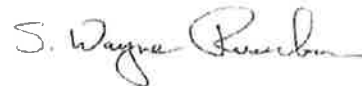
Mr. Michael Vargas & Ms. Clara Miramontes  
June 28, 2023  
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## CONCLUSION

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:

Eileen Sobeck  
Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
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Washington, D.C. 20460

Martha Guzman  
Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

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Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Jayne Joy  
Executive Officer  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

# ATTACHMENT 1

City's Response to Notice

August 27, 2023

S. Wayne Rosenbaum  
Environmental Law Group LLP  
Varco & Rosenbaum  
225 Broadway, Suite 1900  
San Diego, CA 92101

[swr@envirolawyer.com](mailto:swr@envirolawyer.com)

Re: Response to Letter threatening Clean Water Act litigation

Dear Mr. Rosenbaum:

Our office represents the City of Perris (the “City”), as the City Attorney. On June 30, 2023, the City received your correspondence on behalf of Joe McKay and JM Realty Group Inc. (“JM”) dated June 28, 2023, purporting to allege that the City failed to comply with the terms and conditions of its municipal separate storm sewer system (“MS4”) permit, Order No. R8-2010-0033, National Pollutant Discharge Elimination System Permit No. CAS 618033 (“NPDES Permit”), in violation of the Clean Water Act (“CWA”). The purpose of this correspondence is to respond to your allegations.

#### **I. BACKGROUND – CLEAN WATER ACT**

The CWA regulates the discharge of regulated pollutants into Waters of the United States (“WOTUS”). Under the statute, discharge of regulated pollutants into WOTUS is prohibited except where a statutory exception applies. (See 33 U.S.C. § 1311(a).) One such exception exists where a permit has been issued under the National Pollutant Discharge Elimination System, authorizing the permittee to discharge designated pollutants subject to certain conditions. (See 33 U.S.C. § 1342.) One such NPDES permit is a municipal separate storm sewer system (“MS4”) permit.

In 2010, the Santa Ana Regional Water Quality Control Board (SARWQCB) issued the NPDES Permit at issue here, which is still in effect for cities in the area, such as Perris. If a city is in compliance with its NPDES Permit, this is a defense to a lawsuit under the CWA.

#### **II. BACKGROUND ON THE BEST MANAGEMENT PRACTICES (“BMPS”) AND WATER QUALITY MANAGEMENT PLAN (“WQMP”) IMPOSED ON JM’S APPROVALS**

A Specific Plan Amendment, Development Plan Review and rezoning application (referred to herein as “Application”) by JM was considered by the Planning Commission and City Council.

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August 27, 2023  
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The Planning Commission recommended denial in December 2022. In response, JM proposed that they would build approximately 1,580 lineal feet of Line E of the Perris Storm Drain system as a community benefit. JM claimed this would be a community benefit. JM also prepared a WQMP, required by the City and by the NPDES Permit, and JM's engineer stated in the WQMP:

"In terms of offsite areas, there is a sliver of existing offsite run-on expected from the northeasterly edge of the project boundary; however, this existing pervious area is considered relatively small. Separately there is an existing headwall near the northwesterly corner of the site; however, based on the survey information, this structure serves as inlet and connects to an existing 18 inch corrugated metal pipe that discharge westerly into an existing 96-inch MDP facility in Indian Avenue. Based on the existing topography and site visit, very minor drainage is getting to this existing pipe."

Thereafter, the Application was approved by Council in January 2023 subject to a number of conditions of approval, one of which is as follows:

27. Preliminary Water Quality Management Plan (Pre-WQMP for all Tract Maps). A Preliminary WQMP was prepared for the proposed project site. All Pre-WQMPs were determined to be in substantial compliance, in concept, with the Riverside County 2012 WQMP Manual requirements. The following two conditions apply:

a. The development shall be subject to all provisions of City of Perris Ordinance Number 1194, which establishes stormwater/urban runoff management and discharge controls to improve water quality and comply with federal regulations, and any subsequent amendments, revisions, or ordinances pertaining thereto.

b. The structural [best management practices] BMPs selected for this project have been approved in concept. The owner shall submit a final WQMP including plans and details providing the elevations, slopes, and other details for the proposed structural BMPs including the bio-retention basins and self-retaining landscape. The Public Works Department shall review and approve the final WQMP text, plans and details.

JM's WQMP included the following BMPs: Underground Detention System, three BioClean Modular Wetlands Units, CPS screens, self-retaining landscape and covered trash enclosures.

### **III. JM'S NOTICE OF INTENT TO FILE SUIT**

On or about June 28, 2023, JM served a "Notice of Violations and Intent to File Suit" ("NOV"). The City held meetings with you and JM including one on July 14, 2023.

S. Wayne Rosenbaum, Esq.  
August 27, 2023  
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The NOV alleges, without citing any specifics or evidence, that the City has not been filing annual reports required by its NPDES Permit since a report filed for 2019-2020. In fact, the City has filed all annual reports required, as further discussed herein.

The NOV also alleges, without any evidence or specifics, that the City has violated its NPDES Permit since August of 2020 and discharged pollutants into a water of the U.S., namely Lake Elsinore via Perris Valley Channel.

Your letter states many of its allegations are based on “the City’s” [alleged] “failure to implement adequate storm drain infrastructure at and near the JM 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.” However, nowhere does the City’s NPDES Permit require that the City build Line E.

You allege that JM’s undeveloped Property floods during storms and that JM’s Property is a “potential water of the State”.<sup>1</sup> However you have not identified any rivers, streams, lakes, wetlands, or vernal pools on your Property, and JM sought to have a parcel on JM’s Property rezoned from Commercial (C) Zone to Light Industrial (LI), which would be a surprising move if JM’s Property contained any such aquatic sites that it sought to protect.

Nor have you identified any specific constituents or exceedances, locations or dates.<sup>2</sup> Your letter vaguely states violations occurred “August 2020 through the present”.

Moreover, to the extent JM alleges a failure to build a flood control basin, this would seem to be within the jurisdiction of Riverside County Flood Control & Conservation District.

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<sup>1</sup> JM’s NOV states: “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.” (NOV p. 3.)

<sup>2</sup> Note the permit also states “certain activities that generate Pollutants present in Urban Runoff are beyond the ability of the Permittees to eliminate. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear, residues from lawful application of pesticides, nutrient runoff from agricultural activities, leaching of naturally occurring minerals from local geography. Urban Runoff does not include background Pollutant loads or naturally occurring flows.” (App. 4, p. 19.)

S. Wayne Rosenbaum, Esq.  
August 27, 2023  
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**JM's NOV states that the following "Specified Standard, Limitation, or Order[s]" are alleged to have been violated:**

**1) JM ALLEGES "URBAN RUNOFF DISCHARGES CAUSING OR CONTRIBUTING TO EXCEEDANCES OF RECEIVING WATER QUALITY STANDARDS FOR SURFACE OR GROUND WATERS (§ VII.A.)".**

Section VII.A states: Urban Runoff discharges from the Permittees' MS4 shall not cause or contribute to exceedances of Receiving Water Quality Standards (as defined by Beneficial Uses and Water Quality Objectives in Chapter 4 of the Basin Plan) for surface waters or ground waters.

The NOV alleges, without supporting facts, that the City has violated its permit since August of 2020 and discharged pollutants into a water of the U.S., namely Lake Elsinore via Perris Valley Channel [which we note is owned and maintained by Riverside County Flood Control and Water Conservation District].<sup>3</sup> The NOV states:

"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." (NOV p. 3.)

The NOV does not identify any particular pollutants, but alleges 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. . . ." (NOV p. 3.)

In the "location" section of JM's NOV, JM vaguely identifies: "developments upstream from the Property, at the Property, and along Ramona Expressway at and near its intersection with North Perris Blvd." The NOV contends flood waters gather on the JM property and contends as follows:

"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

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<sup>3</sup> Under the MS4 Permit, permittees select one receiving water location in each of the 2 major watersheds to sample stormwater. There are two outfall locations within the City that are sampled by the County. These two locations have flows from the greater watershed, not just the City. The SARWQCB has not found the City in violation of its NPDES permit as a result of any monitoring or sampling or as a result of any other MS4 activities. Under the current Permit, the City already participates in the "TMDL Task Force" and pays for treatment in Canyon Lake and Lake Elsinore.



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. . . ."<sup>4</sup>

The roadway on the western boundary of the site is higher than the Property, and there is no run-on from that side or the north.

The Riverside County Flood Control Water Quality Management Plan, followed by the City, provides all treatment control BMPs for a single priority development project must collectively be sized to comply with the following numeric sizing criteria:

- a. Volume based treatment control BMPs must be designed to mitigate (infiltrate, filter or treat) the remaining portion of the design capture volume (DCV) that was not retained and/or treated with LID BMPs; or
- b. Flow-based Treatment Control BMPs must be designed to mitigate (filter or treat) either: i. the maximum flow rate of runoff produced from a rainfall intensity of .1 inch of rainfall per hour, for each hour of a storm event, or ii. the maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of 2.

In Riverside County, to simplify design calculations (i.e., to avoid the need to perform continuous simulation for design of all BMPs), the 85th percentile 24-hour storm event is taken as the type of storm to design WQMPs for. If a flow-based BMP is used, the rain intensity is presumed .2 inches, not the .1 inch of rain that JM discusses. Thus, the BMPs in the City are designed in conformity with these requirements, and JM's NOV applies the wrong standard. The applicable development projects, in the presumed off-site hydrologic subarea, have been required to meet the DCV<sup>5</sup> requirement as is required in the NPDES Permit.

Finally, JM makes the novel argument that the City has created a "potential" water of the State on JM's property (described as "a large pool" on page 3) by failing to construct "Line E". This puts the cart before the horse and is a circular argument, essentially arguing that the "water body" allegedly being "polluted" is a new pool of water on JM's Property created by City's alleged

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<sup>4</sup> Note: Ramona Expressway was built and is maintained by the County, and additionally, CalTrans has its own NPDES permit to protect against pollutants entering a WOTUS via freeways.

<sup>5</sup> Design capture volume ("DCV") refers to a volume of stormwater runoff produced from an 85th percentile, 24-hour storm event.

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violation of the CWA. The alleged “pool” is clearly not a Water of the State, and JM’s property is clearly not a WOTUS. (*Sackett v. EPA* (2023) 598 U.S. ----, 143 S.Ct. 1322, 1336.)

**2) JM ALLEGES “FAILURE TO IMPLEMENT BEST MANAGEMENT PRACTICES (“BMP”) TO REDUCE POLLUTANTS IN URBAN RUNOFF IN ACCORDANCE WITH THE DRAINAGE AREA MANAGEMENT PLAN (“DAMP”) (§ VII.B.)”.**

Section VII.B of the NPDES Permit states: The DAMP and its components including the Local Implementation Plans (“LIPs”) must be designed to achieve compliance with the Receiving Water Limitations associated with discharges of Urban Runoff to the MEP. It is expected that compliance with Receiving Water Limitations will be achieved through an iterative process and the application of increasingly more effective BMPs.

JM’s NOV states:

“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.) . . .

“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.” (NOV p. 4.)

However, the City submits an annual report to the SARWQCB reviewing and describing BMPs. The City also participates in the Canyon Lake/Lake Elsinore TMDL Task Force since its inception in the mid-1990s.<sup>6</sup> In addition, the City’s Municipal Code requires developers implement such BMPs. Since 1996, , the City has required compliance with the Supplement A to the Riverside County Drainage Area Management Plans, New Development Guidelines. Since 2004, the City utilizes the successive Riverside County Water Quality Management Plans for Urban Runoff, Santa Ana River/Santa Margarita River Regions. The City’s has WQMP requirements for developments. City also follows the DAMP and LIP which are updated regularly as appropriate.

For example, there are at least 17 WQMPs containing BMPs approved by the City and completed in the area identified as “up-watershed” of the site. The WQMP criteria addresses runoff for the 85th percentile 24-hour storm event. In fact, JM itself had an engineer prepare a WQMP for its

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<sup>6</sup> The task force and Comprehensive Nutrient Reduction Plan (“CNRP”), in which the City participates, provides an alternative compliance pathway to urban the Waste Load Allocation for nutrients. (See NPDES Permit p. 67, Section 6.D.2(e).)

Property which has BMPs and states in part:

“In terms of offsite areas, there is a sliver of existing offsite run-on expected from the northeasterly edge of the project boundary; however, this existing pervious area is considered relatively small. Separately there is an existing headwall near the northwesterly corner of the site; however, based on the survey information, this structure serves as inlet and connects to an existing 18 inch corrugated metal pipe that discharge westerly into an existing 96-inch MDP facility in Indian Avenue. Based on the existing topography and site visit, very minor drainage is getting to this existing pipe.”

JM alleges the City must ensure appropriate BMPs to reduce erosion and mitigate Hydromodification be included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings. As is well documented by Riverside County Flood Control District and approved by the SARWQCB, most of Perris, including this Property, is exempt from the Hydrologic Conditions of Concern criteria and exempt from hydromodification requirements, which are referenced by JM. In any event, the City did require DCV-sized based BMPs as part of JM’s WQMP.

JM’s planned BMPs included an underground detention chamber system, three bioretention basins and planting self-retaining landscape. BMPs and a WQMP were part of the City’s conditions of approval issued to JM.

**3) JM ALLEGES A “FAILURE TO ENSURE THAT RUNOFF FROM DEVELOPMENT PROJECTS IT APPROVES DOES NOT CAUSE NUISANCE TO ADJOINING DOWNSTREAM PROPERTIES (§ XII.A.)”.**

Nuisance, under the NPDES Permit and under the Porter-Cologne Act is defined as: anything which meets all of the following requirements: 1 is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, 2 affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and 3 occurs during or as a result of the treatment or disposal of Wastes.

“Wastes” is defined therein as: sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, or for purposes of, disposal. (Water Code § 13050(d).)

JM’s complaints are apparently about flooding of JM’s undeveloped property, for which JM has not installed drainage, during rains. JM has not offered any facts to demonstrate that waste of

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human, animal, manufacturing or processing operation origin is entering a WOTUS.

There are at least 17 WQMPs containing BMPs approved by the City and completed “up-watershed” of the site.<sup>7</sup> In addition, the City submits an annual report to the Regional Board reviewing and describing BMPs. The City’s Municipal Code also requires developers implement such BMPs. Since 1996, , the City has required compliance with the Supplement A to the Riverside County Drainage Area Management Plans, New Development Guidelines. Since 2004, the City utilizes the Riverside County Water Quality Management Plans for Urban Runoff, Santa Ana River/Santa Margarita River Regions. The City’s has WQMP requirements for developments. City also follows the DAMP and LIP which are updated regularly as appropriate.

JM proposed that JM build a section of Line E as part of the Conditions of Approval. This was JM’s idea and proposal, and the City relied upon JM’s proposal in approving their Application. Now JM argues that the failure of the City to build this section of Line E constitutes a Clean Water Act violation because water is allegedly not draining properly on or from JM’s as-yet undeveloped private property.

**4) JM ALLEGES A “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.)”.**

Section 4 of the NOV is entitled differently on page 4 than on page 2 Section 1 Item 4. We use the title from page 2 Section 1 Item 4.

The NOV alleges, without citing any specifics or evidence, that the City has not filed required annual reports or discussions of updates to its DAMP or its Local Implementation Plan (“LIP”) since 2019-2020. In fact, the City has filed all required annual reports, including the ones from 2020-2021 and 2021-2022 that JM claims are missing. The 2020-2021 report was submitted on September 16, 2021. The 2021-2022 report was submitted on October 20, 2022. It is noted that the applicable Riverside County municipalities (Co-Permittees) submit to Riverside County Flood Control (as the Principal Permittee) the Annual Reports. The Principal Permittee then submits them to the SARWQCB. All of those reports discuss updates to the DAMP and the LIP. The 2021-2022 report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 18 and 21 to 22. The 2020-2021 annual report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 17, 20 to 21 and 25.

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<sup>7</sup> If JM believes a neighboring property has violated its WQMP’s BMPs or the City’s Municipal Code, JM should identify the property and the violation so that the City can investigate and, if warranted, issue notices of violation to the properties.

JM cites the NPDES Permit Section VII.D. VII.D states in pertinent part:

If exceedances of Water Quality Standards persist notwithstanding implementation of the DAMP and other requirements of this Order, the Permittees shall assure compliance with Sections V.B and VII.A of this Order, by complying with the following procedure:

1. Upon a determination by either the Permittees or the Executive Officer that the discharges from the MS4 are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittees shall:

a. Promptly, within two (2) working days, provide oral or e-mail and thereafter submit a report to the Executive Officer that describes the 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.

b. The report may be incorporated in the annual update to the DAMP, unless the Executive Officer directs an earlier submittal.

c. The report shall include an implementation schedule.

d. The Executive Officer may require modifications to the report.

e. Submit any modifications to the report required by the Executive Officer within 30 days of notification. [Emphasis added.]

JM has not identified any exceedances or any sources of regulated constituents or pollutants that entered a WOTUS. There are no dates, incidents, locations or pollutants identified in the NOV aside from vague allegations of flooding during rain from "August 2020 to the present" and the assumption that water contained a regulated pollutant. Nor is there an allegation or facts to support that there were exceedances of Water Quality Standards that "persisted notwithstanding implementation of the DAMP and other requirements of the permit". Nor has there been a determination "by Permittees or the Executive Officer that discharges from the MS4 are causing or contributing to an exceedance of an applicable Water Quality Standard".

#### **5) JM ALLEGES A "FAILURE TO SUBMIT ANNUAL REPORTS (§ IV.B.2.)"**

Section 5 is entitled differently on page 4 than on page 2. We use the title from page 2, Paragraph 1, Item 5.

Section IV.B. of the Permit states in pertinent part, "Within 12 months of approval of the LIP template, and amendments thereof, by the Executive Officer, each Permittee shall complete an LIP, in conformance with the LIP Template." The City has completed such an LIP.

There is no Section IV.B.2. However, Appendix 3, Section IV.B.2 requires an annual report, which the City has annually filed. Your letter states the last annual report filed was the 2019-2020

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report. This is not correct. The 2020-2021 report was filed on September 16, 2021. The 2021-2022 report was filed on October 20, 2022.

The 2021-2022 report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 18 and 21 to 22. The 2020-2021 annual report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 17, 20 to 21 and 25.

**6) FAILURE TO ANNUALLY REVIEW FACILITIES AND ACTIVITIES (§ XIV.A.), AND FAILURE TO SUBMIT VALID ANNUAL REPORTS (§ XIX).**

JM's NOV purports to allege violations of Permit Section XIV and XIX in Sections 4 and 5 on page 4 of the NOV and in Section 6 on page 2 of the NOV. Section XIV.A, which you cite, states in pertinent part:

Each Permittee shall continue to implement measures to ensure that their facilities and activities do not cause or contribute to a Pollution or Nuisance in Receiving Waters, as defined in Section 13050 of the Water Code. The Permittees must annually review their activities and facilities to determine the need for revisions to Section 5 of the DAMP and to their LIP. The Annual Report shall include the findings of this review and a schedule for any needed revisions. The Permittees should continue to use Facility Pollution Prevention Plans as noted in Chapter 5 of the DAMP to ensure that the Permittee facilities are not sources of Pollutants to the Waters of the US to the MEP.<sup>8</sup>

Section XIX, which you cite, states in pertinent part: "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. The Executive Officer is hereby authorized to revise the Monitoring and Reporting Program in a manner consistent with this Order to allow the Permittees to participate in regional, statewide, national or other monitoring and reporting programs in lieu of or in addition to Monitoring and Reporting Program No. R8-2010-0033. In addition, dates for completion and implementation of certain program elements and reporting requirements are outlined in the Monitoring and Reporting Program." The City complies with such a program, and you have not identified any failure to comply with such a program.

Your letter states the last time facilities and activities were reviewed and the last annual report filed was the 2019-2020 report. This is not correct. The 2020-2021 report was submitted on September 16, 2021. The 2021-2022 report was submitted on October 20, 2022. These reports

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<sup>8</sup> It is noted that the focus of this NPDES Permit section and the referenced plans apply to municipal building properties, such as a City Hall and any City yard.

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also review facilities and activities. They discuss whether updates are needed and, if so, when.

Your letter alleges that permittees must annually review their activities and facilities to determine the need for revisions to Section 5 of the DAMP and to the LIP, and that the annual report must include such findings. You state the last time this was done was in the 2019-2020 annual report. This is not correct. In fact, the 2021-2022 report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 18 and 21 to 22. The 2020-2021 annual report discusses LIP updates at Exhibit 5, and discusses DAMP updates at pages 17, 20 to 21 and 25.

Simply put, the City is in compliance with its NPDES Permit. The City requires BMPs and WQMPs for all new developments, as JM is well-aware since they are required for JM's own project.

Be advised this letter is not intended to be a complete or final statement of the City's rights or factual and legal contentions. The City does not waive any rights and specifically reserves all rights relating to the substance of this letter. Please do not interpret the lack of any response to any of your allegations as any expressed or implied agreement with, or acceptance of, those claims. Please contact me if you wish to discuss the foregoing.

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