

23801 Calabasas Road Suite 1015 Calabasas, CA 91302 818.704.0195 Fax 818.704.4729

## Green, de Bortnowsky & Quintanilla, LLP

Attorneys at Law

www.gdqlaw.com

35-325 Date Palm Drive Suite 202 Cathedral City, CA 92234 760.770.0873 Fax 760.770.1724

Direct E-mail Address: cgreen@gdqlaw.com

Reply to: Cathedral City Office

June 23, 2009

## CITY OF CATHEDRAL CITY OFFICE OF THE CITY ATTORNEY

Robert Purdue, Executive Officer Colorado River Basin Regional Water Quality Control Board 73-720 Fred Waring Drive, Suite 100 Palm Desert, CA 92260

Re: Whitewater Region MS4 Permit - Determination of Legal Authority

Dear Mr. Purdue:

In accordance with Section E.3 of the National Pollutant Discharge Elimination System (MS4) Permit No. CAS617002 (Order No. R7-2008-0001), the Riverside County Flood Control and Water Conservation District ("District") has requested the City of Cathedral City certify that it has adequate legal authority to implement and enforce, at a minimum, the storm sewer system requirements contained in 40 CFR 122.26(d)(2)(i)(A-F), which are as follows:

- (A) The authority to control through ordinance, permit, contract, order or similar means, the contribution of Pollutants to the MS4 (municipal separate storm sewer) by Urban Runoff associated with industrial activity and the quality of Urban Runoff from sites of industrial activity; <sup>1</sup>
- (B) The authority to prohibit through ordinance, order or similar means, illicit discharges to the MS4;
- (C) The authority to control through ordinance, order or similar means the discharge to the MS4 of spills, dumping or disposal of materials or other Urban Runoff;
- (D) The authority to control through interagency agreements among Permittees the contribution of Pollutants from one portion of the MS4 to another portion of the MS4;

<sup>&</sup>lt;sup>1</sup> The capitalized terms shall have the same meaning as those words are defined in the MS4 (Order No. R7-2008-0001).

- (E) The authority to require compliance with conditions in Permittee ordinances, permits, contracts or orders consistent with the Enforcement and Compliance Strategy describe in Section 1.7 of the SWMP; and
- (F) The authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with the MS4 Permit conditions including the prohibition on illicit discharges to the MS4.

As set forth below, the City is able to provide such assurances.

## **Historical Background:**

In 1997, the City Council of Cathedral City adopted Ordinance No. 459, which added Chapter 15.10 "Storm Water Management and Discharge Controls" to the City's Municipal Code. The purpose of Ordinance 459 (the "MS4 Ordinance") is to protect and enhance the water quality of watercourses, water bodies, ground water and wetlands in a manner pursuant to and consistent with the Federal Clean Water Act by regulating non-storm water discharges to the municipal separate storm drain, controlling the discharge to municipal separate storm drains from spills, dumping or disposal of materials other than storm water; and reducing pollutants in storm water discharges to the maximum extent practicable. The City's MS4 Ordinance, which was modeled after the ordinance prepared by the District, fully complied with the requirements of 40 CFR 122.26(d)(2)(i)(A-F) at the time of its adoption.

## **Regulatory Consistency Provision**

Section 15.10.030 (b) (Construction and Application) of the MS4 Ordinance specifically provides the following:

"This chapter shall be construed in a manner which assures consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and any existing or future municipal national pollution discharge elimination system permits and any amendments, revisions or reissuance thereof."

It is my opinion as the City Attorney for the City of Cathedral City that any new legal requirements imposed under the Federal Clean Water Act and/or the 2008 Permit would be enforceable by the City under Section 15.10.030 of its existing ordinance. As such, I have determined that the City has adequate legal authority to implement and enforce, at a minimum, the storm sewer system requirements contained in 40 CFR 122.26(d)(2)(i)(A-F).

Notwithstanding the foregoing, the City will be introducing an ordinance prior to September, 2009 which will add the following provisions to the City's MS4 Ordinance, which are included at Section E.3 of the 2008 Permit for clarification purposes:

- Control of the contribution of Pollutants to the MS4 by Urban Runoff associated with industrial activity and the quality of Urban Runoff discharged from sites of industrial activity and the discharge of spills, dumping, or disposal of material other than Urban Runoff;
- Prohibition of hazardous wash water discharges resulting from hosing or cleaning of automotive service facilities and from mobile operations such as oily or greasy discharges from mobile automobile washing, steam cleaning, power washing and carpet cleaning;
- Prohibition of hazardous discharges resulting from the cleaning, repair or maintenance of equipment or machinery including motor vehicles, cement related and cutting equipment and port-a-potty servicing;
- Prohibition of runoff from material storage areas containing chemicals, fuels, grease, oil and other Hazardous Materials; and
- Prohibited discharge of food-related Wastes such as grease, food processing, and of wash water from restaurant kitchen mats and trash bins.

If you have any questions, please feel free to contact me at (818) 704-0195.

Very truly yours,

GREEN, de BORTNOWSKY & QUINTANILLA, LLP

Charles R. Green, City Attorney

City of Cathedral City

cc: Donald Bradley, City Manager William O. Bayne, City Engineer

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