



Coalition for a Sustainable Delta

March 24, 2015

Adam W. Laputz  
Assistant Executive Director  
California Regional Water Quality Control Board  
Central Valley Region  
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Submitted via email to: [RB5S-NPDES-Comments@waterboards.ca.gov](mailto:RB5S-NPDES-Comments@waterboards.ca.gov)

**Re: Comments on Renewal of Waste Discharge Requirements (NPDES No. CAS083470), City of Stockton and San Joaquin County Municipal Separate Storm Sewer System Permit**

Dear Mr. Laputz:

The Coalition for a Sustainable Delta (the “Coalition”) appreciates the opportunity comment on the proposed Waste Discharge Requirements referenced above for the City of Stockton and County of San Joaquin Municipal Separate Storm Sewer System (“MS4”) Permit. As set forth below, Coalition’s comments center on the general inadequacy of the permit’s monitoring requirements, and the need to establish a monitoring program that can effectively provide information that will allow assessment of pollutant loadings, sources, and consideration of responsive measures.

The Coalition is a California nonprofit corporation comprised of agricultural and municipal and industrial water users and individuals in the San Joaquin Valley. The purpose of Coalition is to advance the interests of its members, including to (1) better the conditions of those engaged in agricultural pursuits in the San Joaquin Valley, and (2) ensure a sustainable and reliable water supply by protecting the Delta and promoting a strategy to ensure its sustainability, thereby improving the grade of agricultural products and developing a higher degree of efficiency in agricultural operations.

As the Regional Board acknowledges in the proposed Waste Discharge Requirements, “[u]rban storm water runoff may contain pollutants that may lower the quality of receiving waters and adversely impact beneficial use of the San Joaquin River and Delta. Studies indicate there may be increases in pollutant levels and aquatic toxicity in receiving waters as a result of urban storm water discharges.” (§ 14) In order to further its mission of ensuring improved quality of Delta waters, the Coalition initiated a citizen action against City of Stockton and County of San Joaquin, in which the Coalition has alleged significant violations of the City and County’s MS4

permit and of the federal Endangered Species Act. *Coalition for a Sustainable Delta, et al. v. City of Stockton, et al.*, Case No. 2:09-cv-00466-JAM-KJN (E.D. Cal.). The parties are engaged in discussions seeking to resolve that litigation, but the Coalition retains a strong interest in ensuring that Waste Discharge Requirements, and particularly the Monitoring and Reporting Program (“MRP”), are designed to effect improved water quality of discharges from the MS4 in the Stockton Urbanized Area (“SUA”).

Unfortunately, there has been no meaningful enforcement by the Regional Board with regard to non-compliance with either the City and County’s current or predecessor permits’ limited monitoring requirements or substantive permit violations revealed by that limited monitoring. There has been no effective oversight of the Permittees’ Low Dissolved Oxygen and Pathogen Plans. Indeed, those programs have proved particularly ineffective and unfocused. Fish kills have continued. The Low Dissolved Oxygen Demand January 2013 Final Report is limited, at best, with reliance on in-stream rather than up-watershed monitoring. Implementation of the Pathogen Plan began over 10 years ago—the program was to have been completed by 2013, but it appears that the Permittees unilaterally extended the end date to 2018, and even then there may be additional extensions. In sum, there have been hundreds of “cause and contribute” violations (and presumably there would have been a far greater number of violations if all required monitoring had been conducted), yet no enforcement and no effective revisions to the standard monitoring requirements has occurred. Hence the basis of the Coalition’s lawsuit and interest in this proposed, albeit interim, permit.

The proposed Baseline Monitoring (Monitoring and Reporting Program at Section III) is inadequate to reasonably assess pollutant sources, loadings, or to identify BMPs necessary to address those sources and loadings. It is wholly designed to assess symptoms, rather than causes, of the problematic discharges.

The Coalition is encouraged by the recognition in the proposed permit that, in advance of a Region-wide MS4 general permit, the Regional Monitoring Program may be considered in lieu of “some or all” of the monitoring required under the MRP,<sup>1</sup> and further, that the Regional Board is open to considering alternative monitoring programs in lieu of the MRP.<sup>2</sup> However, as noted in the proposed permit, the Regional Monitoring Program is not intended to represent receiving water quality for determination of whether the discharge is “causing or contributing” to an exceedance of an applicable water quality standard, nor can that Program be used to identify specific sources of particular contaminants. (Monitoring and Reporting Program at Section II—Monitoring Program, Regional Monitoring Program.) Therefore, although the still undefined Regional Monitoring Program may be able to complement the specific monitoring requirements

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<sup>1</sup> The proposed MRP states that in “lieu of conducting some or all of the local monitoring specified in [the] Monitoring and Reporting Program of this Order, the Permittees may elect to participate in a Regional Monitoring Program (RMP).” (MRP at Section II)

<sup>2</sup> The proposed MRP (at Section II) permits the Permittees, in lieu of the MRP’s monitoring program, to “elect to propose and implement an alternative Monitoring Program that achieves the objectives listed above and is approved by the Executive Director.”

expressly set forth in the permit, it should not be considered “in lieu of” any portion of the local monitoring program unless that aspect of the RMP would provide more specific information with regard to sources, loadings and establishment of BMPs that would be superior to the information developed as part of the permit-specific monitoring program.

More appropriate for the short-term of the proposed permit would be implementation of the Proposed Water Quality Monitoring Program set forth in the City and County’s June 6, 2012 Report of Waste Discharge and Proposed Stormwater Management Plan (“ROWD”). *See generally* section 2.7 of the ROWD, and specifically section 2.7.3. The Water Quality Monitoring Program proposed in the ROWD was specifically designed to better assess sources, loadings, and responsive BMPs that could begin to abate the Permittees’ permit violations. Further, the Proposed Water Quality Monitoring Program in the ROWD is much more comprehensive than the proposed MRP.

Notwithstanding that the objective of the ROWD monitoring proposal is to better understand, identify and address pollutant sources and loadings, the Regional Board states that “[d]ue to the limited term of this Order, the proposed amendments in the ROWD are not incorporated into this Order.” (Findings, at ¶ 50.) Contrary to that assertion, the “interim” permit should provide pre-approval for the ROWD’s Proposed Water Quality Monitoring Program in lieu of monitoring requirements set forth in the MRP, to the extent those elements of the ROWD will result in a better understanding of sources, loadings, and potential BMPs to address those conditions. However, it remains necessary to retain those elements of the MRP that enable the Regional Board to assess whether discharges are causing and contributing to applicable water quality standards, as set forth as a baseline Discharge Prohibition (Section A.2—Discharge Prohibitions – Storm Water Discharges).<sup>3</sup>

Furthermore, the aspects of the ROWD that are part of the “local” monitoring program should be retained even upon adoption of a general region-wide permit and implementation of a regional monitoring program. Although those broader programs will provide a general overview of sources and water quality, they cannot substitute for the more specific monitoring elements that will provide insight into sources and loadings within the SUA.

In addition to monitoring generally, the pesticides element of the required Water Quality Based Control Programs includes a handful of elements, with particular focus on diazinon and chlorpyrifos. The Coalition agrees that comprehensive measures need to be taken to address pesticides that are part of storm water discharges from the SUA. However, that effort must specifically include greater attention to the pyrethroids class of pesticides, which is now understood to be of significant concern with regard to Delta water quality.

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<sup>3</sup> As held in *Natural Resources Defense Council, Inc. v. County of Los Angeles*, 673 F.3d 880 (9<sup>th</sup> Cir. 2011), *rev’d and remanded on other grounds*, 133 S.Ct. 710 (2013), *on remand* 725 F.3d 1194 (9<sup>th</sup> Cir. 2013), the A.2 Prohibition is absolute, and the Section C.3. “iterative process” measures required in response to non-compliance with the Section A.2 prohibition or Section C.1 and C.2 Receiving Water Limitations are in addition to, and not in lieu of, those absolute permit prohibitions and limitations.

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The Coalition looks forward to development and implementation of a monitoring program incorporated in the City and County's MS4 permit that will be both meaningful and enforceable. Until that occurs, it is unlikely to see improvement in water quality of the storm water discharges, and reduction of resulting permit violations.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. D. Phillimore', with a stylized flourish at the end.

William D. Phillimore  
President, Coalition for a Sustainable Delta

WDP:pt