

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT: Kerry O'Connor  
MEETING DATE: May 10, 2023

**ITEM: 5**

**Central Marin Sanitation Agency, Wastewater Treatment Plant, San Rafael; San Rafael Sanitation District, wastewater collection system, San Rafael; Ross Valley Sanitary District, wastewater collection system, San Rafael; and Sanitary District No. 2 of Marin County, wastewater collection system, Corte Madera; Marin County – Reissuance of NPDES Permit**

**DISCUSSION:**

This Revised Tentative Order (Appendix A) would reissue the NPDES permit for Central Marin Sanitation Agency (CMSA), which owns and operates the Central Marin Sanitation Agency Wastewater Treatment Plant, and three agencies that own and operate the largest portions of the collection system for CMSA's service area: San Rafael Sanitation District, Ross Valley Sanitary District, and Sanitary District No. 2 of Marin County (collectively, "Districts"). CMSA and the collection system agencies operate under a Joint Exercise of Powers Agreement established in 1979. CMSA is governed by a board that includes representatives from the three collection system agencies. CMSA does not have any authority over the collection system agencies.

The collection system agencies collect domestic, commercial, and industrial wastewater from their service areas for treatment at the CMSA treatment plant. CMSA can provide primary and biological treatment for up to 30 million gallons per day (MGD), which is more than four times its average dry weather flow of about 6.4 MGD. CMSA discharges its effluent through a submerged, multi-port diffuser into San Francisco Bay. During wet weather, when stormwater inflow and infiltration enters the collection systems, treatment plant flows can exceed 30 MGD, and CMSA routes a portion of these flows around biological treatment. The diverted primary wastewater is "blended" with the biologically treated wastewater prior to disinfection. This blending is a type of bypass. Federal regulations prohibit bypasses; however, the Regional Water Board may approve them (i.e., not take enforcement for them) if (1) they are unavoidable to prevent loss of life, personal injury, or severe property damage; (2) there are no feasible alternatives; and (3) the Regional Water Board receives notification. The Revised Tentative Order approves blending bypasses at the CMSA treatment plant when wet weather flows exceed 30 MGD and includes conditions to ensure that these federal requirements will be met.

CMSA completed various treatment plant upgrade projects and subsequently determined that there are no more feasible alternatives it can implement to reduce blending. However, the collection system agencies can implement feasible alternatives to reduce blending by reducing inflow and infiltration into their collection systems. Consistent with the previous order, this Revised Tentative Order names the collection system agencies as co-permittees and includes requirements to reduce inflow and infiltration. Doing so allows the Regional Water Board to approve wet weather bypasses at the CMSA treatment plant.

We received comments (Appendix B) from the Districts, CMSA, Bay Area Clean Water Agencies (BACWA), and California Association of Sanitation Agencies (CASA). We prepared responses (Appendix C) to the comments and made a few minor editorial and formatting changes to the tentative order. Most of the comments were from the Districts, many of which restate the comments

the Districts submitted when the NPDES permit was reissued in 2018. The following table highlights some of the Districts' comments, BAWCA and CASA's (Associations') comments, and our responses:

Comment Number	Summary of Comment	Summary of Response
Districts Comments 1, 2, 4, 9, and 10. Associations Comment 3.	The Districts object to their inclusion in the Revised Tentative Order as co-permittees. They say they are not point source dischargers and should not be covered under an NPDES permit.	Federal regulations define publicly owned treatment works (POTWs) to include collection systems, and POTWs are point sources. The wastewater collected by the Districts is treated and discharged to waters of the United States by way of the CMSA discharge outfall. NPDES permits for POTWs in our region routinely include collection systems as part of the regulated facilities. For this permit, naming the collection system agencies as co-permittees is consistent with the approach taken by the Board for many years for several other permits where the owner of a treatment plant does not own any portion of its collection system. Importantly, naming the collection system agencies in this permit prevents them from avoiding responsibility for taking feasible actions to reduce blending simply by virtue of how their Joint Exercise of Powers Agreement is written.
Districts Comments 2, 6, 10. Associations Comment 4.	Along with the Associations, the Districts argue that regulation under the State Water Board's Statewide General Waste Discharge Requirements for Sanitary Sewer Agencies (statewide WDRs) is sufficient.	While we recognize that the Districts are regulated by the statewide WDRs, the statewide WDRs are focused on preventing sanitary sewer overflows, not reducing wet weather bypasses. The statewide WDRs state that it should not be interpreted as prohibiting the issuance of NPDES permits for sanitary sewer systems and that NPDES permits may be more stringent than the statewide WDRs. The provisions of the tentative order focus specifically on reducing wet weather flows to CMSA's treatment plant to reduce wet weather bypasses and go beyond the requirements of the statewide WDRs.
Districts Comments 7, 9, 11, 12, 23, and 24. Associations Comments 3 and 5.	The Districts say regulating them under an NPDES permit unnecessarily increases their liabilities.	We do not agree that naming the Districts will significantly increase their liabilities. While naming the collection system agencies in the NPDES permit may, at least conceivably, increase their liabilities, liabilities would only exist if the Districts were to fail to comply with the permit. This should be unlikely because the Districts themselves identified most of the Revised Tentative Order's requirements to reduce inflow and infiltration and related blending. Moreover, permitting decisions are not typically based on the potential for third-party liabilities.
Districts Comments 4, 14 - 18, and 36.	The Districts argue that blending is not a bypass, and even if it were, they say the fact that CMSA itself cannot implement any feasible	Federal regulations define "bypass" to mean "the intentional diversion of waste streams from any portion of a treatment facility" (e.g., biological treatment). The CMSA treatment plant was intentionally designed so primary-treated wet weather flows above 30 MGD are routed around biological treatment and then blended with the biologically treated wastewater prior to disinfection. The diversion of some

	alternatives to reduce blending is sufficient for Regional Water Board approval.	wastewater around biological treatment fits the definition of a bypass. CMSA's NPDES permit never unconditionally allowed wet weather bypasses (see Orders 80-056, 85-118, 91-003, 96-034, 01-105, R2-2007-0007, and R2-2012-0051). In these orders (prior to the previous order), the Regional Water Board found that there were no feasible alternatives to wet weather bypasses and re-evaluated this conclusion with each permit reissuance. In evaluating whether feasible alternatives exist now, we agree that CMSA cannot implement any additional meaningful measures to reduce blending. However, the collection system agencies can implement meaningful measures to reduce blending by reducing inflow and infiltration. Listing the Districts as co-permittees and including requirements for them to eliminate inflow and infiltration allows the Regional Water Board to approve wet weather bypasses at the CMSA treatment plant.
Districts Comments 17 and 19	The Districts argue that regulating blending as a bypass mandates the cost and manner of compliance with secondary treatment standards.	The bypass prohibition and secondary treatment standards apply independently. The revised tentative order correctly implements the secondary treatment standards end-of-pipe, without dictating the manner of compliance with those standards. The revised tentative order requires all wastewater to pass through all treatment units to maximize treatment and minimize pollutant loadings.

We anticipate that the Districts will reiterate their comments at the Board meeting.

**APPENDIX:**

- A. Revised Tentative Order
- B. Comments
- C. Response to comments

Appendix A  
Revised Tentative Order

# Appendix B

## Comments

For an electronic copy of the comments, please contact Kerry O'Connor via email to [Kerry.OConnor@waterboards.ca.gov](mailto:Kerry.OConnor@waterboards.ca.gov) or at (510) 622-2465.

# Appendix C

## Response to Comments