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Public Comment
Small MS4 Permit Amendment
Deadline: 7/20/17 by 12 noon

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Electronic Submission: commentletters@waterboards.ca.gov

COUNTY OF SAN JOAQUIN COMMENT LETTER – SMALL MS4 PERMIT AMENDMENT

Dear Ms. Townsend:

The County of San Joaquin (County) appreciates the opportunity to comment on the proposed amendment to the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Small MS4 General Permit), implementing region-specific total maximum daily load (TMDL) requirements (Proposed Amendment). Specific to the Central Valley Region (Region 5), the County understands that the intent of the Proposed Amendment is to incorporate revisions to the Small MS4 General Permit to implement the TMDLs that list Phase II Permittees as responsible parties. The County's Phase II Small MS4 General Permit is specifically listed as a responsible party on the following TMDLs:

- TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos (San Joaquin River from Mendota Dam to Vernalis – see Comment No. 4 below)
- TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos
- TMDL for Lower San Joaquin River, San Joaquin River, Deep Water Ship Channel – Organic Enrichment and Low Dissolved Oxygen
- TMDL for the Delta – Methylmercury

The County appreciates the stakeholder outreach efforts undertaken by the State Water Resources Control Board (State Water Board) (conducted primarily in 2013-2014) and the willingness of State Water Board staff to listen to the stakeholder's concerns and ideas. This outreach, in which the County actively participated, will ultimately improve the acceptance and the ability of the County to implement the requirements in the Proposed Amendment.

Our specific comments, provided below, are organized by the structure of the Proposed Amendment, and support those submitted by the California Stormwater Quality Association (CASQA). These comments focus on the above listed TMDLs included for Region 5. Our primary intent is to clarify how the WLAs should be incorporated into this Small MS4 General Permit, how attainment of TMDLs/compliance with the Small MS4 General Permit is demonstrated, and understand the process for TMDLs past their final attainment dates.

GENERAL COMMENT

Comment 1: Replace the term "WLA" with "Best Management Practices (BMPs)" when referring to requirements that must be met by the MS4s.

Throughout the Proposed Amendment, the term wasteload allocation (WLA) is used to describe the point source allocation assigned to the MS4s as defined within the TMDL as well as effluent limitations proposed to be incorporated into the Phase II Permit.

However, for the following reasons, the County recommends that the term "WLA" be revised to "Best Management Practices (BMPs)" when referring to the requirements that must be met by the MS4s. In essence, the Order should include BMPs to implement the TMDL WLAs assigned to the small MS4s. This modified terminology will ensure that the WLAs will be incorporated into the Permit with the flexibility that is allowed by the federal regulations.

Federal regulations authorize BMPs to control or abate a discharge of pollutants where authorized by section 402(p) of the Clean Water Act (CWA) for the control of storm water discharges, where numeric effluent limitations are infeasible,[1] or where the practices are reasonably necessary to achieve effluent limitations or standards or to carry out the purposes and intent of the CWA. 40 C.F.R. §122.44(k)(2)-(4).

[1] Although EPA and others have construed the phrase "where numeric effluent limitations are infeasible" to mean infeasible to calculate, the words "to calculate" do not appear anywhere in this regulation. *See* 44 Fed. Reg. 32,856 (instead referencing "infeasible to control"). This meaning is unfounded and is not supported by case law or any other authority. "It will nearly always be possible to [calculate or] establish numeric effluent limitations, but there will be many instances in which it will not be feasible for dischargers to comply with such limitations. In those instances, states have the authority to adopt non-numeric effluent limitations." *See* City of Tracy v. SWRCB, Statement of Decision, p. 42 (emphasis added.) In addition, case law makes it clear that one factor a water board may consider in determining whether a numerical effluent limitation is "feasible" is the "ability of the discharger to comply." See *Communities for a Better Environment ("CBE") v. State Water Resources Control Bd.*, 109 Cal. App 4th 1089, 1100 (2003) In CBE, the court expressly approved the Regional Board's consideration of this factor in upholding the determination that numeric effluent limits were not "appropriate" for the refinery at issue in that case. Id. at 1105 (approving determination that numeric limit was not feasible "for the reasons discussed above," which included inability of discharger to comply).

In *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C. Cir.1977), the D.C. Circuit stressed that when it is infeasible to comply with numerical effluent limitations, USEPA "may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations." *Id.* at 1380, and at n.21 (noting the proposition that "Congress did not regard numeric effluent limitations as the only permissible limitation on a discharger" was "supported by section 302(a) of the Clean Water Act, (33 U.S.C. §1312(a)"). The court in *Costle* also noted that "'[i]t may be appropriate in certain circumstances for the EPA to require a permittee simply to monitor and report effluent levels; EPA manifestly has this authority. Such permit conditions might be desirable where the full extent of the pollution problem is not known." 568 F.2d at 1380 *citing* 33 U.S.C. §§1342(a)(3),(b)(2)(B). Accordingly, Courts have rejected the argument that in determining the "feasibility" or "propriety" of numeric effluent limitations, the Regional Board may not consider the ability (or inability) of the discharger to comply with such limitations. The *ability to comply* is a critical factor in determining the "feasibility" or "propriety" of numerical limitations. *City of Tracy,* Statement of Decision, p. 42). In fact, EPA's own regulations recognize as much. *See* 40 C.F.R. §450.11(b) ("Infeasible. Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices."); 79 Fed. Reg. 12661 (Mar. 6, 2014). The feasibility of *calculating* a limit is not relevant.

Water Quality Based Effluent Limitations (WQBELs) are not required for MS4s or municipal storm water even where a TMDL exists[2]. In 1999, the Ninth Circuit Court of Appeals expressly held that the CWA **does *not*** require MS4s to strictly comply with water quality standards under CWA section 301. (*See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999).) Instead, the Court of Appeals held that:

- The proper statutory requirements for a municipal MS4 Permit are set forth in CWA section 402(p) and the "maximum extent practicable" standard;
- Section 301(b)(1)(C) does not apply;
- Section 402(p)(B)(3) replaced the requirements under CWA Section 301 for municipal storm water permits.

(*Id.*) By going beyond what is required by federal law, the permit modifications could trigger claims for unfunded state mandates, and definitely trigger additional analysis under Water Code section 13263, including the factors set forth in Water Code section 13241. *See City of Burbank v. SWRCB,* 35 Cal.4th 613 (2005).

Recommendation

Replace the term "WLA" with "BMPs" when referring to the requirements that must be met by the MS4s.

PROVISIONS

Comment 2: Include Reciprocating Language within the Effluent Limitations and Receiving Water Limitations that Cross References the TMDL Provisions.

The Proposed Amendment incorporates language that establishes a direct linkage between the TMDL compliance requirements (Provision E.15.a and F.5.i.1) and the Effluent Limitations (Provision C) and Receiving Water Limitations (Provision D). This language is important to specify how the Permittee demonstrates compliance with these provisions. However, similar language should also be included within Provisions C and D so that these provisions are explicitly linked to the corresponding TMDL language and not interpreted as stand-alone provisions[3].

Recommendation

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[2] The Court of Appeal specifically considered the issue of whether TMDLs must be incorporated into a stormwater NPDES Permit (for the Navy) as numeric WQBEL. The Court found that the CWA did not require TMDLs to be incorporated into the Navy's storm water permit as numeric effluent limits, finding that the CWA and its implementing authorities have "repeatedly expressed a preference for doing so by way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations." (Divers' Environmental Conservation Organization v. State Water Board (2006) 145 Cal.App.4th 246, 256 ("Divers"); emph. added.) The Court held it was "clear that in implementing numeric water quality standards ... permitting agencies are not required to do so solely by means of a corresponding numeric [water quality based effluent limit]." (Id, at p. 262; see also Tualatin RiverKeepers v. Oregon Dept. of Environmental Quality (2010) 235 Ore. App. 132, 148-49 [determining that BMPs are a "type of effluent limitation" authorized by CWA § 33 U.S.C. § 1342(p), as a means of controlling "stormwater discharges." (Id., at pp. 141-42, citing 33 U.S.C. § 1342(p) & 40 C.F.R. § 122.44(k)(2)-(3).)

[3] Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al. (No. 10-56017, 2011 U.S. App. LEXIS 14443, at *1 (9th Cir., July 13, 2011).

Modify Provision C as follows:

C. EFFLUENT LIMITATIONS

1. Permittees shall implement controls as required by this Order to reduce the discharge of pollutants from their MS4s to waters of the U. S. to the MEP.

2.In lieu of Water Quality Based Effluent Limits (WQBELs), this Order establishes BMPs consistent with the assumptions and requirements of the applicable TMDL Permittees shall additionally reduce the discharge of pollutants (1) to achieve TMDL waste load allocations (WLAs) established for discharges by the MS4s. Each Permittee shall comply with applicable BMPs as set forth in Attachment G, pursuant to the associated compliance schedules.

and (2) to comply with the Special Protections for discharges to ASBS. **[move this language to the Discharge Prohibitions or Receiving Water Limitations]**

2. Storm water discharges regulated by this Order shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 or 40 C.F.R. Part 302. **[move this language to the Discharge Prohibitions]**

Receiving Water Limitations

The County recommends incorporating language that explicitly links the receiving water limitations to the TMDL provisions in Attachment G and recognizes that exceedances of water quality objectives or water quality standards may persist while the TMDL is being implemented.

Recommendation

Modify Provision D as follows:

D. RECEIVING WATER LIMITATIONS

.....The Permittee shall comply with Receiving Water Limitations through timely implementation of control measures/BMPs and other actions to reduce pollutants in the discharges and other requirements of this Order including any modifications. The storm water program shall be designed to achieve compliance with Receiving Water Limitations. If exceedance(s) of water quality objectives or water quality standards persist notwithstanding implementation of other storm water program requirements of this Order including the BMPs designed to comply with the TMDLs as set forth in Attachment G, the Permittee shall assure compliance with Receiving Water Limitations by complying with the following procedure……

Comment 3: The Small MS4 General Permit Should Allow the Permittees to Utilize Compliance Schedules for TMDLs.

Provisions E.15.b and F.5.i.2 state, in part:

….Compliance dates that have already passed are enforceable on the effective date of this Order. Permittees may request a time schedule order where a final TMDL compliance deadline is past.

The Fact Sheet further states:

> *Attachment G incorporates the final compliance deadlines for each TMDL; some TMDL compliance deadlines are now past. In these instances, the associated wasteload allocations are effective immediately. Where appropriate, the State Water Board will work with the Regional Water Boards to determine if there is any regulatory flexibility for extension of final compliance dates consistent with any particular TMDL. The State Water Board and the Regional Water Boards additionally have discretion with regard to enforcement actions and will exercise that discretion on a case by case basis based on all the facts underlying a violation, including how recently the Permittee was assigned TMDL-specific requirements in the permit and the Permittee's efforts to date to meet the TMDL-specific requirements. Additionally, a permittee with a past or imminent TMDL compliance deadline may request a Time Schedule Order (TSO) from the applicable Regional Water Board. A Regional Water Board's issuance of a TSO will establish an implementation schedule for the Permittee to comply with the TMDL requirements.*

Although the Fact Sheet states "Where appropriate, the State Water Board will work with the Regional Water Boards to determine if there is any regulatory flexibility for extension of final compliance dates consistent with any particular TMDL", it is unclear what this exactly means; where is it appropriate, which TMDLs would it apply to, and what is the timing within the context of the adoption of the Proposed Amendment? Given the significance of TMDL final compliance dates and the resulting impact on the County, we strongly recommend that these discussions and modifications occur prior to the adoption of Attachment G. Once Attachment G is adopted and final compliance dates take effect, we will need to immediately divert resources to request compliance schedules or time schedule orders, all the while being at risk for potential enforcement action and/or third-party lawsuits.

This language, combined with the fact that Attachment G incorporates numeric WLAs by reference (Comment #6) and does not include alternative compliance pathways (Comment #7), will put the County in immediate non-compliance with the Permit if the WLAs cannot be immediately met. In fact, of the four TMDLs that the County is listed as a responsible party, three of them have final attainment dates that have passed.

- TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos
  - **Final Attainment Date – December 1, 2010**
- TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos
  - **Final Attainment Date – December 1, 2011**
- TMDL for Lower San Joaquin River, San Joaquin River, Deep Water Ship Channel – Organic Enrichment and Low Dissolved Oxygen
  - **Final Attainment Date – December 31, 2011**
- TMDL for the Delta – Methylmercury
  - Final Attainment Date – December 31, 2030

While the County has implemented a rigorous stormwater program for the past two decades and made tremendous progress in meeting the TMDLs, the County has not yet had the opportunity to work with the Regional Board to reevaluate the basis of the TMDLs and determine if the sources, targets, or allocations were accurate or should be modified. This review/revision has not occurred as envisioned by the Central Valley Regional Water Board:

- TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos

- *"The Regional Water Board intends to review the diazinon and chlorpyrifos allocations and the implementation provisions in the Basin Plan at least once every five years, beginning no later than December 31, 2010.[4]"*

- TMDL for Lower San Joaquin River, San Joaquin River, Deep Water Ship Channel – Organic Enrichment and Low Dissolved Oxygen
  - *"The Regional Water Board will review allocations and implementation provisions based on the results of the oxygen demand and precursor studies and the prevailing dissolved oxygen conditions in the DWSC by December 2009.[5]"*

Although the Proposed Amendment states that the Permittees may request a time schedule order (TSO) (a formal enforcement action) where the final TMDL compliance deadline has past and additional time is necessary to comply with the numeric allocations, this pathway is not necessarily ideal or warranted in a number of cases. Our concerns include the following:

- Many of the TMDLs are old and need to be re-evaluated to ensure that the assumptions and data used to develop the targets, allocations, and/or implementation actions, including schedules, were and are still appropriate and reflective of current policies and science. TSOs are generally five to ten years in term, which may not be adequate depending on the TMDL pollutant and waterbody.
- A significant amount of time is necessary to develop, submit, and obtain approval of the TSO package. During this timeframe the County will be out of compliance with the permit and susceptible to potential enforcement and/or third party lawsuits.
- A TSO does not protect the County from third party lawsuits (as was noted by State Water Board staff during the Public Hearing on July 5).

Instead, we submit that the full incorporation of the TMDLs in Attachment G must be done thoughtfully as this is the first Phase II MS4 permit to implement the TMDLs.

Since the final attainment dates have passed for most of the TMDLs, and Attachment G requires the County to meet the WLAs by the final date, these requirements are more stringent than the requirements in Permittees' previous MS4 permits, and constitute "newly interpreted water quality objectives" pursuant to the State Water Board's Policy for Implementation of Compliance Schedules in NPDES Permits, State Water Board Resolution No. 2008-0025 (the Compliance Schedule Policy). In this Policy the State Water Board recognized that a compliance schedule may be appropriate, in some cases, when a discharger must implement actions to comply with a more stringent permit requirement, such as designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to implement new, revised, or newly interpreted water quality objectives or criteria in water quality standards.

As such, the County should be able to propose a compliance schedule in lieu of requesting a TSO for any requirements to implement newly interpreted water quality objectives. In addition, the requirements for the submittal should be specified.

Recommendation

[4] Resolution No. R5-2006-0061, Attachment 1, #4, Page 3.
[5] Resolution No. R5-2005-0005, Attachment 1, #6, Page 5.

- State Water Board staff should work with the Regional Water Board staff and affected stakeholders to determine the regulatory flexibility for extending final compliance dates consistent with any particular TMDL prior to the adoption of Attachment G.
- Modify the language for Provisions E.15.b./ F.5.i.2 as follows:

  In some cases, Attachment G includes dates that fall outside the term of this Order. Compliance dates that have already passed are enforceable on the effective date of this Order. Permittees may request a time schedule order (TSO) or propose a compliance schedule where a final TMDL compliance deadline is past. Compliance dates that exceed the term of this Order are included for reference, and become enforceable in the event that this Order is administratively extended.

  Within six months of notification from the Permittee that a TSO or compliance schedule is needed, a Permittee shall submit a formal request. Between a Permittee's request and timely approval of the request, the Permittee will be deemed in compliance with Provisions C and D for the provisions that would be covered by that TSO or compliance schedule. A Permittee that is timely implementing a duly approved TSO or compliance schedule shall be deemed in compliance with Provisions C and D. for the provisions covered by that TSO or compliance schedule.

  A Permittee requiring additional time to meet applicable requirements set forth in Attachment G that implement a "new, revised, or newly interpreted" water quality objective, as that term is defined in the Compliance Schedule Policy, may propose a compliance schedule. The Permittee's proposed compliance schedule shall include a justification satisfying the following criteria:

  a. *Diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts;*
  b. *Source control efforts are currently underway or completed, including compliance with any pollution prevention programs that have been established;*
  c. *A proposed schedule for additional source control measures or waste treatment;*
  d. *Data demonstrating current treatment facility performance to compare against existing permit requirements, as necessary to determine which is the more stringent requirement to apply if a schedule of compliance is granted.*
  e. *The highest discharge quality that can reasonably be achieved until final compliance is attained;*
  f. *The proposed compliance schedule is as short as possible, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs; and*

g. *Additional information and analyses to be determined by the Regional Water Board on a case-by-case basis.*

If the Permittee requires additional time beyond a TMDL's final attainment date to meet the applicable requirements that do not implement a "new, revised, or newly interpreted" water quality objective as defined in the Compliance Schedule Policy, the Permittee may request a TSO pursuant to California Water Code section 13300 for the Central Valley Water Board's consideration. A request for a TSO shall include sufficient information to demonstrate that the Permittee needs time to implement actions, such as designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to meet the applicable requirements. Such information may include the following:

a. *Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;*

b. *A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;*

c. *Justification of the need for additional time to achieve the requirements;*

d. *A detailed time schedule of specific actions the Permittee will take in order to achieve the requirements;*

e. *A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and*

f. *If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement.*

ATTACHMENT G

Comment 4: The County should not be listed as a Responsible Party to the TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos.

Attachment G erroneously lists the County of San Joaquin as a responsible party for the Lower San Joaquin River – Diazinon and Chlorpyrifos TMDL. The portion of the river to which the TMDL applies is from Mendota Dam to Vernalis. As can be seen in Attachments A and B, Vernalis lies at the very southern border of the County jurisdiction, where no Phase II portions of the County directly discharge. This error was communicated to the Central Valley Regional Water Board in August 2016.

Recommendation

Remove the County of San Joaquin as a responsible party from the TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos.

Comment 5: Consistent with Comment #1, each of the TMDLs within Attachment G should include language regarding the use of BMPs when referring to requirements that must be met by the MS4s.

Throughout Attachment G, the introductory "Purpose of Provisions" language was deleted from every TMDL. Although some of the language was generic and may not have been necessary, each of the TMDLs should include a similar type of introductory section that explains the use of the BMPs within the permit. Alternatively, this language could be included as an overall statement that is applicable to the entirety of Attachment G.

Recommendation

Include the following language within each one of the TMDLs that is implementing established WLAs:

Best Management Practices (BMPs)

This TMDL includes BMPs for MS4s consistent with the assumptions and requirements of the applicable TMDL waste load allocations (WLAs) established for discharges by the MS4s and with 40 C.F.R. §122.44(k)(2)-(4). The responsible Phase II Entities shall implement BMPs that will attain these requirements by the Final Compliance Deadline or approved compliance schedule and maintain such attainment thereafter.

Comment 6: Each of the TMDLs within Attachment G should directly incorporate the BMP-based WLAs established for discharges by the MS4s. In addition, the TMDL language and requirements should be consistent with the adopted Basin Plan Amendment.

Throughout Attachment G and without explanation in the Fact Sheet as to why they are no longer included, the TMDL WLAs were deleted and moved to the Fact Sheet. Each TMDL now includes a statement "The WLA specified/identified in the Fact Sheet of this Order is incorporated by reference". The Fact Sheet states "Attachment G does not restate the final applicable wasteload allocations for each TMDL; however, those wasteload allocations are specific in the Fact Sheet and Attachment G incorporates them by reference as appropriate".

While the Fact Sheet might also include the WLAs, the WLAs must be included within Attachment G of the NPDES permit in order to provide clarity as to the specific applicable BMP-based requirements.

It is confusing for the MS4 Permittee and inconsistent with the Code of Federal Regulations to incorporate the requirements by reference from the Fact Sheet, which is intended to constitute findings and justifications for requirements in the NPDES permit. Fact sheets, which are required for major NPDES permits and general permits per 40 CFR 124.8, "set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.". The Fact Sheet is intended to support the basis for the permit requirements, not include additional regulatory requirements.

Recommendation

Include the WLAs (and any associated footnotes, clarifications, etc.) established for discharges by the MS4s directly within Attachment G as BMP-based requirements.

Comment 7: The Proposed Amendment must include language that identifies the TMDL compliance pathways.

Although the Proposed Amendment includes a similar structure for all of the TMDLs within Attachment G, the Permit provisions and Attachment G are missing language that clearly identifies how compliance with the TMDLs is determined. This language must provide clarity and flexibility for the MS4 Permittee and Regional Board staff.

Each of the TMDLs should include language that explicitly identifies the compliance pathways for the TMDLs. Alternatively, this language could be included as an overall statement applicable to the entirety of Attachment G.

Recommendation

Include the following language within each one of the TMDLs or as a permit provision that is applicable to all of the TMDLs in Attachment G:

Demonstration of Compliance with TMDL WLAs

Compliance with the requirements in Provision C.2 of this Order associated with the applicable WLAs, on or after the final attainment deadline, may be demonstrated by any one of the following methods:

1. *Implementation of the BMPs consistent with an approved watershed plan or similar implementation plan/schedule; OR*
2. *Receiving water monitoring and/or other information, as authorized by the Regional Water Board Executive Officer, that reasonably demonstrates attainment of applicable WLAs in the receiving water (discharges from a Permittee's MS4 did not cause or contribute to an exceedance in the receiving water); OR*
3. *Attainment of the applicable WLAs within the discharge; OR*
4. *Representative outfall sample results for validated human DNA markers demonstrate absence (below analytical detection limits or other established thresholds) of anthropogenic waste in MS4 discharges; OR*
5. *Demonstrate that exceedances of the receiving water limitations in the receiving water are due to loads from natural sources and pollutant loads from the MS4s are not causing or contributing to the exceedances; OR*
6. *No discharges from the Permittee's MS4 to the applicable water body occurred during the relevant time period; OR*
7. *The pollutant load reductions for the MS4 discharges are greater than or equal to the WLAs; OR*
8. *Timely implementation of a Regional Water Board-approved management plan or compliance schedule for meeting the applicable WLAs.*

In addition, the State Water Board and Regional Boards shall further consider other factors as described by the specific TMDLs[6].

[6] To support this portion of the recommended language – as an example, the TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos states "In determining compliance with the waste load allocations, the Regional Water Board will consider any data or information submitted by the discharger regarding diazinon and chlorpyrifos

Comment 8: Attachment G should recognize that participation in Regional Monitoring Programs is supported by the Phase II Permit and incorporate commensurate language.

The Small MS4 General Permit encourages participation in regional monitoring programs (Provision E.13):

> *…"Permittees are encouraged to participate in a regional monitoring program in order to cost-effectively combine resources and water quality information. Regional monitoring is the collaboration of local and regional monitoring programs that are designed to create a more comprehensive picture of water quality conditions within a watershed…. Regional monitoring programs shall be reviewed and approved by the Executive Officer of the applicable Regional Water Board."*

In addition, the TMDL monitoring requirements (E.13.b) allow the Permittees to:

> *"…comply with the monitoring requirements included in Attachment G and consult with the Regional Water Board within one year of the effective date of the permit to determine the monitoring study design and a monitoring implementation schedule."*

Therefore, the TMDL monitoring may be satisfied by participation in a regional monitoring program as long as there has been consultation with and approval by the Regional Water Board. This option is especially important for Phase II communities, which have limited resources and benefit from the ability to coordinate efforts regionally.

However, Attachment G does not, in most instances, recognize participation in a regional monitoring program as an option. Language should be added to Provision E.13.b to unilaterally support participation.

In addition, if a Permittee participates in a regional monitoring program or other collective monitoring effort approved by the Regional Water Board Executive Officer, there needs to be flexibility in the types of assessments that are required.

Recommendation

- Modify Provision E.13.b. as follows – *Permittees shall implement any monitoring requirements assigned to them in Attachment G. <u>With Regional Water Board Executive Officer approval, the Permittees may participate in a regional monitoring program or other collective monitoring effort in lieu of some or all of the individual monitoring requirements specified within Attachment G.</u> ~~The Regional Water Board Executive Officer may require additional monitoring, per Water Code 13383.~~*

Include the following language within the TMDLs to provide the flexibility necessary if participating in regional monitoring:

<u>Region 5</u>

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inputs from sources outside of the jurisdiction of the permitted discharger, including any diazinon and chlorpyrifos present in precipitation and other available relevant information, and any applicable provisions in the discharger's NPDES permit requiring the discharger to reduce the discharge of pollutants to the maximum extent possible.", Resolution No. R5-2006-0061, Attachment 1, #11, Page 4.

- *TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos & TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos & TMDL for Sacramento and Feather Rivers - Diazinon and Chlorpyrifos*
  - *1a. …Conduct an assessment….OR*
  - *1b….With Central Valley…..*
- *TMDL for Lower San Joaquin River, San Joaquin River, Stockton DWSC – Organic Enrichment and Low Dissolved Oxygen*
  - *1. …By [Hard date: one year from the effective date]….OR*
  - *2….With Central Valley…..*
- *TMDL for the Delta – Methylmercury*
  - *1a. …The Permittees shall begin monitoring….OR*
  - *1b….With Central Valley…..*
- *TMDL for Clear Lake – Nutrients*
  - *1. …By [Hard date: 6 months from the effective date]….OR*
  - *2….With Central Valley…..*

Comment 9: The language in Attachment G should be functionally updated to reflect the current status of the Phase II program.

Some of the language in Attachment G is outdated and/or not reflective of the current status of the Small MS4 Permit. Examples include the following:

- TMDL for Lower San Joaquin River, San Joaquin River, Stockton DWSC – Organic Enrichment and Low Dissolved Oxygen
  - The Permittees shall document, in their Annual Reports, the implementation of BMPs to control the discharge of oxygen demanding substances and precursors in their urban discharge. Each Annual Report shall include documentation of compliance with the Permit requirements and a discussion of the effectiveness of the BMPs. ~~In subsequent years three through five, Permittees shall complete and submit a Program Effectiveness Assessment, as specified in Section E.14 in this Order.~~ The Permittees shall use the information gained from the Program Effectiveness Assessments to improve their program and identify new BMPs or modifications of existing BMPs to ensure that they are meeting applicable WLAs.
  - 1. By [Hard Date: one year from the effective date], ~~Renewal Permittees, as identified within the Designation Criteria column in Attachment A of this Order, may incorporate their individual monitoring and reporting plan, or the Permittees can collectively incorporate a single monitoring plan, within their Storm Water Management Plans approved under the previous 2003 Permit4; all other~~ Permittees shall submit the Monitoring and Reporting Plan consistent with E.13 for Central Valley Regional Water Board Executive Officer approval, OR. [also see Comment #8]

Recommendation

Functionally update the language in Attachment G as noted above.

Thank you for providing the opportunity to comment on the Proposed Amendment. Should you have any questions about our comments or recommendations, please contact Gerardo Dominguez, Engineer IV at (209) 953-7948.

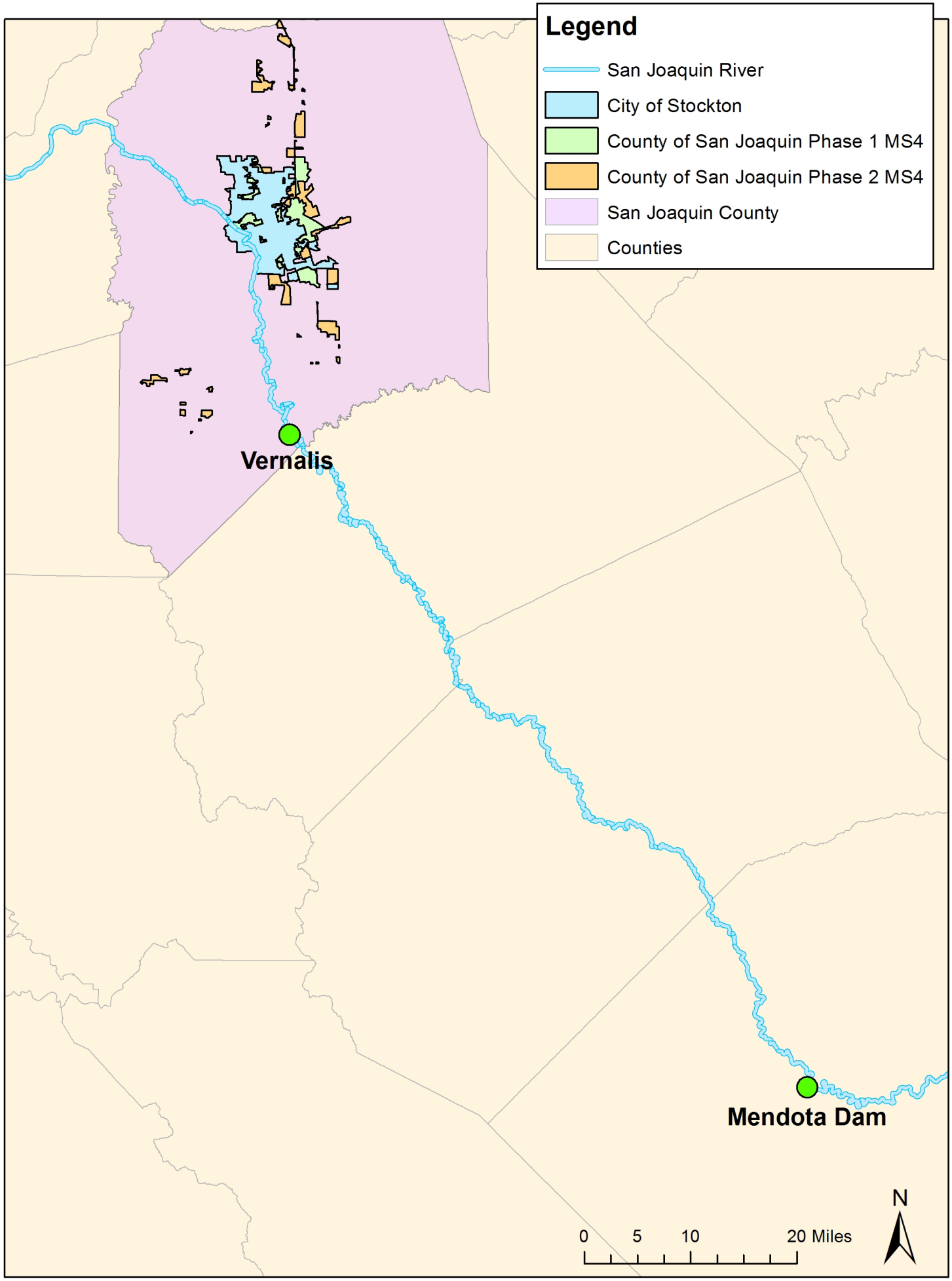
Sincerely,

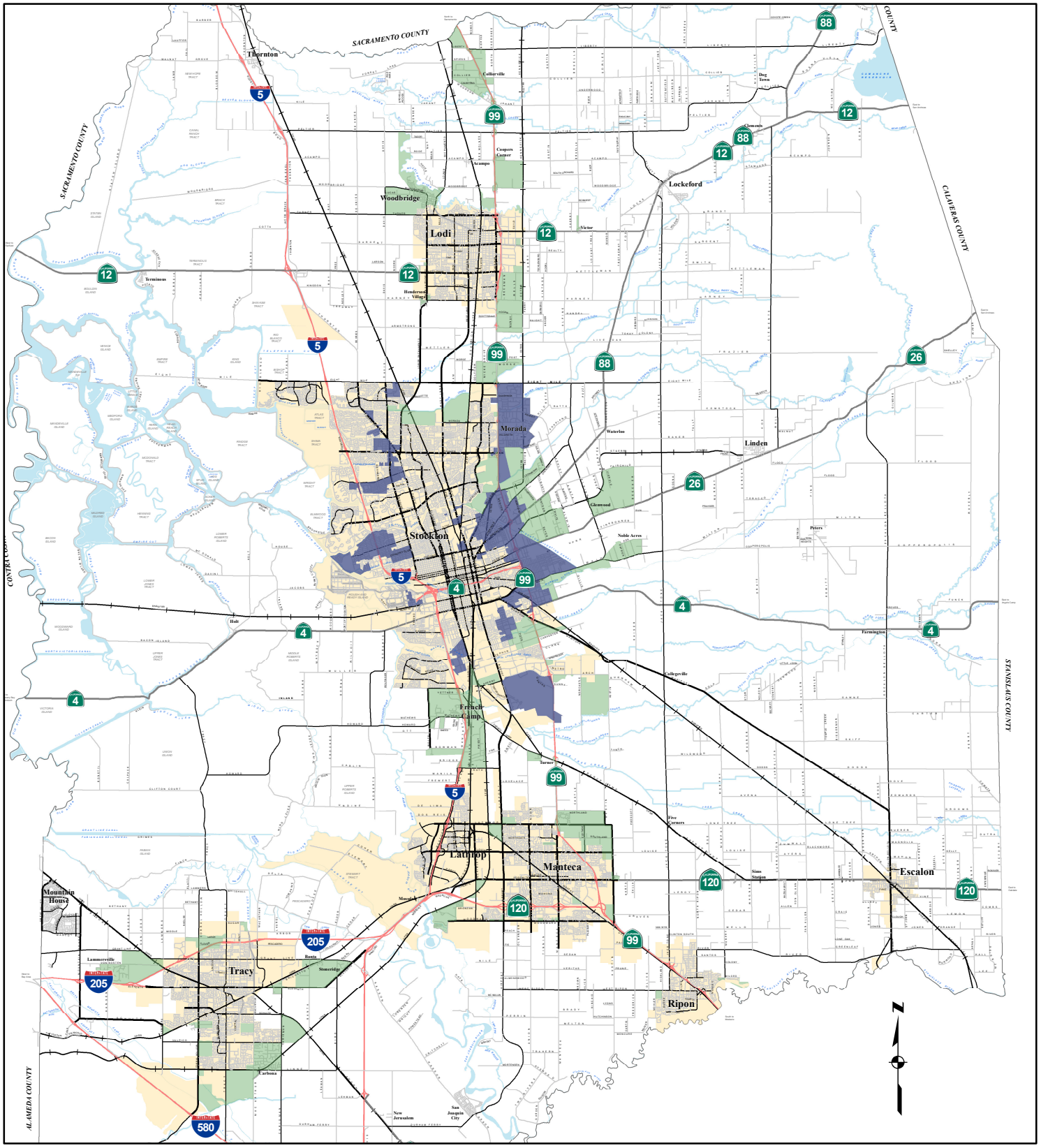
Brandon W. Nakagawa, P.E.
Water Resources Coordinator

Attachments: A – County of San Joaquin - Phase I and Phase II Area Map
B – San Joaquin County - NPDES Phase 2 Stormwater Program Map

Cc: Jonathan Bishop, State Water Board
Karen Larsen, State Water Board
Phillip Crader, State Water Board
Diana Messina, State Water Board
Gayleen Perreira, State Water Board
Bill Hereth, State Water Board
Pamela Creedon, Central Valley Regional Water Board
Clint Snyder, Central Valley Regional Water Board
Bryan Smith, Central Valley Regional Water Board
Elizabeth Lee, Central Valley Regional Water Board

Emc: Gerardo Dominguez, Engineer IV


Legend
San Joaquin River
City of Stockton
County of San Joaquin Phase 1 MS4
County of San Joaquin Phase 2 MS4
San Joaquin County
Counties
Vernalis
Mendota Dam
N
0
5
10
20 Miles



Phase 1 Area | Phase 2 Area | City Limits | 1 " = 25,620.9 '

San Joaquin County NPDES Phase 2 Stormwater Program

(Phase 2 areas shown are based upon 2010 Census Urban and Rural Classification and Urban Area Criteria)

SAN JOAQUIN COUNTY

Department of Public Works, 1810 E. Hazelton Ave., Stockton, CA 95205

Public Works Working for YOU

Gerardo Dominguez

Source: 2010 Census Data