



# City of Santa Rosa

August 1, 2013

**Via Electronic Mail**

Matthias St. John  
Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403

**Comments regarding proposed Amended Time Schedule Order (proposed Order No. R1-2013-0048 Amending Time Schedule Order No. R1-2011-0103 to Provide Time to Undertake Actions to Comply with Requirements in proposed Draft Order No. R1-2013-0001)**

Dear Mr. St. John:

The City of Santa Rosa ("City") appreciates the opportunity to comment on the proposed Amended Time Schedule Order ("Proposed TSO") issued by your office on July 5, 2013. The City greatly appreciates North Coast Regional Water Quality Control Board ("Regional Water Board") staff's recognition that additional time is necessary for the City to obtain compliance with the proposed "no net loading" requirement for total phosphorus included in the recently issued Draft Tentative Waste Discharge Requirements and Master Reclamation Permit for the Santa Rosa Subregional Water Reclamation System ("Draft Order") and its accompanying attachments.

However, as detailed in comments recently submitted on the Draft Order, the City believes the proposed "no net loading" requirement for total phosphorus is neither required nor warranted. The City requested that total phosphorus be instead regulated in the same manner as total nitrogen, with a performance-based mass effluent, until completion of the upcoming nutrient TMDL. In that case, the Proposed TSO would become unnecessary to pursue and adopt. Under the City's recently proposed approach, the Nutrient Offset Program discussed in the Proposed TSO, to which the City remains committed, would be utilized to offset any nutrient discharges in excess of the performance-based mass effluent limitations for total phosphorus and nitrogen. The City's comments below reflect this approach, and alternatively provide comments on the Proposed TSO should the "no net loading" requirement for total phosphorus be retained notwithstanding the City's previously enunciated objections.

**1. If Requested Changes to Proposed Total Phosphorus Requirements in the Draft Order Are Implemented, the Proposed TSO is Unnecessary.**

In July 22, 2013 comments submitted on the Draft Order, the City requested that the “no net loading” requirement for total phosphorus, that is the basis for the Proposed TSO, be removed for a variety of factual, technical, and legal bases. A copy of the relevant aspects of the July 22, 2013 comment letter are enclosed here. Should the proposed “no net loading” requirement for total phosphorus be removed, in favor of a performance-based mass effluent limitation as requested, adoption of the Proposed TSO as currently drafted will be unnecessary, as compliance will no longer be uncertain. The City requests that the Regional Water Board staff make a determination as soon as possible with respect to the City’s July 22, 2013 request to remove the “no net loading” requirement for total phosphorus in favor of a performance-based mass effluent limitation, as was included for total nitrogen, and modify or eliminate the Proposed TSO accordingly.

Should the “no net loading” requirement be retained, and the need for the Proposed TSO remain, the City submits the following additional comments on the Proposed TSO.

**2. The Interim Numeric Requirements for Offset Project Reductions Are Not Reasonable, Feasible, or Practical and Should be Removed.**

Order No. 3 of the Proposed TSO requires the City to “demonstrate progress toward compliance with the [“no net loading”] effluent limitation for total phosphorus” through submission and/or implementation of nutrient offset projects by dates certain that also meet strict, numerical offset reduction benchmarks as compared to the City’s estimated annual mass discharge of total phosphorus. (See Proposed TSO at p. 6, Order No. 3.a. – c.) For example, under the Proposed TSO, by September 1, 2015, the City must implement approved projects or submit proposals for nutrient offset projects that offset at least 66 percent of the estimated annual mass discharge of total phosphorus. (*Id.*) The numeric offset values range from 33 percent in Fall 2014 to 100% in the Fall 2016. While the City understands the Regional Water Board’s desire for nutrient offset projects to continue to be identified and implemented, as is currently done by the City, the framework identified in the Proposed TSO is unreasonable, infeasible, and impractical. (See, e.g., Water Code §13000). First, the very basis for the Nutrient Offset Program, adopted by Regional Water Board Resolution No. R1-2008-0061, is to provide the City flexibility to identify and implement technically sound, cost-effective projects within a three-year averaging window. Whether offset credits can or should be earned via one project implemented near the end of the three year-averaging period, or via many projects performed over a spatially mixed timeframe, is a determination left up to the City within the Nutrient Offset Program. This concept should be revived in the Proposed TSO so that the City has maximum flexibility to expend critically limited resources on projects that meet the watershed, regulatory, and environmental goals of permit requirements.

Second, the City will be unduly restricted in its choices of nutrient offset projects, especially, for example, during 2014/2015, when the City would be arbitrarily required to make the leap from

33% to 66% in offset project submission and/or implementation. This construct will artificially force project selection, which may not result in the best overall watershed projects being designed and implemented. Rather, the City will be forced to pursue those projects, if any, that will quickly and more simply satisfy the numeric interim TSO requirements, but that may lack other benefits.

Third, neither federal regulations nor the Water Code dictate the inclusion of these interim numeric offset program reduction requirements in the Proposed TSO, and no basis appears to be provided to support the arbitrary requirements. In circumstances where a time schedule order exceeds more than one year in length, Water Code section 13385(j)(3)(B)(iii)(i)-(ii) requires only the inclusion of interim effluent limitations and actions/milestones leading to compliance with those limitations, if appropriate. In this case, the Regional Water Board could have simply included calculated, performance-based mass limits for total phosphorus as the interim limitation to satisfy the Water Code mandates and, to satisfy the Regional Water Board staff's desire to keep apprised of the City's progress, required the City to report its progress towards compliance with the initial "no net loading" calculation expected in 2017. (*See, accord, State Water Board Order re TSO interim limits*).

Finally, given the time-intensive and difficult nature of identifying and implementing nutrient offset programs that concurrently meet the criteria applied by the City and Regional Water Board staff, the City is not confident that offset projects can be submitted and/or implemented consistent with the schedule contained in the Proposed Order.<sup>1</sup> In that case, the City is concerned that the protection from mandatory minimum penalties afforded by the Proposed TSO would disappear, and leave the City unreasonably subject to penalty notwithstanding its good faith efforts to secure sufficient offset credits for the initial "no net loading" calculation expected in 2017.

For these reasons, the City requests that the interim numeric offset program reduction requirements set forth in Sections 3.a. – c. of the Proposed Order be removed, and that a performance-based mass limit for total phosphorus of 17,787 lbs.<sup>2</sup> be included instead, along with a requirement that the City annually report its progress towards compliance with the initial "no net loading" calculation expected in 2017.

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<sup>1</sup> *See, e.g.*, the City's May 18, 2012 Petition for Review to the State Water Board for a more thorough description of these issues, which does not include the City's more recent and problematic encounters on the now-abandoned Nunes project.

<sup>2</sup> Consistent with the manner in which interim, performance-based limitations are adopted in Time Schedule Orders and Cease and Desist Orders statewide, this value was calculated using a total phosphorus concentration of 2.2 mg/L and a maximum annual discharge volume of 1698 million gallons, assuming an average dry weather flow of 17 million gallons per day, which reflects past performance and anticipated near-term discharge ranges and maximized reuse operations.

**3. The City Requests Additional Changes to the Proposed TSO's Language for Clarity, Consistency, and Accuracy.**

The City requests the following modifications to the Proposed TSO (the page numbers in the redlined/strikeout version in the public comment package are cited below) be made prior to its presentation to the Regional Water Board for adoption:

- a. Finding 11, Page 3: After citation to Provision IV.A.2.b. in the Draft Order, please include the phrase, "The zero or no net loading requirement for total nitrogen was removed."
- b. Finding 12, Page 3: Please modify the initial phrase of this finding to state, "Consistent with Order No. R1-2006-0045 and the express terms of Order No. R1-2013-0001," and modify the end of that sentence to state, "earn nutrient reduction credits that offset annual nutrient phosphorus loads discharged ..."
- c. Finding 13, Page 4: Please modify the finding to state, "Regional Water Board and City staff are currently working cooperatively to investigate further nutrient offset project options, ~~including those associated with agriculture, including dairies,~~ that could be approved by the Regional Water Board. The identification, approval, and implementation of nutrient offset projects, agricultural or otherwise, will take additional time. Therefore, the City is unlikely to be able to timely implement nutrient offset project(s) ~~so as quickly enough~~ to achieve compliance with the "~~zero or no net loading~~" effluent limitations for ~~nitrogen and~~ phosphorus in 2014~~5~~ via through implementation of the Nutrient Offset Program."
- d. Finding 19, Page 5: Please modify the initial sentence of Finding 19 to state, "...Order No. R1-2006-0045, and still the no net loading requirement for total phosphorus set forth in renewed Order No. R1-2013-0001 continues to constitutes a new and more stringent ..." and modify the next sentence further to state, "Order No. R1-2013-0001 contains the same ~~zero or no net loading requirement for total phosphorus...~~"
- e. Order No. 3, Page 6: Please modify the introduction to this section to state, "To demonstrate progress towards compliance with the "no net loading" effluent limitation for total phosphorus, the City ..."
- f. Order No. 4, Page 6: Please modify the reporting obligations to state, "...to the Regional Water Board written annual updates of the status of projects ..."

**4. Modifications to Order No. R1-2011-0103 Requested in Sections 2 and 3 of this Letter Should Also Be Incorporated into Order No. R1-2013-0048.**

The Regional Water Board staff is proposing to amend Order No. R1-2011-0103 via adoption of Order No R1-2013-0048, and in doing so, Order No. R1-2013-0048 repeats many of the same findings and information contained in Order No. R1-2011-0103. For this reason, the City

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requests that the modifications to Order No. R1-2011-0103 requested in Sections 2 and 3 above also be incorporated into the findings of Order No. R1-2013-0048.

Thank you for your careful consideration of the City's comments. We would appreciate scheduling a follow-up meeting with you prior to the proposed hearing date to further discuss the City's comments.

Please contact Jennifer Burke, Deputy Director Environmental Services, at 707-543-3359, to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Guhin". The signature is written in a cursive style with a large, sweeping initial "D" and a long horizontal stroke at the end.

David M. Guhin  
Director of Utilities