

Lake Elsinore & San Jacinto Watersheds Authority



City of Lake Elsinore • City of Canyon Lake • County of Riverside
Elsinore Valley Municipal Water District • Santa Ana Watershed Project Authority

November 23, 2009

Gerard Thibeault, Executive Director
Regional Water Quality Control Board
3737 Main St., Suite 500
Riverside, CA 92501

RE: Impacts of TMDLs in Draft NPDES Permits

Dear Mr. Thibeault:

On November 9th, a meeting was held among the Lake Elsinore and Canyon Lake Nutrient TMDL Task Force (Task Force) to discuss the draft RCFCWCD MS4 stormwater permit (MS4 Permit). The Task Force concluded that the draft MS4 Permit contains provisions that may impact the collaborative efforts of the Task Force in implementing a watershed-wide adaptive management approach in achieving the TMDL water quality targets for Lake Elsinore and Canyon Lake. Based on the meeting discussion, this letter is intended to share the Task Force's concerns with MS4 Permit provisions relating to the Lake Elsinore/Canyon Lake (LE/CL) TMDL in the MS4 Permit as well as other TMDL party NPDES permits. In addition, recommended revisions to continue the positive progress of the Task Force are provided.

The Permit Would Disqualify MS4 Permittees for Grant Eligibility

The Regional Board has been a long-time supporter of the Task Force approach and the Lake Elsinore & San Jacinto Watersheds Authority in supporting grant funding to assist implementation of measures to protect and enhance beneficial uses in the lakes. However, the proposed inclusion of TMDL compliance actions in the NPDES permit may disqualify the Task Force members from eligibility for grant funding for in-lake water quality projects. This is evidenced by USEPA 319 (h) grant provisions which indicate that these funds cannot be used for activities under or a part of the NPDES permit. As an example, Section VI.D.2.e would make the Canyon Lake Sediment Treatment Plan, currently an option of the LE/CL TMDL, mandatory.

The Permit Would Reduce Needed Flexibility

Second, the latest draft of the MS4 Permit includes tables from the approved TMDL implementation plans that show interim and Regional Board approved final deliverable dates expected to attain the beneficial uses at the lakes by the TMDL target deadlines. By placing these tables in the MS4 Permit, the Task Force anticipates that the deliverables and their deadlines would become fixed, thus reducing the flexibility envisioned by the Regional Board and the Task Force under an adaptive management approach. In first proposing these

interim deliverables, it was with the understanding that these deliverables dates could be modified from time to time based on new data and science being collected at the lakes and the watershed under an iterative process. The Task Force approach, as defined in the TMDL implementation plan is to:

1. Calculate existing loads and updating load and waste load allocations for each discharger/source based on the most current data available;
2. Develop tools and data that allow the dischargers to take credit for load reductions based on BMP implementation;
3. Implement innovative and cost effective in-lake improvements;
4. Develop pollutant trading plans and biological translators that allow the dischargers to take credit for in-lake improvements; and
5. Re-evaluation of the TMDL, as appropriate, to ensure that it reflects the current state of science and knowledge regarding the lakes.

This approach includes planned improvements at the lakes based on our understanding that controlling nutrients in the watershed will not be sufficient to result in restoration of lake beneficial uses. Watershed based nutrient controls only function during rain events, and can never be sufficient to control the volumes of water and resultant nutrient loads that are produced by large rain events. Proper management of the lakes will require BMPs that can function year-round – and continually address the sources of impairment. In-lake management measures are likely to be more successful as they can control the underlying cause of impairments on a daily basis.

Numerical Effluent Limitations Would Undermine Task Force

By attempting to enforce waste load allocations for the MS4 Permittees and other stakeholders through additional outfall based monitoring and compliance determinations that go beyond the compliance programs developed through the TMDL Implementation Plan, the Regional Board may inadvertently undermine the Task Force approach. Since the watershed is large and there are many outfalls, determining any specific dischargers actual load from monitoring data is economically and technologically infeasible. Further, the source of nutrients that are measured in outfall monitoring data is difficult to trace. Nutrients measured at outfalls are likely to represent the contribution of multiple TMDL dischargers including state and federal agencies (schools, CalTrans, etc), agricultural and CAFO operations, MS4 dischargers (possibly multiple cities), etc. This may promote infighting between the stakeholders regarding relative contributions of nutrients, stall Task Force progress, and divert resources from addressing the actual impairments in the lakes to address individual compliance with the waste load allocations. This may also lead some Task Force agencies to intercept and divert flows from the lake to meet upstream compliance and thereby further exacerbate lake water quality so dependent on upstream flows to be maintained. Calculating existing loads, and then determining compliance by allowing the dischargers to take credit for load reductions that result from BMP implementation in the watershed or at the lakes is a much more effective way to ensure progress and compliance with the TMDL and is

consistent with the plans and schedules that have been approved by the Regional Board to date.

Recommendations

To facilitate implementation of in-lake controls and continued viability of the adaptive management approach, the Task Force recommends that:

1. Reference to Canyon Lake activities in the MS4 permit be deleted to avoid disqualifying the MS4 Permittees for eligibility to apply for EPA 319 grant funds;
2. All interim deliverable tables for the TMDL in the MS4 permit be deleted and that only the TMDL implementation plans and studies be referenced as a narrative in the MS4 permit. The Task Force has worked cooperatively and responsively in all TMDL deliverables to date and when delays have arisen in interim deliverables, these delays have been communicated to Regional Board staff with a full explanation.
3. The TMDL provisions in the MS4 Permit be revised to eliminate monitoring and reporting requirements that exceed Regional Board approved monitoring and implementation plans already submitted by the Task Force on behalf of its members to ensure that resources stay focused on those tasks that are most likely to restore beneficial uses at the lakes.
4. The TMDL provisions in the MS4 Permit be revised to require the Permittees to develop BMP plans and schedules, consistent with documents submitted by the Task Force and approved by the Regional Board, that demonstrate implementation of the Waste Load Allocations as opposed to trying to measure compliance with the Waste Load Allocations directly using numeric effluent limits.

We appreciate the Regional Board staff's cooperation and participation on the Task Force and believe this is a valuable approach in assuring that water quality improvements and beneficial uses are returned to both Canyon Lake and Lake Elsinore. If you have any questions or concerns regarding this report, please contact me at 951-354-4221.

Respectfully submitted,



Mark Norton P.E., LEED AP
LE/CL TMDL Task Force Administrator