

Draft Comment Summary and Responses

Comment Deadline: October 14, 2013

Amendment to the Water Quality Control Plan for the Central Coastal Region to Adopt Total Maximum Daily Loads for Nitrogen Compounds and Orthophosphate in the Lower Santa Maria River Watershed and Tributaries to Oso Flaco Lake

List of Commenters:

Comment Reference	Organization	Representative
1	City of Santa Maria, Utilities Department	Richard Sweet
2	KMI	Kay Mercer

Response to Comments:

No.	Author	Comment	Response
1.1	City of Santa Maria Utilities Department	<p>The City of Santa Maria (“City”) submits these written comments to the State Water Resources Control Board (“State Board”) in connection with its consideration of the Santa Maria Nutrient TMDL. These written comments satisfy the requirements of 23 Cal. Code Regs. 3779(f) because they focus on the final version of the Santa Maria Nutrient TMDL approved by the Central Coast Regional Water Quality Control Board (“Central Coast Regional Board”), demonstrate that the comments were timely made to the Central Coast Regional Board, and explain why the Central Coast Regional Board’s responses to those comments were inadequate or incorrect.</p> <p>Before presenting the City’s specific comments on the TMDL, the City wishes to emphasize how the State Board’s pending consideration of the receiving water limitations (“RWL”) language for MS4 permits relates to and informs the City’s comments. As the City explained to the State Board during the recent RWL workshop, the current RWL approach, as interpreted by the courts, undermines the type of comprehensive and collaborative approaches that will be required to address nutrient problems in the Santa Maria watershed. The current RWL language forces an “end-of-pipe,” jurisdictional focus and requires strict and immediate</p>	<p>Staff appreciates these comments from the City and would like to note that the City’s comment letter also included the following two attachments.</p> <p>Attachment A, dated February 11, 2013, is a comment letter submitted by the City during the public comment period for the May 30, 2013, Central Coast Water Board hearing. Staff provided written responses to these comments on May 15, 2013, and made them available on the Central Coast Water Board website.</p> <p>Attachment B, dated May 29, 2013 is a comment letter submitted on behalf of the City by Best Best & Krieger. This comment letter was submitted one day prior to the Central Coast Water Board hearing that was held on May 30, 2013.</p> <p>With regard to receiving water limitations, it should be noted that available water quality data, as reported in the City’s Storm Water Annual Reports (2009, 2010, and 2011), indicate that nitrate as nitrogen rarely exceeded a concentration of 1.0 mg/L (maximum of 3.3 mg/L) and that unionized ammonia as nitrogen did not exceed 0.0018 mg/L. These concentrations are well below the proposed waste load allocations. As contained in the proposed TMDLs, the City’s year round waste load allocations are set at the existing Basin Plan municipal drinking water standard for nitrate of 10 mg/L as nitrogen and the existing Basin Plan water quality objective for</p>

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		<p>compliance with water quality standards which the Santa Maria Nutrient TMDL determines will take decades to achieve. Addressing the RWL approach to encourage more collaboration and to reflect the time needed to deal with the scale of the nutrient problem would go a long way toward easing some of the City's key concerns about the TMDL.</p>	<p>unionized ammonia of 0.025 mg/L as nitrogen. Based on this information, staff has concluded that the City's discharge does not likely cause or contribute to exceedances of these water quality objectives. As such, the receiving water limitations do not force an end-of-pipe, jurisdictional focus that requires strict and immediate compliance with water quality standards.</p> <p>The City's interim waste load allocations as mentioned above are to be attained 12-years after the effective date (OAL approval). The 20-year interim and final 30-year final waste load allocations only pertain to waterbodies exhibiting biostimulation and these waterbodies are not within the City's jurisdiction. As such, the length of time necessary to achieve the TMDL is not applicable to the City's receiving water limitations.</p>
<p>1.2</p>	<p>City of Santa Maria Utilities Department</p>	<p>With this point as an important backdrop, the City would like to stress, in addition to the attached comments, the following comments on the TMDL:</p> <ol style="list-style-type: none"> 1. The Concentration-Based Approach: A main concern the City has about the Santa Maria Nutrient TMDL is that it uses concentration-based allocations rather than load-based allocations. As the City and others pointed out during the comment period and at the Central Coast Regional Board hearing, a concentration-based approach focuses too narrowly on individual discharges and does not support a broader, comprehensive approach to addressing nutrients. As staff has acknowledged, "a concentration-based load allocation expression may not adequately provide meaningful connection to on the ground implementation decisions." (See Response to Comments #13 and #19.) Such an approach is problematic in both an urban setting (because it focuses narrowly on urban discharges that have no large-scale 	<p>Note that the City refers to Central Coast Water Board staff's Response to Comments #13 and #19 as contained in Attachment 5 of the Staff Report for the Central Coast Water Board hearing on May 30, 2013. As noted in the Sept. 3, 2013 public comment notice, State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f) requires that:</p> <ol style="list-style-type: none"> 1. Comments must specifically address the final version of the Basin Plan Amendment adopted by the Central Coast Water Board. 2. If the Central Coast Water Board previously responded to a similar or identical comment, the commenter must explain why and in what manner the commenter believes each of the responses provided by the Central Coast Water Board to each comment was inadequate or incorrect. <p>As such, the Central Coast Water Board has previously responded and the State Board may refuse these comments. However, general comments are provided to reiterate previous Central Coast Water Boards' responses.</p>

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		<p>nutrient reduction benefits) and provides perverse incentives to agricultural sources who, as one commenter pointed out, “will actually have an incentive to increase irrigation discharges to decrease the concentration of nitrogen and orthophosphate in waters.” (See Response to Comment #13.)</p>	<p>The proposed TMDLs include concentration-based targets and allocations because concentrations, rather than loads, are a direct measure of existing water quality objectives contained in the Basin Plan and are directly protective of beneficial uses. Note that expressing TMDLs and allocations as concentrations is particularly important with regard to toxic compounds such as nitrate and unionized ammonia, because toxicity “loads” cannot be effectively translated into protective exposure levels.</p> <p>The Central Coast Water Board responded to public comments regarding the concentration-based TMDL approach and provided meaningful connection to “on-the-ground” implementation by developing “Alternative Pollutant Load Expressions to Facilitate Implementation of Concentration-based Allocations”. These alternative pollutant load expressions are mass-based and contained in Appendix F of the TMDL Project Report.</p> <p>In addition, with regard to discharges from irrigated agriculture, Central Coast Water Board staff developed non-concentration-based metrics as a means to determine compliance with the TMDL load allocations and these alternative metrics are contained within the Basin Plan Amendment language (see for example Resolution R3-2013-0013, Attachment, page 11). These alternative metrics include:</p> <ul style="list-style-type: none">• achieving numeric targets for nutrient-response indicators (i.e., dissolved oxygen water quality objectives, chlorophyll <i>a</i> targets and microcystin targets).• demonstrating receiving water mass load reductions• implementing management practices that are capable of achieving load allocations.• providing other sufficient evidence to demonstrate compliance with load allocations.
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			<p>Central Coast Water Board staff has previously responded to these comments as evidenced by revisions to the Project Report and Basin Plan Amendment language which were approved by the Central Coast Water Board. As such, the comment that agricultural sources “will actually have an incentive to increase irrigation discharges to decrease the concentration of nitrogen and orthophosphate in waters” is neither justified nor evident.</p>
1.3	City of Santa Maria Utilities Department	<p>The City acknowledges the Central Coast Regional Board has made some positive changes to the TMDL based on these comments. For irrigated lands, the Central Coast Regional Board provided an alternative load-based approach as an optional metric to gauge progress towards reducing nutrient discharges. The Central Coast Regional Board also attempted to revise the metrics applicable to urban discharges to provide additional flexibility. The changes are appreciated, but do not address the fundamental problem that defining final allocations in terms of concentrations will not foster the best water quality results. This approach will:</p> <ul style="list-style-type: none"> • Ultimately mean that concentration allocations will become an enforceable requirement inhibiting the City’s ability to participate in or fund the development of more productive solutions, such as its agricultural tailwater denitrification system in the Bradley Channel. To protect the City’s narrow interests, the City may need to focus solely on achieving the concentration-based requirements at its urban discharge points, which will have no meaningful regional water quality benefit. A broader, load-based approach would promote more collaboration and broader water quality solutions. The City is willing to participate in these solutions but need regulatory certainty to make such investments. 	<p>Staff appreciates these comments. Please see Comments 1.1 and 1.2 regarding the City’s concentration-based waste load allocations.</p> <p>Indeed, the proposed TMDLs provide greater flexibility for determining the City’s attainment of waste load allocations with the intention of facilitating the installation of a denitrification system in Bradley Channel that will provide a regional water quality benefit. For example, the Basin Plan Amendment language (see Resolution R3-2013-0013, Attachment, page 13, D) states that:</p> <p>“In order to achieve attainment of waste load allocations, Water Board staff may additionally consider:</p> <p>D. load reductions demonstrations on mass basis at storm drain outfalls and/or downstream of treatment systems.”</p> <p>It is important to note that the additional considerations for achieving waste load allocations as mentioned above do not preclude the requirement for attainment of Basin Plan water quality objectives, such as nitrate and unionized ammonia that are expressed as concentration, nor do they override existing provisions that are contained in the MS4 General Permit.</p> <p>As discussed with the City, staff applauds nitrogen reduction</p>

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		<ul style="list-style-type: none"> Ultimately undermine the “pump-and-fertilize” approach to addressing legacy groundwater pollution. Although the Central Coast Regional Board added language to the TMDL supporting this approach, the narrow concentration-based focus undermines the “pump-and-fertilize” approach because the concentration levels of polluted groundwater exceed the allocations. <p>For all these reasons, the City requests that the State Board send the TMDL back to the Central Coast Water Board with direction to express the final allocations as loads rather than concentrations.</p>	<p>efforts, such as one in Bradley Channel. The receiving water allocation in tandem with a monitoring location downstream of the treatment system could be an appropriate strategy that addresses the City’s concern and implementation of the TMDL.</p> <p>As mentioned in SBX2 1, the “pump and fertilize’ approach is recognized as a key, long-term remediation strategy for large groundwater basins that are impacted by nitrate, such as the Santa Maria River and Oso Flaco Lake watersheds. Staff considers high nitrate groundwater used for agricultural irrigation as a potential resource that should be managed through irrigation and nutrient management measures performed in compliance with the existing Irrigated Agricultural Order.</p>
1.4	City of Santa Maria Utilities Department	<p>2. Application of the TMDL to Man-Made Flood Control Channels that are not “Water Bodies”: The City has Long-urged the Central Coast Regional Board and the State Board to treat the Bradley Channel, Blosser Channel, and the Main Street Canal for what they really are – man-made flood control channels constructed in or about the 1960s in areas where no previous watercourses existed. These channels carry agricultural flows and have no natural tributaries. They are not “water bodies” as used in the Central Coast Basin Plan. For this reason, they should not be included in this TMDL.</p> <p>The City appreciates the Central Coast Regional Board’s sensitivity to this issue, and acknowledges that staff has worked to provide flexibility regarding how the TMDL might apply to the channels. More is needed, however. Rather than include these channels in the TMDL, the State Board should direct the Regional Board to consider these channels as part of the upcoming 303(d) listing process and to use that process to more accurately characterize the nature of these</p>	<p>In accordance with 23 Cal. Code Regs., § 3779, subd. (f), the Central Coast Water Board previously responded to a similar or identical comment. The City has not explained why and in what manner the City believes the responses provided by the Central Coast Water Board are inadequate or incorrect.</p>

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		<p>channels.</p> <p>The City thanks the State Board for its consideration of these issues and looks forward to working with the Central Coast Regional Board to revise the TMDL consistent with these comments.</p>	
2.1	Kay Mercer	<p>Thank you for the opportunity to provide comment on the Lower Salinas River and Santa Maria River Nutrient TMDL programs. Comments will primarily be focused on the Salinas River Nutrient TMDL. Nevertheless, all concerns could be extrapolated and may applied to the proposed Santa Maria Nutrient Program.</p> <p>This TMDL stakeholder process has been protracted for a variety of reasons. Consequently, there is a considerable history of comment letters. I am attaching a few historical comment letters, as many of the questions and concerns echoed in earlier letters and throughout the stakeholder process have not been addressed by the final TMDL.</p>	<p>Staff appreciates these comments from Kay Mercer (KMI) and would like to note that this same comment letter was submitted for the Lower Salinas River Nitrogen Compounds and Orthophosphate TMDL Basin Plan amendment. This comment letter also included the following three attachments:</p> <ol style="list-style-type: none"> 1. A public comment letter from Abby Taylor-Silva of Grower-Shipper Association of Central California and Kay Mercer of KMI, dated Nov. 26, 2012 and submitted for the public comment period for the draft Lower Salinas Nitrogen Compounds and Orthophosphate TMDLs, prior to Central Coast Water adoption of these TMDLs on March 14, 2013. 2. A comment letter from Kay Mercer of the Agricultural Watershed Coalition, dated October 31, 2008, regarding a draft TMDL project report for nutrients in the Santa Maria and Oso Flaco watersheds. 3. A comment letter from Richard Quant of Grower Shipper Association of Santa Barbara and San Luis Obispo Counties dated October 31, 2008, regarding a draft TMDL project report for nutrients in the Santa Maria and Oso Flaco watersheds. <p>The comment letter did not contain citations or references specific to the TMDL for Nitrogen Compounds and Orthophosphate in the Lower Santa Maria River Watershed and Tributaries to Oso Flaco Lake; the comment letter, did, however, reference the TMDL for Nitrogen Compounds and Orthophosphate in the Lower <u>Salinas River</u> and Reclamation Canal Basin and the Moro Cojo Slough</p>

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			<p>Subwatershed. Staff cannot ascertain what the commenter believes should be extrapolated or applied from the comments to the final version of the Basin Plan amendment for the Santa Maria River Watershed TMDL project, adopted by the Central Coast Water Board. In addition, the three attachments pertain to previous draft TMDL documents and not the final Basin Plan amendment.</p> <p>As noted in the Sept. 3, 2013 public comment notice, State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)) requires that:</p> <ol style="list-style-type: none">1. Comments must specifically address the final version of the Basin Plan Amendment adopted by the Central Coast Water Board.2. If the Central Coast Water Board previously responded to a similar or identical comment, the commenter must explain why and in what manner the commenter believes each of the responses provided by the Central Coast Water Board to each comment was inadequate or incorrect. <p>As such, the State Board refuses to accept these comments.</p> <p>Note however, that responses to these comments are contained in a separate <i>Draft Comment Summary and Responses</i> document prepared for the Lower Salinas River Nitrate Compound and Orthophosphate TMDL Basin Plan amendment.</p>
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