

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

TIME SCHEDULE ORDER R5-2019-XXXX REQUIRING COUNTY OF LAKE CITY OF CLEARLAKE CITY OF LAKEPORT MUNICIPAL SEPARATE STORM SEWER SYSTEMS

TO COMPLY WITH REQUIREMENTS PRESCRIBED IN WATER QUALITY ORDER 2013-0001-DWQ, AS AMENDED

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds the following:

1. The State Water Resources Control Board (State Water Board) adopted the National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order Number. 2013-0001-DWQ, (Small MS4 General Permit) on 5 February 2013 and subsequently amended.¹
2. County of Lake, City of Clearlake, and City of Lakeport (collectively Permittees) are regulated MS4s under the Small MS4 General Permit. The Permittees each own MS4s that discharge into Clear Lake (Attachment A).
3. The Permittees need additional time to comply with requirements of the Small MS4 General Permit as detailed below and have requested a time schedule order from the Central Valley Water Board.

Basin Plan Amendment for the Control of Nutrients in Clear Lake

4. On 23 June 2006, the Central Valley Water Board adopted Resolution Number. R5-2006-0060, which adopted the Basin Plan Amendment for the Control of Nutrients in Clear Lake (Basin Plan Amendment). The Basin Plan Amendment established Total Maximum Daily Loads for nutrients in Clear Lake (Clear Lake Nutrient TMDL) and a program of implementation. The TMDL became effective on 21 September 2007.

¹ The Small MS4 General Permit was amended by the State Water Board's Executive Director on 2 September 2015, Order WQ 2015-0133-EXEC; 20 June 2016, Order WQ 2016-0069-EXEC; 24 January 2018, Order WQ 2018-0001-EXEC; 13 March 2018, Order WQ 2018-0007-EXEC. The State Water Board amended the Small MS4 General Permit on 19 December 2017, which amendments went into effect on 1 January 2019.

5. The Central Valley Water Board established the loading capacity of Clear Lake as an average annual phosphorus load of 87,100 kilograms. The wasteload allocation (WLA) for the Permittees is 2,000 kilograms per year of phosphorus.

Small MS4 General Permit TMDL Provisions

6. On 19 December 2017, the State Water Board amended the Small MS4 General Permit to include TMDL compliance requirements, including the Clear Lake Nutrient TMDL.
7. Section C.1 of the Small MS4 General Permit provides, in relevant part, the following effluent limitations:

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 [Maximum Extent Practicable]. Permittees shall additionally reduce the discharge of pollutants to achieve applicable TMDL wasteload allocations in accordance with Sections E.15.a.

8. Section E.15 of the Small MS4 General Permit requires the Permittees to comply with all applicable TMDL-specific, BMP-based water quality-based effluent limitations and other permit requirements within Attachment G.
9. Under Section E.15.b of the Small MS4 General Permit, WLA attainment dates that already passed when the Small MS4 Permit was amended became effective on 1 January 2019, the effective date of the amended Permit.

Time Schedule Order Request

10. Under Section E.15.b of the Small MS4 General Permit, where a final deadline to attain WLAs has passed and the permittee has not demonstrated compliance, the permittee may seek a time schedule order pursuant to Water Code section 13300 and in accordance with the criteria established in the Small MS4 General Permit.
11. On 22 August 2019, the Permittees jointly submitted a request for a time schedule order under Water Code section 13300.
12. As detailed in their time schedule order request, the Permittees state that they have been unable to implement appropriate monitoring efforts to evaluate the current storm water program and infrastructure to determine if their WLA has been met. The permittees provided the following justifications for needing additional time to evaluate current efforts and demonstrate compliance with the WLA requirements:
 - a. Several major disasters in County of Lake over the last five years, including seven wildfires and two significant flooding events;
 - b. MS4 staff turnover, leading to inconsistencies within the program and delayed implementation of TMDL goals; and

c. Lack of financial stability for the Permittees' MS4 programs.

13. In their request, the Permittees request time to complete a best management practice (BMP) effectiveness study to determine if they are meeting the WLA. The BMP study involves inventorying and mapping BMPs currently in place and conducting an effectiveness assessment of the BMPs ability to reduce phosphorus inputs into the Clear Lake watershed. Due to the high amounts of phosphorus in the soil, sediment/erosion control is considered an effective process to reduce phosphorus inputs.
14. Depending on the outcome of the BMP study, the Permittees may need to develop and implement a Sediment/Phosphorus Reduction Work Plan to further reduce phosphorus loading and achieve compliance with the WLA.

Water Code Provisions

15. Water Code section 13300 states the following in relevant part:

Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule for specific actions the discharger shall take in order to correct or prevent a violation of requirements.

16. Based on Permittees' failure to demonstrate compliance with the WLAs pursuant to the Small MS4 General Permit, the Permittees' MS4 discharges to Clear Lake are not or may not comply with the Small MS4 General Permit and its BMP-based water quality-based effluent limitations and other permit requirements. Accordingly, pursuant to California Water Code section 13300, a discharge of waste is taking place or threatens to take place that violates requirements prescribed by the State Water Board.
17. This Order describes steps that the Permittees will take in order to come in compliance with the Small MS4 General Permit's TMDL requirements. If Permittees comply with the requirements of this Order, it is not the Central Valley Water Board's intention to take enforcement action for violations of the Clear Lake Nutrient TMDL as set forth in the Small MS4 General Permit.
18. This Order requires the Permittees to undertake specific actions to demonstrate compliance with TMDL requirements. The established time schedule is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the Small MS4 General Permit TMDL requirements.

19. Water Code section 13267, subdivision (b)(1) provides in pertinent part as follows:

The regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposed to discharge waste within its region...shall furnish, under penalty or perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

20. Water Code section 13383, subdivision (a) provides in pertinent part as follows:

The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements for any person who discharges, or proposes to discharge, to navigable waters.

21. All technical and monitoring reports required under this Order are required pursuant to California Water Code sections 13267 and 13383. The Permittees own and operate their respective municipal separate storm sewer systems which are subject to this Order. The technical and monitoring reports required by the Order are necessary to determine compliance with the Small MS4 General Permit and this Order. The burdens, including costs, of these reports bear a reasonable relationship to the needs for the reports and the benefits to be obtained therefrom.

California Environmental Quality Act

22. This Order, which provides a time schedule of specific actions the Permittees shall take in order to correct a violation of existing permit requirements, is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, sections 15301 and 15321.

Public Notice

23. The Central Valley Water Board notified the Permittees and interested agencies and persons of its intent to adopt this Order and provided them with an opportunity to submit their written views and recommendations.

24. On 23 October 2019, Central Valley Water Board staff issued a notice of public hearing and provided a 30-day comment period for consideration of adopting this Order under Water Code section 13300. The notice stated that any member of the public may request an oral hearing, and if no hearing is requested, the Executive

Officer’s review of the administrative record, including any written comments received shall constitute the public hearing.

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13300, 13267, 13383, the Permittees shall comply with the following time schedule and reporting provisions:

1. To ensure compliance by **30 September 2024**, the Permittees shall submit the following technical reports, either individually or jointly, according to the time schedule set forth below:

Task	Compliance Date
<p>1. Create an inventory of existing structural and source control best management practices (BMPs). This assessment shall include, where applicable and available, a comparison of pre- TMDL BMPs to post-TMDL BMPs.</p>	<p>31 January 2020</p>
<p>2. Create a map of all existing structural control BMPs within the Permittees’ MS4 area. This map shall include the total number of acres existing management practices occupy and a summary of the acres treated by each existing best management practice.</p>	<p>31 March 2020</p>
<p>3. Submit a BMP Effectiveness Assessment Report. The report shall include:</p> <ul style="list-style-type: none"> • Calculations, including assumptions, of the estimated load reduction from the Permittees based on the implementation of best management practices; and • A demonstration of whether the WLA is being met based on the calculations. <p>Central Valley Water Board staff will timely review the BMP Effectiveness Assessment Report and determine whether the WLA has been met.</p>	<p>31 August 2020</p>

Task	Compliance Date
<p>4. Submit a Sediment/Phosphorus Reduction Work Plan. If the Central Valley Water Board determines, after reviewing the BMP Effectiveness Assessment Report, that the WLA has not been met, the Permittees shall submit a Work Plan for approval by the Central Valley Water Board’s Executive Officer detailing specific actions the Permittees will take in order to meet the TMDL requirements no later than 30 September 2024. This Work Plan shall include:</p> <ul style="list-style-type: none"> • Proposed schedule to implement specific actions the Permittees will need to take in order to meet the TMDL requirements by 30 September 2024; • Additional, modified, and/or updated best management practices and other specific actions that will be implemented; • The locations of anticipated future best management practices; • A quantitative estimate of the load reduction based on the methods outlined in the Work Plan; • A submittal of a Water Quality Monitoring Plan and Quality Assurance Project Plan (QAPP), as specified in Attachment G of the Small MS4 General Permit, to evaluate the effectiveness of new BMPs implemented and/or installed for compliance with TMDL WLAs; and • A summary explaining how funding is expected to be obtained to implement the BMPs. The summary shall include: <ul style="list-style-type: none"> ○ A list of applications submitted or planned to be submitted to obtain funding and an update on the application progress; ○ A list of any other funding mechanism (e.g. voter approved measure, etc.) being pursued and an update on the progress; and ○ An explanation with specific details if no attempts has been made toward obtaining funding. 	<p>31 March 2021</p>

Task	Compliance Date
<p>5. Implement Best Management Practices and Submit a TMDL Attainment Assessment Report. The Permittees shall implement the best management practices identified in the approved Sediment/Phosphorus Reduction Work Plan. The Permittees' MS4 discharges shall achieve full compliance with the Clear Lake Nutrient TMDL WLA as soon as possible but no later than 30 September 2024. The Permittees shall submit a TMDL Attainment Assessment Report which shall include the following:</p> <ul style="list-style-type: none"> • Calculations, including assumptions, for attainment of the WLA; and • A demonstration that the WLA has been met based on those calculations. <p>Central Valley Water Board staff will timely review the TMDL Attainment Assessment Report and determine whether the WLA has been met.</p>	<p>30 September 2024</p>
<p>6. Annual Progress Report. The Permittee shall submit an Annual Progress Report. The Annual Progress Report shall include the following:</p> <ul style="list-style-type: none"> • Summary of progress to date, including updates on identified tasks within the Time Schedule Order; • Identification of any delays, explanation for the delays, and how the delays will be addressed; and • Activities planned for the following year. 	<p>Annually by 30 September</p>

2. Any person signing a document submitted under this Order shall make the following Certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

3. In accordance with Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgements performed by or under the direction of registered professional competent and proficient in the fields pertinent to the required activities. All technical documents specified herein that contain work plans for, that described the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction or appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Permittees shall contain the professional's signature and/or stamp of the seal.
4. All reports required under this Order shall be submitted into the State Water Resources Control Board Storm Water Multiple Application & Report Tracking System (SMARTS) database.
5. All provisions of the Small MS4 General Permit not in conflict with this Order remain in effect.
6. If any of the Permittees fail to comply with a provision of this Order, the Central Valley Water Board may take any further action authorized by law against the Permittee that is out of compliance, including but not limited to enforcement action pursuant to California Water Code sections 13350 and 13385. The Central Valley Water Board may also refer this matter to the Attorney General for judicial enforcement.
7. The Central Valley Water Board may reopen this Order at its discretion or at the request of any of the Permittees if warranted.

Any person aggrieved by this Central Valley Water Board action may petition the State Water Board for review in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et seq. The State Water Board must receive the petition by 5:00 p.m. on the 30th day after date of this Order, except that if the 30th day falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. [Laws and regulations applicable to filing petitions](#)
(https://www.waterboards.ca.gov/centralvalley/public_notices/wqcerts/pendingapps.pdf) are published on the Internet and will be provided upon request.

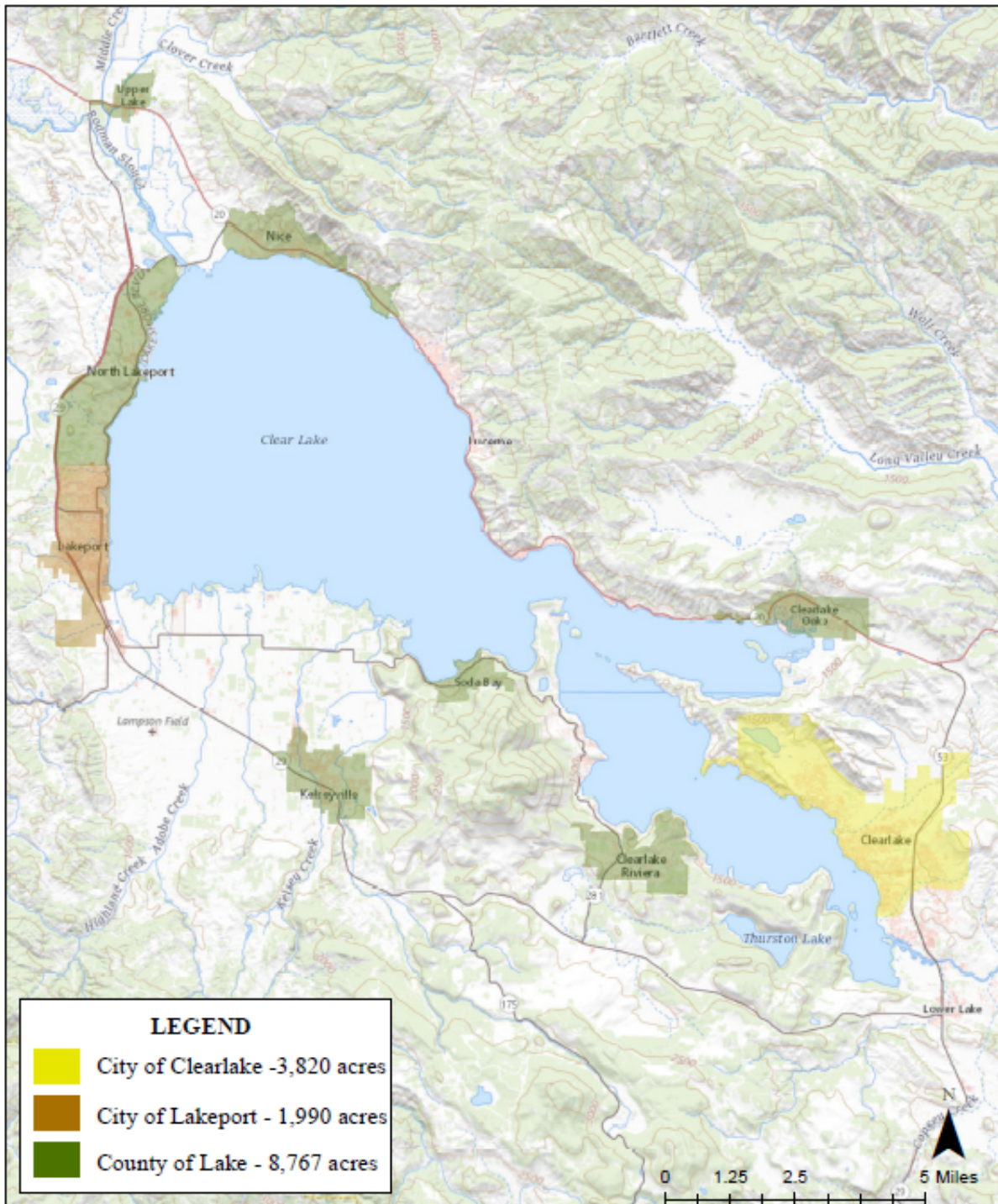
TIME SCHEDULE ORDER R5-2019-XXXX
COUNTY OF LAKE & CITIES OF CLEARLAKE AND LAKEPORT
MUNICIPAL SEPARATE STORM SEWER SYSTEMS

This Order is issued under authority delegated to the Executive Officer in accordance with Central Valley Water Board Resolution R5-2018-0057 and is effective upon signature.

PATRICK PULUPA, Executive Officer

(Date)

ATTACHMENT A



MS4 Boundaries - TMDL Landscape Calculations

Lake County Clean Water Program, Lake County CA

September, 2019