

**Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
December 2, 2021**

ITEM: 3

SUBJECT: Public Hearing on Order No. R1-2021-0041 to consider the amendment of the Water Quality Trading Framework for the Laguna de Santa Rosa (WQTF), as adopted in Order R1-2020-0012, Waste Discharge Requirements for City of Santa Rosa Regional Water Reuse System, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0022764, WDID No. 1B83099OSON, (Matt Herman)

BOARD ACTION: The Board will consider adoption of Amendment Order No. R1-2020-0041 (Proposed Order). The Proposed Order will amend the WQTF adopted in the above referenced NPDES Permit.

BACKGROUND: The City of Santa Rosa (City or Permittee) is currently discharging treated wastewater from the City of Santa Rosa Regional Water Reuse System, Laguna Treatment Plant (Facility) under NPDES Permit, Order No. R1-2020-0012. The Permit was adopted on August 20, 2020 and will expire on September 31, 2025.

The Facility provides tertiary treatment and ultraviolet light disinfection of municipal wastewater and has an average dry-weather design flow of 21.34 million gallons per day (mgd). Treated wastewater is discharged to an effluent storage pond system prior to discharge to the water reclamation system or the surface water discharge system. The pond system consists of Brown Pond; Meadow Lane Ponds A, B, C, and D; and Delta Pond. The combined maximum capacity of the existing storage ponds is 1,650 million gallons. The storage ponds allow the Permittee to control the timing, location, and volume of discharge to protect beneficial uses of the receiving water and provide a source of recycled water during the surface water discharge prohibition period. Additionally, discharges of municipal wastewater to surface waters are limited to no more than one-percent of the flow of the receiving water during the period of October 1 through May 14.

Instead of establishing a numeric water quality-based effluent limitation for total phosphorus, the Permit includes a narrative (BMP-based) effluent limitation, expressed as "no net loading." The "no net loading" effluent limitation represents a conservative effluent limitation to control phosphorus loading to water bodies of the Laguna de Santa Rosa and to prevent further water quality degradation. Compliance with the "no net loading" effluent limitation for total phosphorus is determined through compliance with the WQTF.

The Permittee has expressed concerns with the available time that phosphorus credits generated within the WQTF remain available for use. This time is defined as a credit's banking period. In adopting Order No. R1-2020-0012, the Regional Water Board expanded the maximum allowable banking period for credits in the previous order from five years to the predetermined period of time over which the specific project that generated the credits is anticipated to generate usable water quality credits.

The Permittee has requested that the Regional Water Board further revise the WQTF to clarify that credits generated from a subset of multi-benefit projects shall receive credits that do not expire.

DISCUSSION: As the development and implementation of credit generating projects is at the discretion of the credit generator, the expanded banking life policy included in Order R1-2020-0012 was anticipated to promote longer term projects and result in longer banking periods for their respective credits. The Permittee's remaining concerns regarding the credit banking periods demonstrates that the WQTF has not yet established the level of confidence needed to promote a significant investment into the longer term, multi-benefit projects that are incentivized under the WQTF.

In order for the WQTF to be most effective, credit generating projects that are long-term and multi-benefit are preferred. To incentivize the implementation of these long-term and multi-benefit projects it is essential to provide credit generators the assurance that their investment will result in usable credits. Allowing long-term, multi-benefit projects to receive credits that do not expire would provide credit generators the confidence to pursue such projects and ultimately will promote implementation of these types of projects.

The Proposed Order amends the WQTF as adopted in Order No. R1-2020-0012 to establish a subset of multi-benefit projects that may generate credits that do not expire. The Proposed Order further includes several modifications, administrative changes, and new requirements described in the following enumerated paragraphs:

1. Footnote 1 has been added to the WQTF to clarify that the WQTF adopted with a NPDES Permit is the operative Framework for compliance purposes, and not the Framework attached to Resolution R1-2018-0025.
2. A provision that all documents submitted to the Regional Water Board pursuant to the WQTF should comply with the most current online accessibility requirements of the Regional Water Board has been added to Section 1.3 of the WQTF.
3. Section 2.3, Trading Area, and Section 2.4, Types of Credits to be Traded, have been consolidated into a single section. The resulting Section 2.3, Credit Units – Place, Kind, and Time, details the geographic limitations to the WQTF, and identifies the credit value and available use period for credits. Section 2.3 further clarifies the units of water quality credits as being pounds of phosphorus per discharge season within the Laguna de Santa Rosa watershed.
4. WQTF Section 3.2.1, Avoiding Localized Impacts, includes language clarifying that the "in time" requirement for credit use shall be satisfied when credits are used consistent with the credit banking provisions included in the WQTF.

5. Section 4, Quantifying Pollutant Reductions for Water Quality Credits, has been clarified to detail the types of practices that require credit quantification methods in their supporting documents.
6. Section 5.1, Trading Ratio Reduction Criteria, has been amended to ensure trading ratio reductions are provided when credit-generating projects meet the necessary criteria. A description of qualifying trading ratio reduction criteria elements has also been added to this section. Furthermore, Table 5.1 has been added to the WQTF to summarize each trading ratio criteria type with its base trading ratio, maximum ratio reduction, and applicable reduction criteria.
7. The term Credit Life, previously detailed as Section 6.1, has been removed to reduce confusion in the WQTF. The Regional Water Board has determined that the term Credit Life is no longer necessary as each credit may be used to offset the discharge of phosphorus that occurs during a single discharge season.
8. Section 6.1, Project Life, has been amended to specify that credit release schedules must provide reasonable justification for the timing of the release of credits, and that no credits may be released after the project life has ended. Furthermore, this section has been updated to remove references to the term credit life.
9. A new category of Permanently Protected Environmental Enhancement Projects (PPEEPs) has been established in the WQTF to encourage the development of projects that offer both enhanced environmental value and will be located on permanently protected lands. Projects qualifying as PPEEPs will be granted permanent project lives, allowing credits generated from this project classification to be banked until the credits are used, suspended, or cancelled.
10. Language clarifying that credits are considered active until used, retired, suspended or cancelled has been added to Section 6.2, Banking Credits for Later Use.
11. Table 6.1 has been added to Section 6.2 the WQTF to summarize the relationship between the presence of applied retirement ratio criteria and a project's credit banking period.
12. Language clarifying that credits generated before a project is renewed can be banked for the renewed project's life only if the project has received a reduced retirement ratio has been added to Section 6.3, Project Expiration and Renewal.
13. A new requirement that third-party verification must confirm that the basis for a retirement ratio reduction is still present when a project has received a retirement ratio reduction has been added to Section 8.3. Furthermore, this language specifies that if the basis for the retirement ratio reduction is no longer present, this finding will result in the declaration of a material failure for that project.

14. Section 8.3.1 has clarified the process that a Permittee must complete to address a material failure to meet approved practice standards or other requirements of the approved Credit Project Plan. Furthermore, the available options to address a credit deficit resulting from suspended or cancelled credits that have already been used has been updated.
15. Footnote 11 has been added to the WQTF to identify that the suspension or cancellation of previously generated credits is dependent on the timing and basis of a material failure. Footnote 11 further explains that the timing of a material failure shall be from the time it first occurred until the time that it has been satisfactorily corrected.
16. Section 9.1, Credit Certification, has been modified to allow credits awaiting certification to be identified for use within the current discharge season if the associated credit verification report has been submitted.
17. Footnote 12 has been added to the WQTF to identify that a credit certificate may apply to multiple credits.
18. The definition of “used” in Section 9.3, Changes in Credit Status has been updated to further explain that credits shall be banked per the approved Credit Project Plan if unused.
19. Multiple sections of the WQTF have been updated to reference both Sections 7.1 and/or Section 7.4 where they inadvertently only referenced Section 7.1. These sections include Sections 3.2.1, 3.2.2, 8.2, 8.2.1, and 8.3. Furthermore, the WQTF has been corrected to read Phosphorus instead of phosphorus throughout the text.

The Proposed Order further amends the Fact Sheet for Order R1-2020-0012 to include a summary of changes and reasoning for the WQTF modification resulting from the Proposed Order. Additionally, the Fact Sheet for Order R1-2020-0012 has been modified to acknowledge the additional public notice and comment period associated with the Proposed Order.

A copy of the Draft Order was posted on the Regional Water Board website and was available for public comment from September 10, 2021 through October 11, 2021 for the 30-day comment period. Comments on the Draft Order were received from the City of Santa Rosa, Russian River Watershed Association, and the City of Cotati. A full explanation of the comments and Staff’s responses is provided in the attached Response to Comments document.

Comment letters from the Russian River Watershed Association and the City of Cotati expressed support for the adoption of the Proposed Order. The City of Santa Rosa also expressed support for adoption of the Proposed Order, but also requested two minor

changes to the permit. The Proposed Permit has been revised in response to these requests as summarized in the following enumerated paragraphs.

1. The City requested that the language in Section 2.3 of the WQTF be revised to ensure that this section cannot be mis-interpreted to imply that credits generated in a discharge season must be used in that same discharge season.

Response: Regional Water Board staff agree that this is a reasonable request and have modified the language in Section 2.3 of the WQTF as follows:

Water quality credits generated under this Framework are available to offset pollutant discharges that occur during a single discharge season.

2. The City requested confirmation that the suspension or cancellation of previously generated and applied credits that might result in a credit deficit, will only occur if the previously generated and applied credits were applied after the established date of material failure, as discussed in Section 8.3.1 and Footnote 11 of the WQTF.

Response: Regional Water Board staff provided confirmation that a suspension or cancellation of used credits, that might result in a credit deficit, is not intended to apply to credits generated prior to the date that a material failure first occurred. Staff agree that clarification was required and modified Footnote 11 to address the City's concern as follows:

¹¹ Previously generated/certified credits may be suspended or cancelled based on the timing and basis for the material failure. Used credits originating from a project that has experienced a material failure shall not be suspended or cancelled unless the timing and basis of the material failure indicate that the credits should not have been certified. The timing of a material failure shall extend from the date that a material failure first occurred until the date that it is corrected to the satisfaction of the Executive Officer.

RECOMMENDATIONS: Adopt Order No. R1-2021-0041, as proposed.

SUPPORTING DOCUMENTS:

1. Proposed Order No. R1-2021-0041
2. Revised Water Quality Trading Framework for the Laguna de Santa Rosa
3. Revised Order No R1-2020-0012
4. Staff Response to Comments (Copies of Comment Letters are available upon request)
5. Public Notice