



City of Encinitas

November 5, 2012

Honorable Grant Destache, Chair
Honorable Board Members
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

**SUBJECT: TENTATIVE ORDER R9-2013-0001 REGIONAL NPDES PERMIT
FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS
(MS4s) DRAINING THE WATERSHEDS OF WITHIN THE SAN
DIEGO REGION**

Dear Chairman Destache and Board Members,

As it relates to the forthcoming Public Workshop on November 13th, 2012 please accept this letter on behalf of the City of Encinitas and the responsible parties of the San Marcos Hydrologic Area (HA) including the Cities of Carlsbad, Escondido, San Marcos, and the County of San Diego, as identified in Resolution No. R9-2010-0001 incorporating into the San Diego Basin Plan the *Revised Total Maximum Daily Loads (TMDL) for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (including Tecolote Creek)* (Bacteria TMDL).

At the November 13, 2012 Public Workshop, two significant and interrelated regulatory Orders will converge that individually deserve careful consideration, and even more so collectively. Tentative Order No. R9-2013-0001 includes *Attachment E – Specific Provisions for Total Maximum Daily Loads Applicable to Order No. R9-2013-0001*, and specific provisions for implementing the TMDLs adopted by the San Diego Water Board. Included in *Attachment E* are compliance requirements specific to the Bacteria TMDL¹, including the San Marcos HA.

The Bacteria TMDL states that for watersheds where there are no longer any impairments listed on the 2008 303(d) List (for REC-1 water quality standards), the Phase I MS4s are not required to submit a load reduction plan and are not subject to any further action under the TMDL as long as monitoring continues to

¹ Revised TMDL for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek) adopted by SDRWQCB Resolution No. R9-2010-0001

support compliance with REC-1 water quality standards. However, if the impairment returns for REC-1 water quality standards, the Responsible Parties will be required to submit a load reduction plan to the RWQCB.

The City of Encinitas and the San Marcos HA Responsible Parties have demonstrated to the RWQCB that this hydrologic area is consistent with the scenario described in the Bacteria TMDL, as the Pacific Ocean Shoreline Segment at Moonlight Beach in Encinitas (in the San Marcos HA) is no longer listed as impaired for indicator bacteria under REC-1 water quality standards. The Responsible Parties received written confirmation (*See Attached E-Mail dated Wednesday, May 16, 2012*) that they are “*not subject to further action under Resolution No. R9-2010-0001 as long as monitoring data continues to support compliance with the REC-1 water quality standards.*” This scenario effectively places the San Marcos HA in a “dormant TMDL” status, unless the Pacific Ocean shoreline of the San Marcos HA is relisted on future 303(d) lists for indicator bacteria² and REC-1 impairment.

Attachment E, Section 6³ of the Tentative Order requires, amongst other provisions, compliance with Water Quality Based Effluent Limitations (WQBELs). The WQBELs as described in the Tentative Order are expressed as Receiving Water Limitations, Effluent Limitations and as Best Management Practices requirements. As *Attachment E* of the Tentative Order is currently written, the Responsible Copermittees in the San Marcos HA are required to meet the listed WQBELs even while under the “dormant TMDL” condition.

Further exacerbating this conflict, there is a disparity between relisting of the Pacific Ocean shoreline and the more strict WQBEL limitations presented in the Tentative Order. If future conditions and monitoring data were to support a relisting of the Pacific Ocean shoreline at Moonlight Beach, this would be done under the criteria established in the 2004 SWRCB Listing Policy⁴ which allows for a certain number of water quality standard exceedances prior to listing. In clear contrast, the WQBEL limitations in the Tentative Order allow **zero** water quality standard exceedances under dry weather conditions – a much higher bar with which to comply than the listing criteria. In effect, San Marcos HA Responsible Parties will be required to focus intense resources to address bacteria at this Pacific Ocean shoreline segment where water quality monitoring has demonstrated an impairment does not exist.

² Page A66 of SDRWQCB Resolution No. R9-2010-0001

³ Attachment E, Section 6 of the Tentative Order is the Specific Provisions for Total Maximum Daily Loads Applicable to Order R9-2013-0001 for the Revised TMDL for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek)

⁴ State Water Resources Control Board – Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List, adopted September 2004

In summary and in consideration of this involved and complex set of issues it is important to acknowledge the following facts:

- Per the 2010 303(d) list, the Pacific Ocean shoreline at Moonlight Beach (San Marcos HA) is NOT impaired for REC-1 Beneficial Uses (Moonlight Beach is the location that is the basis for including the San Marcos HA in the Bacteria TMDL).
- Per the 2010 303(d) list, the listing at Moonlight Beach for total coliform is based upon the water quality objectives for the SHELL beneficial use only, and as stated above, is not listed for REC-1.
- Per Resolution No. R9-2010-0001, the TMDL applies only to REC-1 and does not apply to SHELL impairments

Pg. 4, footnote 17: "waterbodies with SHELL beneficial use impairments will be addressed in a separate TMDL project and/or standards action."

Based upon this background information and the conclusions presented above, at this time the Responsible Parties of the San Marcos HA would like to request your direction to RWQCB staff to address the conflict between the RWQCB adopted Bacteria TMDL and the compliance requirements of Tentative Order R9-2013-0001.

Sincerely,


Gus Vina,
City Manager, City of Encinitas

cc: Erik Steenblock, City of Encinitas
Todd Snyder, County of San Diego
Elaine Lukey, City of Carlsbad
Cheryl Filar, City of Escondido
Erica Ryan, City of San Marcos

Attachment A**Erik Steenblock**

From: Deborah Jayne [djayne@waterboards.ca.gov]
Sent: Wednesday, May 16, 2012 5:27 PM
To: elaine.lukey@carlsbadca.gov; Erik Steenblock; vina@cityofencinitas.org;
constantine_kontaxis@dot.ca.gov; cfilar@escondido.org; eryan@san-marcos.net;
Todd.Snyder@sdcounty.ca.gov
Cc: David Barker; Deborah Woodward; Eric Becker; Jeremy Haas; Lisa Honma; Wayne Chiu
Subject: Your April 23, 2012 Letter Regarding Bacteria TMDLs and Moonlight State Beach

Dear Mr. Vina et al,

Thank you for your letter dated April 23, 2012 requesting written acknowledgment of your conclusions regarding the applicability of the Bacteria TMDLs to Moonlight State Beach and the requirement for submittal of a Bacteria (or Comprehensive) Load Reduction Plan (BLRP or CLRP).

The REC-1 TMDLs adopted under Resolution R9-2010-0001 remain in effect and applicable at Moonlight State Beach. However you are correct that the Responsible Parties (RPs) are not required to submit a BLRP or CLRP (specific to this beach segment) within 18 months of the effective date of the Bacteria TMDLs because this beach segment is not currently impaired/listed for REC-1. Furthermore, the Moonlight State Beach segment is not subject to further action under Resolution No. R9-2010-0001 as long as monitoring data continues to support compliance with the REC-1 water quality standards (Resolution No. R9-2010-0001 page A2). If, however, the segment is re-listed on a future 303(d) List for a REC-1 impairment, the RPs will be required to submit a BLRP or CLRP for this beach segment within 6 months of the adoption of the 303(d) List by the San Diego Regional Board (Resolution No. R9-2010-0001 page A66).

I trust this email adequately addresses your inquiry regarding TMDL applicability and BLRP or CLRP submittal. Regarding ongoing monitoring requirements, please refer to your MS4 permit for the general requirements and direct any specific monitoring questions to Mr. Wayne Chiu at wchiu@waterboards.ca.gov. Please feel free to contact me or Wayne at any time if additional clarification is needed.

Sincerely,

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5/17/2012