

July 28, 2011

Via Electronic Mail

Charles R. Hoppin, Chairman and Members
State Water Resources Control Board
c/o Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
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Subject: Comment Letter – Santa Clara River Bacteria TMDL

Dear Chairman Hoppin and Members:

The City of Ventura appreciates the opportunity to comment on the Santa Clara River Bacteria TMDL (TMDL). We have identified a number of concerns with the TMDL that we feel will impact the City's ability to successfully achieve compliance with the TMDL requirements. The concerns can be grouped into four categories:

1. TMDL compliance language
2. TMDL schedule
3. TMDL monitoring requirements
4. TMDL reconsideration provisions

Details about the City's concerns in each of these areas are discussed in more detail in our letter. We would appreciate the State Water Resource Control Board's (SWRCB) consideration of the requested revisions to the TMDL.

Revise TMDL BPA to include Clear Compliance Language for MS4s

The City feels that the TMDL is unclear as to how the TMDL will be incorporated into the MS4 permit and how compliance with the wasteload allocations (WLAs) will be determined. The Santa Clara River Bacteria TMDL Basin Plan Amendment (BPA) contains a number of general provisions about how compliance will be determined. However, the language is unclear and potentially conflicting in some instances and does not provide sufficient clarity to allow the City to understand how the wasteload allocations (WLA) will be incorporated in to the Ventura County MS4 NPDES permit. For example, the BPA contains the following provisions:

- Compliance with the TMDL is stated as being determined using both in-stream and outfall monitoring on page 7 under *Monitoring to Determine Compliance* and using just outfall monitoring on page 5 under *Implementation*. Additionally, the TMDL is not clear how the outfall monitoring will be used for assessing compliance. If one outfall exceeds but the other outfalls do not and/or other sources are discharging higher bacteria loads, the City is unclear how we will determine whether or not we are in compliance with the TMDL. A small amount of discharge from one outfall that exceeds the targets may not cause or contribute to an exceedance in the receiving water depending on the concentrations and flow from other discharges to the waterbody and the City should not be out of compliance in that situation. The current TMDL language does not provide a mechanism to address this concern.
- The BPA states that during wet weather, compliance can be based on an allowable load, but the language is not clear on how loads proposed in the implementation plans by responsible parties would be used to determine compliance.
- The BPA includes language that makes the City jointly responsible for outfalls that contain discharges from other MS4s (such as Ventura County) and does not provide a clear mechanism for differentiating between the discharges. Outfall monitoring for outfalls that include discharges from more than one jurisdiction will not provide a mechanism for demonstrating that the City of Ventura is in compliance with the TMDL if discharges from another jurisdiction are also present in the outfall and the monitoring shows an exceedance of the WLA.
- The BPA requires the development of a detailed implementation plan that describes how the proposed implementation actions will result in compliance with the WLAs, but does not describe how this implementation plan will be used to assess compliance with the TMDLs.

Given the lack of compliance information included in the BPA, the City has concerns about how the TMDL will be incorporated into the Ventura County NPDES MS4 permit. During renewal of the Ventura County MS4 permit in 2009, incorporation of the MS4 WLAs into the permit was challenging in cases where compliance was not clearly defined in the allocations section of the TMDL. The BPA states that the WLA will be incorporated into the NPDES permits consistent with the assumptions and requirements of the applicable WLAs. However, the BPA does not clearly outline the assumptions and mechanisms for incorporating the WLAs into the MS4 permit and does not allow the City to have certainty as to the permit conditions that will be required to implement the TMDL. To address these inconsistencies and provide clear compliance language for the TMDL, the City would like to request additional compliance language be included in the BPA wasteload allocations section.

Requested TMDL Modifications:

To clarify compliance for all MS4 dischargers, the City requests that clearly understandable compliance language be included in the TMDL, similar to the language included in the Los Angeles River Bacteria TMDL that was adopted by the Los Angeles

Regional Water Quality Control Board (RWQCB) the same day as the Santa Clara River Bacteria TMDL. Thus, the City requests that the SWRCB include the following language in the WLA section of the Santa Clara River Bacteria TMDL:

MS4 dischargers can demonstrate compliance with the final WLAs by demonstrating that final WLAs are met instream or by demonstrating one of the following conditions at outfalls to the receiving waters:

1. Flow-weighted concentration of indicator bacteria is less than or equal to the numeric targets, based on a weighted-average using flow rates from all measured outfalls;
2. Zero discharge during dry weather;
3. Meeting Executive Office approved MS4 loads during wet weather;
4. Demonstration of compliance as specified in the MS4 NPDES permit that may include the use of BMPs where the permit's administrative record supports that the BMPs are expected to be sufficient to implement the WLA in the TMDL.

Revise TMDL Schedule to be Consistent with Los Angeles River Bacteria TMDL Schedule

Secondly, the City requests that the time schedule for the Santa Clara River Bacteria TMDL be extended to be more consistent with schedules used in other similar adopted TMDL's. The Los Angeles River Bacteria TMDL that was adopted on the same day as the Santa Clara River Bacteria TMDL includes a longer time frame for compliance with the TMDL than the Santa Clara River TMDL (10 to 18.5 years for dry weather depending the waterbody segment and 25 years for wet weather). Extending the time schedule for this TMDL is also recommended give that the Santa Clara River TMDL addresses more sources than the primarily urban Los Angeles River watershed TMDL, including many non-point sources that are not currently regulated, such as horses and cows. Additionally, the amount of data on sources and trends in bacteria concentrations that are needed to support implementation actions is limited as compared to the information on the Los Angeles River. As a result, the time necessary to gather information, prepare an appropriate implementation plan that meets the TMDL requirements, have that implementation plan approved by the RWQCB, and implement the required actions could be significant. Finally, a number of activities are ongoing at the state and national level that may change the TMDL targets and/or allocations and responsible parties should not be required to implement actions that may not be necessary as a result of the changes to the TMDL.

The BPA and the Staff Report provide no discussion of the basis for the selected time schedule or justification for why a longer time frame could not be included in the TMDL. The Los Angeles River Bacteria TMDL includes a more reasonable time frame for implementation, given the reductions required, the challenges of addressing bacteria

discharges, and the lack of data on sources of bacteria to the Santa Clara River. As a result, the City requests that the schedule for compliance with the TMDL be extended.

Requested TMDL Modifications:

The City of Ventura requests that the dry weather TMDL implementation schedule be extended to 15 years and the wet weather implementation schedule be extended to 25 years from the TMDL effective date.

Revise TMDL Monitoring Requirements

Thirdly, the City feels that the monitoring provisions are not clear and do not allow responsible parties to define the monitoring program that will provide them with the information necessary to define compliance with the TMDL. The TMDL BPA requires that jurisdictions prepare an outfall monitoring plan, but then also requires that compliance be determined at both outfalls and in the receiving water. The intent of the two types of monitoring are not clear and it is not explained why the MS4s need to conduct both types of monitoring. For some jurisdictions, outfall monitoring may be appropriate to assist with determining compliance, but for others receiving water monitoring may be sufficient. Jurisdictions should be able to propose their own approach as part of the required monitoring and implementation plan. The TMDL should allow for jurisdictions and agencies to propose the monitoring plan that is best suited to their needs for implementing the TMDL and determining compliance with the TMDL requirements.

Requested TMDL Modifications:

The City requests that the monitoring section on pages 6 of the BPA be modified as follows:

Responsible jurisdictions and agencies for the MS4 WLAs shall submit a compliance monitoring plan as part of their implementation plan. The compliance monitoring plan shall propose monitoring stations to be used for determining compliance with the MS4 allocations, a sampling frequency, and protocol for enhanced monitoring to be conducted if in-stream exceedances are observed above the allowable exceedance frequency. Responsible jurisdictions and agencies can use existing monitoring stations in the Ventura MS4 permit, where appropriate for both the permit and TMDL objectives.

Additionally, the City requests that the language on page 7 of the BPA under the heading *Monitoring to Determine Compliance* be deleted from the BPA. The City has proposed clarifying compliance language above and feels that jurisdictions can propose a monitoring plan that will allow them to determine compliance through one of the mechanisms identified in the proposed compliance language.

Mr. Charles Hoppin
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Clarify TMDL Reconsideration Provisions

Finally, the City requests clarification on the TMDL reconsideration provision. The provision as currently written appears to limit the type of information that may be used to determine reconsideration is necessary.

Requested TMDL Modifications:

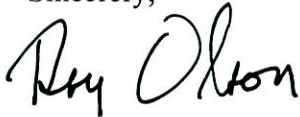
The City requests that the following language be added to the BPA for the reconsideration at 4 years.

(4) Responsible parties supply other information justifying a modification to the TMDL targets, allocations or implementation schedule.

The City also requests that an additional reconsideration of the TMDL be included at 8 and 12 years to allow for additional data gathering and BMP implementation to occur and for TMDL revisions to be considered prior to the final compliance dates.

The City appreciates the opportunity to provide comments on the Santa Clara River Bacteria TMDL. If you have any questions about these comments, please feel free to contact me at 805-652-4593.

Sincerely,



Ray Olson
Environmental Manager
City of Ventura Public Works