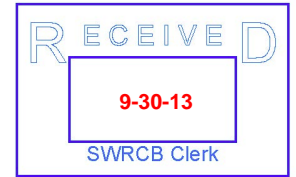




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September 30 2013

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Subject: Comment Letter – Salinas Nutrient TMDL and Santa Maria Nutrient TMDLs

Dear Sir/Madam:

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.

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.

Unintended and unforeseen consequences are not (and cannot be) considered

First, it is understood that Clean Water Act requires a TMDL program when/if a waterbody is listed for impairment. Next, it is understood that the TMDL process, in and of itself, does not take unintended or unforeseen consequences of the proposed TMDL program into account. Unintended consequence is a consistent concern that has been expressed throughout the comment record. Unfortunately, the TMDL programs, as promulgated by EPA, are grossly inadequate for complex non-point source issues. They were originally designed for point sources and the processes by which "success" is determined are poorly suited for the regulation of non-point source communities.

There is not a California Nutrient Surface Water Policy to give guidance to the Regional Boards on nutrient TMDLS

During verbal testimony on March 41, 2013, concern was expressed about the lack of state policy for Surface Water Nutrients. Furthermore, there are numerous nitrate task forces (CDFA, SWRCB, Governor's office) that have been convened to address nitrate use by the agricultural community. The findings of those task forces have not been reconciled. Therefore, it is uncertain how findings or future policies would be incorporated into this TMDL.

This is not a Drinking Water Program, and in fact, it is rare for TMDLs to consider groundwater at all

Upon making the March 14, 2013 testimony, Central Coast Water Board Members protested that there was enough evidence regarding drinking water impairment in the Salinas Groundwater Basin to justify this TMDL. It should be reiterated, herein, that the TMDL program is largely intended to be a surface water program. Any mention of groundwater is related to upwelling of contaminated groundwater and the potential for contribution to surface water exceedances. This TMDL is NOT a groundwater program per se. While there is a purported connection between surface water management practices and groundwater, neither current technical knowledge nor the existing TMDL has firmly established this connection. There is a lack of knowledge about the degree and sources of drinking water impairments in the TMDL project areas.

If one insists on considering the CNP Report as evidence for adopting this Nutrient TMDL, then, one must consider ambiguities in the analysis

One may point to the UC Davis California Nitrate Project (CNP) Report as evidence of groundwater and drinking water impairment and as subsequent justification for this Salinas Nutrient TMDL. However, there are two basic flaws with the use of the CNP for these purposes.

First, although the UC Davis effort concurred with previous work that groundwater concentrations have generally been increasing with time in the [Tulare and Salinas Groundwater] Basins, trends are really not that obvious when one considers that analysis of each basin independently.

“Some of the [CNP] analyses indicate increasing nitrate concentrations in the Salinas Valley. Other analyses are less clear, and may indicate either decreasing nitrate concentrations, no obvious pattern of concentration change, or insignificant concentration changes for some periods and locations. The results of the UC Davis effort were intended to be spatially unbiased, but it not clear they are. Much of the groundwater nitrate data analyses made in the CMP was conducted separately for the five regions in the CNP study. However, the broadest conclusions regarding groundwater nitrate occurrence in the CNP, including the magnitude of temporal nitrate concentration trends, were based on summary statistics from the combined Tulare Lake Basin and Salinas Valley dataset. It is not completely clear what consequences, if any arise from using the combined dataset for assessing

groundwater nitrate occurrence at the local level” (Abrams, personal communication). The bottom line is that while the CNP is often quoted as demonstrating proof of worsening groundwater quality, there is enough ambiguity in the combined analysis, to lend doubt to these conclusions.”

The stated CNP naturally occurring background levels are less than some proposed numeric standards in this TMDL

It is likely, in this political environment; the SWRCB will stand by the CNP Report. In that case, the question becomes whether the SWRCB will also stand behind the 9 mg/L background nitrate concentration range that is posited by the CNP Report. It states, “We did not establish specific background nitrate levels. The U.S. Geological Survey typically uses nitrate levels of 9 mg/L, 13.5 mg/L or 18 mg/L as a threshold to differentiate between what is possibly natural nitrate and what is likely “anthropogenically influenced” nitrate. We developed data for all these thresholds, but have focused on the 9 mg/L [2 mg/L Nitrate-N] threshold, the 22.5 mg/L [5 mg/L Nitrate - N] threshold (half the MCL) and the 45 mg/L threshold (10 mg/L Nitrate-N) (the MCL).”

When one considers the CNP’s naturally occurring background levels of 9 mg/L in light of the proposed Salinas numeric targets, one cannot help but be concerned. The proposed nitrate numeric targets range from 1.4 - 6.4 mg/L in the dry season to 8 mg/L during the wet season in the Salinas Valley. Some of these proposed numeric targets are actually lower than the CNP naturally occurring background levels. It is possible that these levels are so low as to make it impossible for currently high-nitrate demand crops or other less nitrate intensive crops to be grown in the TMDL project area. In essence, the agricultural beneficial use is likely to be destroyed by this TMDL program.

While the numeric standards are NOT enforceable, there is concern about how these relate to provisions in the Ag Waiver Order.

The final concern regarding this TMDL is language in the newly adopted SWRCB Central Coast Ag Order. Current provisions read “24. Dischargers must comply with applicable Total Maximum Daily Loads (TMDLs), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL.” In essence, while the numeric targets are NOT enforceable standards, there is question whether the language in the Ag Waiver renders them so. If this is not the case, there needs to be some sort of explanation given to the regulated community about the inter-connectedness of the TMDL Program and the Ag Regulatory Program and the Basin Plan. At present, there is much confusion about the mechanism for which the programs and Basin Plan inform each other and how enforcement is triggered.

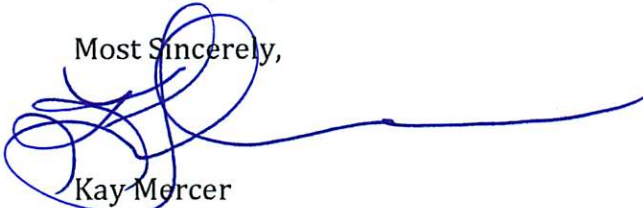
In summary, primary concerns regarding this proposed Salinas Nutrient TMDL are:

- That it is NOT a drinking water program, but political concerns about drinking water will trump an objective review of the proposed program on its own merits.
- The naturally occurring background may be below some proposed numeric targets
- This TMDL does not support the beneficial use of agricultural water
- There is uncertainty about how the proposed numeric targets will inform future regulatory efforts such as Agricultural General or individual Waste Discharge Requirements.
- At every step in this process: there has been insufficient consideration of the unintended and unforeseen consequences. To a certain degree this is an outgrowth of the TMDL program per se. It is also a reflection that the state is still wrestling with the nitrate question and there is insufficient conclusion about the best steps forward.

Consequent to the above concerns, please refrain adopting these TMDL programs as written. It is requested that the State Board stay adoption until the SWRCB Expert Panel has convened and there is a state-level surface water nutrient policy to guide the regions in development of nutrient TMDLs.

Thank you for your consideration of these points.

Most Sincerely,



Kay Mercer  
President