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Public Comment
Proposed Caltrans Permit Amendment
Deadline: 3/28/14 by 12:00 noon



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March 28, 2014

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor, Sacramento, CA 95814
commentletters@waterboards.ca.gov

Subject: Comment Letter, ORDER 2014-XXXX-DWQ amending the NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STATEWIDE STORM WATER PERMIT FOR STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION ORDER 2012-0011-DWQ, NPDES NO. CAS000003.

Dear Ms. Townsend,

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on Order 2014-XXXX-DWQ amending the NPDES Statewide Storm Water Permit for State of California Department of Transportation, and related attachments that will constitute the reissued Caltrans Statewide NPDES Permit (CAS000003).

Caltrans generally supports the modified Total Maximum Daily Load requirements proposed to be amended to State Water Board Order 2012-001-DWQ. The existing individual TMDL requirements have presented Caltrans with a significant statewide implementation challenge by requiring different ways of doing business in each watershed, and even posing different ways of managing the same pollutant.

The Amendment provides Caltrans consistent statewide model practices for addressing waters impaired for similar or like pollutants. This approach helps Caltrans integrate water quality activities into everyday business practices, yielding more consistent performance. This approach will also result in greater water quality benefits, by focusing Caltrans' efforts on pollutant sources with a direct correlation to highway operations, rather than the existing TMDL approach which was subjective.

The annual compliance unit approach gives Caltrans a clear performance measure and explicit path to compliance with the new TMDL Requirements. Caltrans appreciates the introduction of an incentive for cooperative implementation efforts. We are concerned that there are limited opportunities for cooperative implementation. We would like to explore statewide programmatic agreements or lump sum contributions, where Caltrans contributions would be administered by a third party, such as contributing to a statewide grant or other programs.

There are a number of TMDLs where Caltrans is not a source or is otherwise identified as an insignificant source of the pollutant(s) causing impairment, a number of TMDLs where the Regional Water Board has determined that compliance with the NPDES permit will meet the wasteload allocation, and one TMDL that has not been approved to date. Caltrans requests that the State Board consider adjusting the compliance unit threshold for these reasons (see Comment 20 in the Attachment).

Caltrans has utilized extensive capital resources and limited right of way to implement treatment BMPs to address TMDLs. These factors should be considered in a comprehensive accounting of total annual compliance units:

- BMPs currently in operation to address TMDL compliance
- BMPs treating existing drainage area
- BMPs in projects initiated or programmed to date in TMDL watershed
- BMPs in projects that cannot be redesigned. The State Transportation financing and programming process currently has programmed projects in the pipeline.

Caltrans requests that the Order and Factsheet provide clarity by adding:

- Language stating that Order requirements govern when there is conflict with the details of the fact sheet
- Table of contents referencing Permit Section numbers

Additional comments are provided in the attachment. These comments focus on clarifications needed to avoid ambiguity between Caltrans, the State Board, and the Regional Boards makes recommendations for consistency, and suggests administrative changes.

If you have any questions, please contact me directly at (916) 653-4446.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Scott McGowen" with "FOR" written below it.

G. SCOTT MCGOWEN, P.E.
Chief Environmental Engineer

cc: Malcolm Dougherty, Director, Caltrans
Richard Land, Chief Deputy Director, Caltrans
Karla Sutliff, Chief Engineer, Caltrans
Katrina Pierce, Division Chief, Environmental Analysis, Caltrans
Tom Howard, SWRCB Executive Director
Jonathan Bishop, SWRCB Chief Deputy Director

Attachment

ATTACHMENT

Caltrans comments on ORDER 2014-XXXX-DWQ amending the NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STATEWIDE STORM WATER PERMIT FOR STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION ORDER 2012-0011-DWQ, NPDES NO. CAS000003, for the State of California, Department of Transportation.

1. **Page 3, Order, Finding 40.** *“The Regional Water Boards may require additional monitoring through Regional Water Board orders pursuant to Water Code section 13383.”*

Comment: TMDL monitoring requirements are found Attachment IV, Section III. The Regional Water Boards may require additional monitoring through Regional Water Board orders pursuant to Water Code section 13383.

Recommendation: Limit monitoring requirements to only what is required to address the TMDL requirements in Attachment IV.

2. **Page 3, Order, Provisions E.2.c.2)a)ii) – Total Maximum Daily Loads** *“TMDL monitoring shall also include the constituents listed in Attachment II.”*

Comment: Attachment IV language on page 178 excludes Attachment II monitoring for Selenium, Trash, and Bacteria TMDLs.

Recommendation: Modify the last sentence of the first paragraph in this section as follows: “TMDL monitoring shall also include the constituents listed in Attachment II except as exempted by Attachment IV.”

3. **Page 23, Fact Sheet** *“Accordingly, for purposes of this calculation, the percentage of inaccessible/unsafe sites is reduced by one-half for TMDL watersheds, or 32 percent, translating into approximately 22,000 fewer acres (68,000 x 32 percent = 22,000) that must be treated. Therefore, the Department will have to address approximately 46,000 acres of ROW to comply with the TMDL requirements of Attachment IV. With the objective of addressing all TMDLs in Attachment IV within 20 years, the Department must treat or otherwise address 2300 acres per year (46,000/20 = 2300) throughout the state within the TMDL watersheds listed in Attachment IV.”*

Comment: Caltrans ROW noted in the Fact Sheet, ... (68,000 acres x 32 percent = 22,000 acres) is based on initial preliminary estimates.

Recommendation: This should be adjusted based on the most current estimates.

4. **Page 24, Fact Sheet** *“Using an average cost \$176,000 per BMP/acre⁴, the proposed annual cost to meet this requirement relying solely on retrofits is approximately \$290,000,000.”*

Comment: Footnote needs to be clarified as cost estimate of \$176,000/Acre (\$290M annual) provided by Caltrans to the Water Board to clarify the cost per acre.

Recommendation: Revise footnote, “Construction capital cost based on information provided by Caltrans staff.”

5. **Page 36, Fact Sheet** Lost River Nitrogen Biochemical Oxygen Demand, the WLA listed is incorrect.

Final Nitrogen WLAs

Segment	Total Dissolved Inorganic Nitrogen WLA (average g/day)	Total Carbonaceous Biochemical Oxygen Demand (CBOD) (average kg/day)
Lost River from Border of Tule Lake Refuge	79.5	197.0
Tule Lake Refuge TMDLs	181.5	901.1
Lower Klamath Refuge TMDLs	76.2	889.9

6. **Page 47, Fact Sheet** South Fork Trinity River Watershed Sediment TMDL "...TMDLs are portions of Highways 36 and 101."

Comment: Highway 101 is not within the South Fork Trinity Watershed.

Recommendation: Should be changed to Highway 36, 299, and 3.

7. **Page 60, Fact Sheet** Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients, the last value in the Caltrans Nutrient Contribution table is calculated incorrectly.

Source	Summer TN Load kg/mo (Apr 15 – Nov 15)	Winter TN Load kg/mo (Nov 16 – Apr 14)	Summer TP Load kg/mo (Apr 15 – Nov 15)	Winter TP Load kg/mo (Nov 16 – Apr 14)
Total Load	789	20,442	140	2,842
Department Runoff (estimate based on area)	6.31	164	1.12	22.7

8. **Page 80, Fact Sheet** Dominguez Channel and Greater Los Angeles and Long Beach Harbor Toxic Pollutants TMDL, Inner Cabrillo Beach should not have allocations for Caltrans in the table.

Final Mass-Based Sediment Allocations for the Department			
Total PAHs (kg/yr)	Total DDTs (g/yr)		Total PCBs (g/yr)
Dominguez Channel Estuary	0.0023	0.004	0.004
Consolidated Slip	0.00009	0.00014	0.00006
Inner Harbor	0.0017	0.0010	0.0011
Outer Harbor	0.00021	0.000010	0.00004
Fish Harbor	0.000021	0.0000010	0.000006
Cabrillo Marina	0.0000016	0.00000028	0.00000024
Inner Cabrillo Beach	N/A	0.0001	0.0003
San Pedro Bay	0.077	0.002	0.019
LA River Estuary	0.333	0.014	0.047

9. **Page 89, Fact Sheet** Los Angeles Area TMDLS, the Total DDTs TMDL for fish tissue is an error—5.98 should be 5.28

Subwatershed	Responsible Jurisdiction	Input	Suspended Sediment WLAs (ug/kg dry weight)	Water Column WLAs (ng/L)
Northern	Department	State Highway Storm water	5.98-5.28	0.59
Southern	Department	State Highway Storm water	5.98-5.28	0.59

10. **Page 106, Fact Sheet** Ballona Creek Trash TMDL has the wrong baseline WLA for volume. The Department is assigned the following baseline WLAs of trash.

Weight (lbs/mile ²)	Volume (ft ³ /mile ²)
7479.36	66,566-892.64

11. **Page 109, Fact Sheet** Machado Lake Trash TMDL, Point Source Area is incorrect.

Point Source Area (mile ²)	Baseline WLA (gal/yr)
59,421 0.63	4,215.84

12. **Pages 156, Attachment IV, Section I.B.2.d. –TMDL Prioritization and Implementation**
“The effectiveness of the BMPs installed.”

Comment: The effectiveness evaluation is covered under Section III.A.3.c. The TMDL Progress Report seems like a better place for this item as it is expected to cover a "discussion of previous year's activities."

Recommendation: Suggest delete this item.

13. **Page 156, Attachment IV, Section I.B.2.j** *“Any other information requested by the SWRCB Executive Director or designee.”*

Comment: Statement is too broad. The requirement “any other” is overly broad. Caltrans cannot assure compliance with unknown and possibly arbitrary requirements.

Recommendation: Delete the sentence.

14. Page 157, Attachment IV, Section I.B.6 *"No credit will be given to post-construction BMPs that only meet the minimum requirements of this Order (Section E.2.d.2a)). Other projects within a TMDL watershed where treatment is provided above and beyond the post-construction requirements in this Order, may receive compliance units according to the following formula..."*

Comment: The crediting formula (for "beyond post construction requirements") only shows the methodology for volume based BMPs. The Order also allows crediting for flow based BMPs.

Recommendation: Delete the equation as it only implies volume based BMPs are credited for beyond post-construction. This should be based on the area treated and credit should be based on the area treated above and beyond what is required with post-construction. Revise the last sentence to state, "Other projects within a TMDL watershed where treatment is provided above and beyond the post-construction requirements in this Order may receive compliance units."

15. Page 158, Attachment IV, Section I, Table IV.I - Reach Prioritization Scoring Matrix

Comment: Additional factors to be considered for reach prioritization should not be limited to Table IV.1. Other factors that should be considered include:

- BMP effectiveness for the pollutant of concern.
- Potential for meeting a water quality standard if BMPs are constructed.
- Significance of the Caltrans' load in the TMDL causing impairment. Insignificant sources would be lower priority.

Recommendation: Caltrans requests to add to the secondary factors listed under Section I.A.5

16. Page 158. Attachment IV, Table IV.1 Reach Prioritization Scoring Matrix (Definitions)
"Connectivity to Receiving Waters -Directly Connected" definition

Comment: The Permit's glossary (Attachment VIII) defines an indirect discharge as "conveyed to the receiving water through 300 feet or more..." thereby meaning any discharge less than 300 feet is a direct discharge. The statement in Att IV.1 contradicts the Permit's definition. 1/4 mile is equivalent to 1320 feet for a direct discharge.

Recommendation: Change "direct connectivity" to "proximity" – change in prioritization factors guidance table and the text below the table.

- 17. Pages 159, Attachment IV, Section II.B.2** “2. Where the Department has existing cooperative implementation agreements with other responsible parties, it shall fulfill the commitments and requirements of those agreements.”

Comment: Caltrans should have discretion to withdraw from cooperative agreements, without violating the Permit, where it is in the best interest to do so. If an agreement is for sampling only it may be in the best interest to use funds for construction and monitoring in a higher priority watershed.

Recommendation: Delete item 2. It should not be a permit violation if Caltrans decides to withdraw participation through a cooperative agreement.

- 18. Page 159, Attachment IV, Section II.B.4:** “Cooperative agreements relative to the TMDL implementation activity are subject to approval by the applicable Regional Water Board Executive Officer.”

Comment: Regional Water Board Executive Officer approval of the cooperative agreements will cause delays in the stakeholder process. It is not appropriate for the Water Boards to engage in approval of these legal agreements between stakeholders. A listing of the mutually agreed activities to be performed will be submitted to the Regional Board with the annual TMDL Status Review Report

Recommendation: Delete II.B.4.

- 19. Page 160, Attachment IV, Section II.B.5** “5. The Department shall submit sufficient information to document the progress in achieving the requirements of the TMDL for each cooperative implementation agreement in its annual TMDL Status Review Report.”

Comment: This paragraph could be deleted since the item is covered in detail in Section I.B.2.

Recommendation: Delete this paragraph.

- 20. Page 161, Attachment IV, Table IV.2. TMDL Summary Table and Control Requirements**

The following are TMDLs that should be removed from Attachment IV.

1. TMDLs stating, *Compliance with the NPDES permit is sufficient to attain and maintain the wasteload allocations.*
 - a. Napa River Sediment TMDL
 - b. Sonoma River Sediment TMDL
 - c. San Lorenzo River Sediment TMDL
 - d. Morro Bay Sediment TMDL
 - e. Ballona Creek Wetlands Sediment and Invasive Exotic Vegetation TMDL
 - f. Truckee River Sediment TMDL (this TMDL was approved for delisting)
 - g. San Pedro and Pacifica State Beach Bacteria TMDL

2. TMDLs stating, *USEPA did not establish specific wasteload allocations for point sources, so the wasteload allocations are set to zero. The Department point source contribution is insignificant.*
 - a. Albion River (WLA set to zero, not significant)
 - b. Big River (WLA set to zero, not significant)
 - c. Eel River, Lower (WLA is zero)
 - d. Eel River, South Fork (WLA set to zero, insignificant)
 - e. Eel River, Upper Main (WLA set to zero, insignificant)
 - f. Gualala River (WLA set to zero, insignificant)
 - g. Navarro River (WLA set to zero, insignificant)
 - h. Ten mile River (WLA set to zero, insignificant)
 - i. Trinity River, South Fork (WLA set to zero)
 - j. Van Duzen River and Yager Creek (WLA set to zero)

3. TMDLs not fully approved
 - a. Los Penasquitos Lagoon Sediment TMDL

21. Page 172, Attachment IV, Table IV.2. TMDL Summary Table and Control

Requirements – Lake Tahoe TMDL *“By March 15, 2017, the Department shall update its Pollutant Load Reduction Plan to describe how it will achieve the pollutant load reduction requirements for the second five-year TMDL implementation period, defined as the ten-year load reduction milestone in the Lake Tahoe TMDL.”*

Comment: Lake Tahoe TMDL Pollutant Load Reduction Plan and the Pollutant Load Reduction Progress Report due dates should be updated. The date should be revised in Attachment IV.

Recommendation: Update schedule.

22. Page 175, Attachment IV, Section III.A.1.b – TMDL Prioritization and Implementation

...shall also include monitoring for all TMDLs that do not have existing approved water quality monitoring plans. ...The comprehensive TMDL monitoring plan shall include a time schedule for implementation...

Comment: Is Caltrans expected to monitor where there is no WLA or WLA=0 or where the Regional Boards or EPA have determined the Department's contribution is insignificant?

Recommendation: Change language so monitoring is limited to TMDLs where Caltrans has a WLA or where Caltrans is a significant source.

- 23. Page 175, Attachment IV, Section III.A.1.a** *“The Department shall continue to implement existing TMDL water quality monitoring plans, including cooperative water quality monitoring plans that have already received approval from the Regional Water Board Executive Officer.”*

Comment: This language appears to imply that the Caltrans TMDL Monitoring Plan would have to attach all the different monitoring plans for each TMDL listed in ATT IV even when Caltrans might not be a participant in a cooperative effort.

Recommendation: Suggest the following changed language: .Caltrans shall continue to implement existing approved TMDL water quality monitoring plans for cooperative efforts where Caltrans is a participant. These efforts shall be listed in a separate section of Caltrans’ Monitoring Plan.

- 24. Page 175. Attachment IV, Section III.A.3.b** *“b. The Department shall summarize the previous year’s TMDL monitoring results, deliverables and other actions as specified in its annual TMDL Status Review Report, per Provision E.4.c.of this Order.”*

Comment: This is a circular reference since here it refers to Section E.4.c of order which again refers to ATT IV.

Recommendation: Delete.

- 25. Page 184, Attachment V, Part 2 .5.b.** *“Include trash capture devices on the outlets of treatment systems for new and redeveloped highway projects to achieve the full trash capture standard.”*

Comment: This requirement may not be possible in areas where endangered species or species of special concern exist.

Recommendation: Delete requirement: 1 – not all outlets need to be retrofitted for full capture, and 2 – consideration needs to be given regarding endangered species or special concerns/wildlife and flood control.

- 26. Page 184, Attachment V, Part 2 6.e.** *“Total trash load by volume”*

Comment: Please clarify. Total trash load may refer to the total load in the Bay Area but in this context, it seems to refer to trash load collected or prevented from discharge.

Recommendation: Delete part e, report total trash load by volume....adequate to report trash reduction actions.