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RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

August 19, 2014

Electronic Submittal: commentletters@waterboards.ca.gov

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

Re: Comment Letter – Draft Drinking Water Systems General Permit and Resolution

The Riverside County Flood Control and Water Conservation District (District) is submitting this comment letter on the above-referenced proposed Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water Systems Discharges (Draft General Permit) and Resolution. The District is under the jurisdiction of the Santa Ana, San Diego, and Colorado River Regional Water Quality Control Boards (RWQCBs). The Board's careful consideration of these concerns is appreciated.

Background

The State Water Board is considering the Draft General Permit and Draft Resolution to address discharges from drinking water systems due to activities mandated by the federal Safe Drinking Water Act and California Health and Safety Code. The Draft Resolution proposes that the State Water Board grant an exception to public and private water purveyors statewide from complying with requirements of the State Water Board Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California ("Toxics Policy") and the California Ocean Plan. The Draft General Permit proposes to implement the "exception", and provide regulatory coverage for water purveyors enrolled in the permit.

The Permit Fact Sheet acknowledges that mandatory drinking water system development and maintenance activities often result in surface water discharges via municipal separate storm sewer systems (MS4s). The Permit Fact Sheet also acknowledges that "discharges from drinking water systems have a potential to cause an exceedance of water quality standards and may pose a threat to beneficial uses of surface water". For example, discharges of raw, potable water and treated drinking water have constituents of concern for surface water quality including numerous constituents that, while perhaps meeting maximum contaminant level (MCL) standards for human health protection, exceed standards established for other beneficial uses, such as the California Toxics Rule (CTR) which MS4s are required to comply with.

Attachment 1, Table 1 to the Draft Resolution identifies priority pollutants for which a water purveyor needs a categorical exemption in order to discharge because these pollutants have an applicable CTR criterion that is more stringent than its corresponding MCL, or, where a pollutant-specific MCL is not specified, might be present in the discharge at levels exceeding the applicable CTR criteria. The Draft General Permit and Draft Resolution would excuse drinking water system discharges from complying with priority pollutant objectives included in the CTR for the pollutants identified in Attachment 1, Table 1 to the Resolution. While the Draft General Permit includes discharge limitations for *total residual chlorine* and *turbidity*, it does not include requirements for compliance with numeric effluent limitations for other pollutants such as nutrients and bacterial indicators that are included in MS4 permits.

Comments

While the District understands that drinking water systems are critical infrastructure and operators must take necessary actions to operate and maintain these systems, there is a major policy issue that needs to be addressed. The District is concerned that discharges from drinking water systems, not adversely impact compliance with MS4 NPDES permits.

In summary, the District has identified the following concerns:

- Discharges from drinking water system development and maintenance activities enter MS4s, which are subject to their own NPDES permits requiring the MS4s to not cause or contribute to the exceedance of water quality standards.
- Discharges of raw, potable water and treated drinking water that enter into, and are discharged from MS4s contain pollutants which could contribute to exceedances of water quality objectives in receiving waters.
    - Several MS4 permits, particularly those issued by the San Diego Regional Water Quality Control Board hold MS4 operators strictly liable for water quality standard exceedances during non-storm conditions. This is a recent change to the regulation of MS4 permits which previously allowed dry weather discharges to be addressed through an MEP standard.
    - Numeric nutrient criteria in Water Quality Control Plans can be more stringent than drinking water standards. Raw and potable water sources often do not meet receiving water nutrient standards and can cause exceedances of water quality standards for receiving waters.
    - Raw and drinking water system discharges may also promote the growth of bacterial indicators and may result in re-suspension of bacterial indicators and other pollutants in such receiving waters.
    - Many MS4 programs are developing low flow diversions intended to eliminate dry weather discharges to receiving waters. Discharges from drinking water systems and third-party discharges may overwhelm these diversions or may circumvent their effectiveness.
- Without changes to the proposed Drinking Water Systems General Permit, the authorization of discharges from drinking water systems could result in additional costs to MS4 Permittees to monitor and manage these discharges in compliance with the requirements of their MS4 permits. These costs should be borne by the discharger, generally a different entity (and often a private entity) than the MS4 operator; or the MS4 operators need to be relieved of secondary impacts from these discharges.

Finding III.H of the Draft General Permit asserts that based "on the data that is currently available, and due to the high quality, intermittent, and short-term nature of the discharges from drinking water systems authorized under this Order, it is unlikely that these discharges contribute to the impairment of the TMDL-related water bodies". The District does not believe that the record is sufficient for the State Water Board to reach this conclusion, especially in light of the fact that many MS4 permits purport to establish instantaneous and strict liability for discharges that cause or contribute to the exceedance of a water quality standard. In light of that fact, any significant discharge from a drinking water system that flows through an MS4, especially under dry conditions could lead to liability to the MS4 operator, because the discharge from the MS4 allegedly "caused or contributed" to an exceedance of water quality standards. This is particularly true for water quality standards related to nutrients and bacterial indicators. For bacterial indicators, the exceedances may not occur at the point of discharge, but are the result of natural regrowth that occurs once the discharge is exposed to the environment. Groundwater well development and maintenance activities require the flushing of sand and grit

from the well screens prior to delivery of raw/potable water which can contribute to elevated suspended solids concentrations and turbidity levels, either in the water pumped or from erosion or debris-flushing caused by the flow. Such discharges potentially cause exceedances of water quality objectives applicable to the receiving waters into which the MS4s flow. As acknowledged in the Draft Permit Fact Sheet, even the relatively high-quality drinking water system discharges can exceed the water quality objectives and very stringent CTR standards applicable to MS4 dischargers. Where such discharges dominate or constitute the entire flow in an MS4 facility, this would cause MS4 operators to be in non-compliance with their MS4 permits. The risk to MS4 permittees from such discharges is concerning due to the fact that even if an RWQCB had knowledge of the discharge, nothing prevents a third-party from monitoring such discharge and then bringing a citizen suit under the provisions of those MS4 permits.

The District has a particular concern with non-stormwater discharges into their MS4 channels due to the hydrology in the County and strict prohibitions against exceeding water quality standards during dry weather conditions. With the exception of the Santa Ana River, virtually all channels (both natural and engineered) in Riverside County are naturally dry during non-storm conditions. For example, dry weather field surveys conducted in the Upper Santa Margarita River Watershed found that approximately 97% of the stream segments were dry. These ephemeral conditions are not unique to this watershed, or Riverside County. The District and its fellow MS4 Permittees are actively pursuing irrigation runoff controls to eliminate dry weather discharges. Discharges from drinking water systems sometimes provide the entire flow and determine water quality in segments of our MS4, particularly in areas with numerous well blow-offs.

Compliance Responsibility Should Not Be Placed On MS4 Operators

While the categorical exemption proposed in the Draft General Permit may protect drinking water system dischargers from liability for impacts on receiving waters associated with their discharges, it leaves MS4 permittees conveying their discharges potentially liable for compliance with water quality objectives and for implementing programs to monitor and manage these discharges. While drinking water systems are critical infrastructure and discharges are necessary for the operation and maintenance of these systems, these discharges must not adversely impact compliance with MS4 NPDES permits. Simply put, the Draft General Permit must not shift environmental consequences caused by drinking water system discharges to MS4 permittees. The Draft General Permit must address potential water quality impacts from drinking water systems to MS4s. The District is not recommending prohibition of these discharges to the MS4 as we do not believe this is effective public policy. As a matter of fact, there are necessary public benefits to allowing water transfers through MS4 facilities to downstream water providers and/or recharge facilities to address water rights and/or stabilization of local water supplies. However, liability for these beneficial discharges must not be transferred to MS4 operators.

Recommendation: Given the potential impact of drinking water system discharges that would be authorized under the Draft General Permit on the compliance efforts of MS4 permittees, the District requests that the Draft General Permit and the Draft Resolution be revised to provide a categorical exemption to MS4 operators receiving discharges from drinking water systems for compliance with water quality objectives until those discharges depart the MS4. If such an exemption cannot be provided, then the Draft General Permit must be revised to hold the drinking water system dischargers to similar standards as MS4s. Exhibit 1 to this comment letter provides suggested language to the Draft General Permit to effectuate these needed changes, which are feasible for drinking water system operators and which will help to quantify the contribution of such discharges to receiving waters. In addition to our recommendation, we would like to highlight the following concerns.

Monitoring and Reporting

The Draft General Permit only requires measurement of flow and field testing of Total Residual Chlorine, pH and turbidity in discharges from drinking water systems. No laboratory testing is required. Such monitoring does not fully address the potential impacts of drinking water system discharges on receiving waters, and the cost of such monitoring should not be effectively transferred to MS4 operators. Additionally, the Draft General Permit does not require reporting to MS4 operators of discharges that enter the MS4. This is a major oversight, and should be addressed in the Draft General Permit through parallel reporting to the Principal Permittee under the corresponding MS4 Permit or, where a Principal Permittee has not been designated, to the MS4 permittee on whose jurisdiction the discharge occurs. Finally, the threshold for notification and monitoring of discharges has been set too high at one-acre foot. We note that in the 2012 Los Angeles County MS4 Permit, recordkeeping is required for all non-stormwater discharges exceeding 0.3 acre-foot (100,000 gallons). A similar threshold should be included in the Draft General Permit.

These changes, while adding little to compliance costs for drinking water system operators, will assist MS4 permittees to determine the impacts of drinking water system discharges and to establish, if required, that such discharges may be the cause of an impairment that otherwise would be ascribed to MS4 permittees.

Mandated BMPs

The mandated BMPs identified in Attachment C to the Draft General Drinking Water System Permit are required to "protect the beneficial uses of the receiving waters and to prevent erosion or hydromodification caused by discharges". It appears that the BMPs are limited to those that may remove pollutants from drinking water prior to discharge or that may manage erosion resulting from direct discharge. It should be clarified if the discharger is expected to evaluate the flows and implement BMPs all the way to the terminus of the discharge and after discharging from an MS4 if applicable. As previously described, discharges of drinking water may create violations of water quality standards in downstream receiving waters even where the initial discharges have been treated for removal of pollutants. Further, if exemptions for potential violations are not granted to MS4 operators where discharges occur, it may be necessary to monitor and manage the discharges, perhaps even requiring additional treatment or diversion. Additional treatment or diversions would include requirements to infiltrate or reuse drinking water system discharges consistent with flow and volume mitigation criteria contained in MS4 permits or criteria established in other MS4 water quality control plans.

Notice of Non-Applicability

Provision I.1. of the Draft General Permit exempts from coverage drinking water system operators that are under an established local agreement with an MS4 operator. As previously noted, the Draft General Permit describes that discharges from drinking water systems may exceed water quality objectives. Typically permits issued by MS4 operators only relate to engineering and access rights to the physical connection. Under state law, MS4 operators rely on the Water Boards to regulate the discharge of pollutants to protect receiving waters under their authorities under NPDES and Porter-Cologne. It is not clear how a local agreement with an MS4 operator could exempt a discharger of waste to a surface receiving water from compliance with these state and federal statutes. This provision should be clarified.

Conclusion

While the District acknowledges that drinking water systems are critical infrastructure and discharges are necessary to operate and maintain these systems, there is a major policy issue that needs to be addressed; MS4 facilities designed to protect life and property are also critical infrastructure. MS4 operators face increasing challenges in complying with MS4 permits in meeting water quality objectives and are required to conduct extensive monitoring and watershed management programs during dry and wet weather. MS4 permits are now holding permittees strictly liable for meeting receiving water standards during dry weather. Recognizing that discharges from drinking water systems may not meet water quality standards, the Draft General Permit must recognize these efforts and extend the categorical exemptions proposed for drinking water system discharges to the MS4s impacted by those discharges. If such an exemption cannot be provided, then drinking water system dischargers must be held to similar standards as MS4 operators.

While the District does not oppose adoption of the Draft Resolution and General Permit, we request that adoption be deferred pending resolution of the concerns described in this letter and the development/additions of protections for MS4 operators that may be the recipients of discharges from drinking water systems authorized by the Draft General Permit. We look forward to working with the State Board, the drinking water system industry, and other stakeholders in a dialogue to incorporate these concepts into a revised General Permit.

Very truly yours,

JASON E. UHLEY
Chief of Watershed Protection Division

Attachment: Exhibit

ec: Art Diaz
David Garcia

JU:cw
P8/163352

EXHIBIT 1

Requested Edits for Proposed Statewide NPDES General Permit for Drinking Water System Discharges to Surface Waters

1. Requested new Finding regarding MS4 discharges:

xx. MS4 Operations. The issuance of this statewide NPDES Permit to drinking water system dischargers who discharge into storm drain systems covered by MS4 NPDES permits does not shift responsibility for the impacts of discharges covered under this Permit from the drinking water system dischargers to the entities covered under the MS4 permits. The issuance of this Permit does not render MS4 permittees liable for violations of discharge prohibitions, receiving water limitations or other provisions of their permits caused by the discharges authorized by this Permit.

2. Requested Changes to Attachment A, Definitions

MS4

A municipal separate storm sewer system (MS4) covered under a MS4 NPDES permit issued by either a Regional Water Board or the State Board.

3. Requested Changes to Monitoring and Reporting Program

Add to Provision II.A.

"2) direct or non-direct discharges that are greater than ~~325,850~~ 100,000 gallons per event.

Add to Provision V.

[following "shall notify the California Governor's Office of Emergency Services (CalOES)"] "and shall confirm this notification in writing to the corresponding Regional Water Board and, if the discharge entered an MS4, to either the Principal Permittee designated under the MS4 Permit covering that MS4 or, if no Principal Permittee has been designated, the corresponding county flood control district."

Add to Provision VI.

VI. PRE-NOTIFICATION OF LARGE PLANNED DISCHARGES GREATER THAN ~~ONE ACRE-FOOT (325,850 GALLONS)~~ 100,000 GALLONS

Three (3) days prior to initiation of a planned discharge (or retroactively within 24-hours after the Discharger is informed to conduct an urgent planned discharge) of a volume equal to or greater than ~~one acre-foot (325,850 gallons)~~ 100,000 gallons, the Discharger shall notify the appropriate Regional Water Board and, if the discharge will enter an MS4, to either the Principal Permittee designated under the MS4 Permit covering the MS4 or, if no Principal Permittee has been designated, the corresponding county flood control district and provide:

A. The start and end date and time of the discharge
B. The location of the discharge and the applicable receiving water
C. The estimated volume of the discharge
D. The reasons for the discharge
E. Description of BMPs implemented
F. Additional information required in advance and/or requested subsequently by the Regional Water Board or MS4 authorities.

Add to Provision VII, A.5, new last sentence.

"If the catastrophic discharge has entered a MS4, the discharger shall submit a copy of the report made to CalOES within three (3) days to the Principal Permittee designated in the corresponding MS4 permit or, in the absence of such Principal Permittee, to the county flood control district."

4. Requested Addition to Draft Resolution

New paragraph 6 in resolution

5. Recognizes that some discharges subject to this exception are to municipal separate storm sewer systems ("MS4") covered by MS4 NPDES permits issued by regional water boards or the State Water Board, and that issuance of the exception does not shift responsibility to, or create liability for, any MS4 permittee for exceedances of priority pollutant objectives in the CTR or Ocean Plan objectives caused by water purveyor discharges to or from the MS4.