

City of Big Bear Lake



PUBLIC WORKS/ENGINEERING

November 21, 2011



Mr. Gaylon Lee
Division of Water Quality
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

RE: PROPOSED WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR THE US FOREST SERVICE

Dear Mr. Lee:

The City of Big Bear Lake (City) appreciates the opportunity to submit these comments on the Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges (NPS) related to certain activities in National Forest System (NFS) lands in California (Waiver). We share many of the concerns expressed in previous comment letters, dated August 24, 2011, from the Los Angeles County Flood Control District (LACFCD) and the Santa Ana Regional Water Quality Control Board (Regional Board). The LACFCD letter referenced studies¹ that substantiate the contribution of various pollutants from forest lands, including sediment, nutrients, bacteria, and metals. Our comments link the key shared concerns to specific circumstances in the Big Bear Lake (Lake) Watershed.

Key Shared Concerns

- The waiver should have specific requirements for the attainment of TMDLs (Total Maximum Daily Loads)
- Discharges from NFS land should meet water quality standards and should be routinely monitored

¹ See especially: Stein, E., and Yoon, V., 2007. Assessment of water quality concentrations and loads from natural landscapes. Southern California Coastal Water Research Project Technical Report 500.

TMDL Implementation

The City is greatly concerned that the proposed Waiver will negatively impact implementation of adopted and proposed TMDLs for the Lake Watershed. Over 70% of the contributing watershed for the Lake is administered by the United States Department of Agriculture Forest Service (USFS). Runoff from these NFS areas flows directly to the Lake, its tributaries, and into improved channels operated as part of the municipal separate storm sewer system (MS4) in the City and in San Bernardino County. These flows contribute a significant volume of runoff and associated pollutant loads to the Lake. Pollutants of immediate concern include sediment and nutrients that contribute to beneficial use impairments in the Lake². The receiving waters for these discharges are subject to the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), which includes the adopted Nutrient TMDL for Dry Hydrological Conditions for Big Bear Lake³ (Dry Nutrient TMDL). The Lake is also listed for impairments due to mercury and PCBs (polychlorinated biphenyls). The TMDL for mercury is currently under development by the Regional Board, and the largest mercury source is from "non-MS4 areas," including water-column and sediment-bound loads⁴. Therefore, controlling pollutants from NFS areas will also be essential to meet any load allocations (LAs) included in the Lake's future TMDL for mercury, and likely for PCBs.

The USFS is named as a discharger in the Dry Nutrient TMDL, and has been assigned LAs and required implementation actions, including monitoring and reporting activities. Since the discharges from NFS lands contribute to the nutrient and mercury impairments, we believe that the effect of these discharges is demonstrably greater than a "potentially low or moderate impact on water quality" as proposed in the draft Waiver. The City and other local government agencies named as dischargers in the Dry Nutrient TMDL are regulated under the San Bernardino County MS4 NPDES Permit (Order No. R8-2010-0036) (MS4 Permit). TMDL implementation actions have been written into the MS4 Permit and are enforceable Permit requirements. However, the USFS is not currently bound by an equivalent regulatory mechanism to ensure its compliance with the Dry Nutrient TMDL requirements. This inequity is perceived as a "double standard" for TMDL compliance in the Lake Watershed. We believe that a standard of compliance and level of consequence for non-compliance, equivalent to the MS4 Permit, should be applied to the USFS and NFS lands subject to TMDLs. As the majority of the water runs through our City without controls.

This need is reflected by the MS4 Permit; it does not assign responsibility to the Permittees to address pollutants from NFS areas where they lack jurisdiction. Instead, the "Regional Board recognizes that the Permittees should not be held responsible for such facilities and/or discharges," and the MS4 Permit specifically assigns to the Regional Board the responsibility to coordinate with federal agencies to implement programs addressing such discharges⁵. The proposed Waiver does not adequately

² California Regional Water Quality Control Board, Santa Ana Region. Staff Report on the Nutrient Total Maximum Daily Loads for Big Bear Lake, June, 2005.

³ Resolution No. R8-2006-0023; approved by the USEPA on September 25, 2007.

⁴ Tetra Tech: Technical Support Document for Big Bear Lake Mercury TMDL, October 2008.

⁵ Order R8-2010-0036, Section I.B.

address the impact of runoff from NFS lands on downstream water quality. As a result, downstream MS4 Permittees will, in some cases, be unable to comply with water quality standards and risk being in non-compliance with their MS4 Permit. The Waiver should contain adequate conditions to ensure that runoff from NFS lands do not cause or contribute to a violation of water quality standards in down gradient waterbodies covered by the MS4 Permit.

To address this TMDL implementation inequity, the City hereby requests that the Waiver not cover discharges from NFS lands which discharge into the watersheds subject to the MS4 Permit, including the Big Bear Lake Watershed. Instead, such discharges should be covered by a specific WDR or by a WDR waiver issued by the Regional Board⁶.

If the State Board determines that the proposed Waiver must cover discharges from NFS lands that flow into downstream MS4s, the City requests that the Waiver be revised to include a section that specifies conditions for the responsibilities of the USFS to comply with TMDLs. The proposed Waiver currently provides more confusion than clarity regarding TMDL compliance. While stating that compliance with the conditions of the Waiver constitutes compliance with TMDLs, the only apparent condition is that activities conducted under the Waiver must comply with "all applicable water quality requirements..."

For example:

- Finding 21.a.4 (Page 9) acknowledges that there are now adopted TMDLs in areas of NFS lands.
- Finding 25.c (Page 11) acknowledges the State and Regional Boards' authority to regulate discharges, and specific authority for Basin Plans, including TMDL implementation requirements.
- Finding 31 (Page 12) acknowledges that NFS lands and the USFS have been named as dischargers in established (adopted) TMDLs, and that the "water quality goal" for these impaired waters is to improve water quality enough to delist the waters.
- Finding 32 (Page 13) includes a clause that apparently allows a Regional Board to notify the USFS that the Waiver does not satisfy TMDL compliance obligations. However, there is no further procedural explanation.
- Finding 68 (Page 19-20) states that the Waiver requires compliance with the Antidegradation Policy (Resolution 68-16), and that activities "must comply with applicable water quality control plans..."
- General Condition 13 (Page 24) is the only apparent condition specific to TMDL compliance and states (emphasis added):

⁶ Task 1 (Page 8-9) of the Dry Nutrient TMDL states: "On or before February 29, 2008, the Regional Board shall issue the following new waste discharge Requirements: Waste Discharge Requirements (WDRs) or Conditional Waiver of WDRs to the US Forest Service to incorporate the nutrient load allocations, compliance schedule and monitoring and reporting requirements for Forested Areas."

“Activities conducted under this Waiver must comply with all applicable water quality requirements. Water quality requirements include water quality standards, as well as all other requirements, including guidelines, TMDLs, and prohibitions, set forth in water quality control plans and policies adopted or approved by the State Water Board.”

- And, as stated by the August 24, 2011 LACFCD comment (emphasis added):

*“Chapter 7 of the proposed WQMH addresses TMDL implementation, **but it does not contain specific requirements for the USFS to comply with TMDL implementation plans or otherwise to achieve load allocations or wasteload allocations for specific TMDLs.**”*

We believe it would be in the best interest of all regulated and regulating agencies to revise the Waiver to exclude TMDLs, or address TMDL compliance directly within a separate section that ensures the USFS will undertake all TMDL requirements or face enforcement actions equivalent to those provided for in NPDES permits.

Monitoring Runoff from NFS Lands

In addition to strengthening the Waiver conditions to ensure that the USFS meets all TMDL compliance requirements, our experience suggests the need for a more robust monitoring program. We support the August 24, 2011 comment by LACFCD:

“...the monitoring program proposed by the Conditional Waiver does not require the collection of sufficient information to ascertain whether discharges from NFS land are contributing pollutant loading to downstream MS4 systems or are causing or contributing to exceedances of water quality standards in receiving waters. ... The Conditional Waiver should therefore be revised to provide that discharges from covered activities on NFS lands must meet applicable water quality standards in downstream receiving waters. Further, the monitoring program should be revised so that sufficient data can be collected to fully characterize the quality of such discharges to ensure that the conditions of the Waiver are being met.”

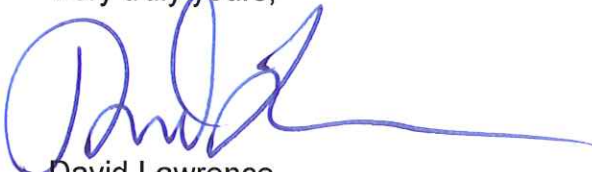
Lack of comprehensive water quality data from the Big Bear Lake Watershed is a primary constraint in understanding pollutant sources, pathways and loads for the Dry Nutrient and mercury TMDLs. Due to the large percentage of NFS areas that contribute runoff and pollutants to the Lake, we believe a monitoring program should be required to evaluate and monitor NPS pollutant loads from NFS areas. Constituents to be monitored and sampling and testing procedures should be consistent with the approved TMDL monitoring program for the Lake Watershed. The USFS has coordinated with the other named dischargers in the Dry Nutrient TMDL and is a signatory to a cooperative agreement to conduct TMDL activities. However, the USFS has stopped short of providing a commensurate share of resources for TMDL development and implementation, which includes a significant monitoring component. Therefore, the requested monitoring program should be the sole responsibility of the USFS to implement and report. The City specifically requests that the USFS be required to

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monitor the main tributary streams that carry runoff from NFS areas into and through the City's MS4. These include Summit, Knickerbocker, and Rathbun Creeks (Figure 1). Although not contributing flow to the City's MS4, other major tributaries, such as Grout Creek in the northeastern quadrant of the watershed, should also be monitored to fully characterize the runoff and any BMP implementation effectiveness.

Thank you for considering our comments. If you have any questions, please contact me at (909) 866-5831 ext 198 or email me at dlawrence@CITYBIGBEARLAKE.com, or you may contact Jackie Heule at (909) 752-2860 or jheule@citybigbearlake.com.

Very truly yours,



David Lawrence
Director of Public Works/City Engineer

Attachment: Figure 1

cc: Alexis Strauss, USEPA
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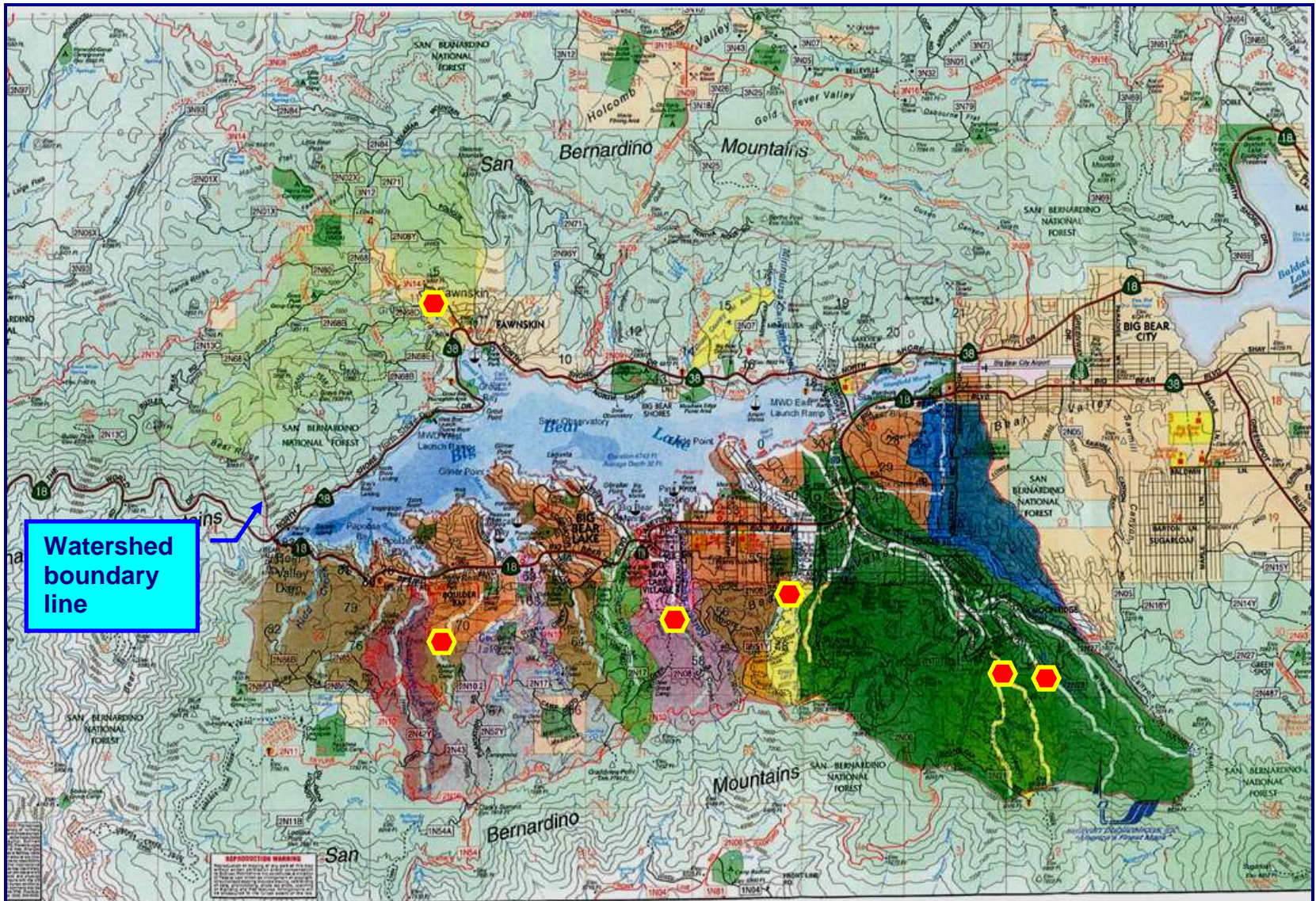


Figure 1: Proposed USFS monitoring stations (red hexagon symbol) to characterize runoff from National Forest Service lands in the Big Bear Lake Watershed.