



City of South Lake Tahoe

"making a positive difference now"

November 30, 2011

Harold Singer
Executive Officer
California Regional Water Quality Control Board, Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

**Subject: Comments on Draft Municipal NPDES Permit
City of South Lake Tahoe, California**

Dear Mr. Singer,

The City of South Lake Tahoe (City) respectfully submits the following comments on the proposed draft Waste Discharge Requirements and National Pollutant Discharge Elimination System (NPDES) permit for El Dorado County, Placer County, and the City of South Lake Tahoe (Draft Permit). The City appreciates the ongoing consideration of our comments by the Regional Water Quality Control Board's, Lahontan Region (Lahontan) staff. Since the City's initial September 14, 2011 permit comment letter, City staff has been working productively with Lahontan staff in an iterative manner to identify issues, review permit drafts, and to correct, clarify, and improve permit language. However, we feel that there is more work to be done.

The City is requesting that adoption of the permit be delayed to allow for additional consideration of specific comments on the permit language, as well as larger questions regarding permit implementation. To date, Lahontan staff has been responsive to the City and co-permittees' (El Dorado and Placer Counties) requests to limit the addition of updated requirements from other jurisdictions' Phase 1 Municipal Separate Storm Sewer System (MS4) permits, given the substantial increase in work required to meet the Lake Tahoe Total Maximum Daily Load (TMDL) requirements. However, the Draft Permit still requires most of the elements in the City's existing NPDES permit, in addition to the new TMDL requirements. The net result is a substantial increase in City resources required for permit compliance.

The City agrees with Lahontan's focus on reducing pollutant loads that degrade Lake Tahoe and implementing programs to meet the new TMDL requirements, which were recently added to the Lahontan's Regional Water Quality Control Plan (Basin Plan). However, implementation of the new TMDL requirements, as currently described in the Draft Permit, will place an unreasonable administrative burden on the City. The TMDL component of the Permit includes extensive condition assessment and monitoring and reporting requirements that are targeted at validating the baseline load estimates and pollutant load models. The City feels that it should not be the burden of local agencies to prove or disprove the science behind the TMDL program/tools created for its implementation. The time and costs associated with the monitoring and reporting, in addition to the TMDL modeling requirements, are unreasonable and will greatly reduce the ability of the local agencies to actually complete projects and maintenance that will reduce pollutant loads.

The City understands that upcoming TMDL Management System Project should provide additional support to integrate the TMDL crediting program and streamline use of the developed tools (BMP Rapid Assessment Methodology [RAM], Road RAM, Accounting and Tracking Tool, etc.). The City requests that the Draft Permit adoption be delayed until the TMDL Management System Project is complete, to avoid spending precious resources on potentially inefficient processes.

The City also requests Lahontan's consideration of the following permit implementation and policy questions, with respect to our request for a delay:

- Since 1987, the Environmental Improvement Program (EIP) has been the leading funding and regulatory program for water quality improvements in the Tahoe Basin. Construction of EIP projects historically has been the measurement of water quality performance for local agencies. It is necessary for local agencies to have a high level of EIP project delivery, in order to obtain development rights regulated by the Tahoe Regional Planning Agency (TRPA). TRPA is currently updating its Regional Plan. Presently, there are no indications of any significant changes to the EIP or performance-based development right allocations in the updated Regional Plan.

In 1992, the first NPDES Phase 1 municipal permit was issued in the Tahoe basin. The six traditional NPDES minimum control measures provided a second set of storm water regulatory thresholds for compliance (Public Education and Outreach, Illicit Discharge Detection and Elimination, Public Involvement, Construction Site Controls, Post-Construction Controls and Municipal Operations Controls). With the addition of the TMDL requirements and the Lake Clarity Crediting Program in the proposed Draft Permit, there will be a third set of regulatory thresholds for compliance.

While federal and state funding for water quality projects and programs continue to decrease, the current trend of increasing regulatory burden is not sustainable. The regulations in the Tahoe Basin, between agencies, need to be coordinated and consistent in order to reduce duplication of efforts and unreasonable administrative costs.

- It is important to leverage resources available from other agencies, when working as a basin, to protect Lake Tahoe's water quality. Before adopting a new permit, it may be useful to develop a clearer understanding of how inter-agency partners will work together to meet permit requirements. This is referenced in the California Tahoe Conservancy (Conservancy) letter to Lahontan, which indicates the Conservancy's desire to participate in developing a comprehensive funding strategy and monitoring program. As Patrick Wright, CTC Executive Director, states it is "...difficult to justify these expenditures in the absence of a comprehensive and well-integrated implementation and funding strategy for the Lake Tahoe TMDL." The Permit should not be adopted until these comprehensive strategies have been developed, to ensure that the Permit requirements are feasible.

- The Draft Permit calls for infiltration of the volume of the 20 year, 1-hour storm as the first option for storm water treatment, but then provides options if infiltration is deemed infeasible. Additionally, the Draft Permit allows a jurisdiction to reach its pollutant load reduction targets through a variety of methods, at the jurisdiction's discretion, whether it be through increased maintenance, BMP implementation, project implementation, etc, or a combination of all. In contrast, TRPA staff has indicated that the updated Regional Plan will continue to require infiltration BMPs for **all** parcels within the Tahoe Basin, regardless of prioritization by local agencies or other available options. These policy conflicts need to be resolved prior to the Draft Permit implementation.
- Natural Resources Conservation Services (NRCS) is currently introducing a program to provide public educational services for Best Management Practice (BMP) compliance. The program emphasizes education and voluntary compliance. It is unclear whether these methods would be effective enough to accomplish BMP installation at a level necessary for compliance with this Permit. The NRCS effort should be integrated with the TRPA Regional Plan Update and Lahontan Draft Permit efforts.
- The City understands that the Resource Conservation Districts (RCD) may be available to assist with some of the Lake Clarity Crediting Tool requirements (i.e., BMP RAMS, Road RAMS, etc). However, the RCDs ability to assist will likely be based upon available funding and agency priorities. This should be explored through an inter-agency coordinated effort, instead of on a jurisdiction by jurisdiction basis, so that resources are equitable coordinated and available to all agencies.
- The City has been working with the Conservancy and TRPA to develop a plan for environmental redevelopment. Public funds can be put towards storm water treatment of public properties, but effective storm water treatment of private properties will require reinvestment. The three agencies have been working together to develop incentives for redevelopment and eliminating unnecessary procedures that are roadblocks for private reinvestment. Lahontan and the State Water Board should be participating in this effort as a partner. The Permit should be supportive of redevelopment efforts that include installation and upgrades to storm water treatment and emphasize the potential for positive pollutant load impacts.
- Will other state agencies and federal agencies that manage land in the Tahoe Basin be required to take responsibility for a share of pollutant load reduction? What will that share be?

The City also requests Lahontan's consideration of the following permit specific questions:

- Does the failure to meet pollutant load reduction requirements of the Permit result in a violation of the permit subject to fines or mandatory minimum penalties?

- The Permit requirements for construction site and industrial permitting/inspection duplicate requirements already in place in the Tahoe Construction General Permit and Industrial General Permit requirements. The NPDES Permit should not contain requirements for local agencies to duplicate the tracking and inspecting that is already the responsibility of the State.
- The proposed permit does not specify the first required submittal date for the Fiscal Analysis required in Order III.C. (Page 24). Permit should identify whether the Fiscal Analysis is meant to be a stand-alone document or part of the SWMP. As written, it appears that the first Fiscal Analysis may be required in 2012, a year before the Pollutant Load Reduction Plan or Amended Stormwater Management Plan submittals. If appropriate add the Fiscal Analysis to the Table of Submittals, and specify first date required.
- Given that permittees may not have sufficient funds available to achieve permit compliance, how will the Fiscal Analysis be evaluated? Will permittees be out of compliance if submitting a Fiscal Analysis that indicates that program funding is not sufficient to meet all permit requirements?
- There is little value for a complete Pollutant Load Reduction Progress report deliverable (Order IV. F. Page 28) due on October 1, 2013, since the Pollutant Load Reduction Plan is due six months earlier on March 15, 2013, and progress can be assessed in the annual report due six months later March 15, 2014. If some form of progress report is to be required in October 2013, change language to require only “draft pollutant load reduction estimates” making it clear that, though permittees could be required to identify projects and actions to reduce loads prior to October 15, 2011, they are not required to provide the level of effort to estimate pollutant load reductions and complete catchment credit schedules for these projects or actions by October 1, 2013. Permittees may have previous projects or jurisdiction-wide actions that would provide small amounts of credits. The requirement to estimate pollutant load reductions (and presumably register those catchments) by October 2013 (or never claim credits for these activities) specifies the method of compliance with pollutant load reduction requirements. Permittees may want to use their resources for other activities, and should have the opportunity to estimate pollutant load reductions and claim credits at a time of their own choosing.
- Clarify and correct text in Attachment C Monitoring and Reporting Program (MRP) I.G. “Impacts Influencing Baseline Pollutant Loads” Page 5. Suggested text second paragraph with ~~deletions~~ and *insertions*:
“As part of this assessment, each Permittee shall determine if ~~the magnitude of changes~~ *in* land use, impervious cover, and operations and maintenance practices ~~has confirmed that are consistent with~~ the model assumptions and input variables used to calculate the Permittee’s baseline pollutant load estimates ~~are no still valid~~ and that such changes have not caused any increase in pollutant loads beyond the baseline estimate”.
- The new third paragraph in Attachment C MRP I.G. “Impacts Influencing Baseline Pollutant Loads” Page 5 includes a requirement to register catchments where Permittee determines that a change (increase) in baseline load has occurred. While the Table of

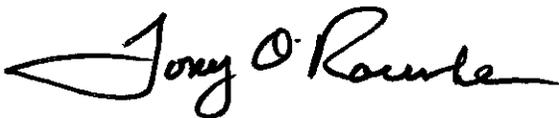
Required Submittals identifies this as a one-time submittal due March 15, 2015, this also appears to be a required section of the Annual Report due March 15, 2014, and annually thereafter. See Section IV.1 of the Monitoring and Reporting Program. It is not clear whether Permittees are required to register catchments with changes annually (starting March 15, 2014), once (by March 15, 2015), or on an unspecified schedule. Update the language to indicate that this submittal is either one-time starting in 2015, or to be submitted with the annual report starting in 2015.

If permit adoption is delayed, the City is willing to shift existing resources from meeting the administrative reporting requirements of the current permit (e.g. Annual Report) to working on high priority deliverables for pollutant load reduction in the proposed Draft Permit; e.g., legal authority (storm water ordinance) and preparing a Pollutant Load Reduction Plan. If the City is able to make progress on developing Pollutant Load Reduction strategies, we will develop a better understanding of the effort required to implement the Lake Clarity Crediting program, and will be better able to assess needed resources and prioritize our efforts to implement the new permit, when adopted.

In the last few years, City staff has already been developing projects and programs which emphasize pollutant load reduction, and has participated in the TMDL implementation training. In doing so, the City has reallocated resources to align with pollutant load reduction priorities proposed in the Draft Permit. The City will continue working towards high priority deliverables in the Draft Permit, prior to adoption, provided we can do so without increasing risk of enforcement action with regards to existing permit requirements.

The City appreciates your consideration of our comments and requests submitted herein. We look forward to continuing to work together to protect Lake Tahoe's water quality. If you have any questions or concerns regarding this letter, please do not hesitate to call Sarah Hussong Johnson at 530.542.6033.

Sincerely,

A handwritten signature in black ink that reads "Tony O'Rourke". The signature is written in a cursive style with a large, sweeping initial "T".

Tony O'Rourke
City Manager
City of South Lake Tahoe