



Santa Ana Regional Water Quality Control Board

April 3, 2023

Keith Linker
Principal Civil Engineer
City of Anaheim Public Works Department
200 South Anaheim Boulevard
Anaheim, CA 92805

**AUTHORIZATION TO PROCEED WITH THE PROPOSED CITY OF ANAHEIM
STORMWATER CREDIT PROGRAM**

Dear Mr. Linker:

This letter is in response to a request made by the City of Anaheim (City) for consideration of a proposed City-wide Stormwater Credit Program (Program), dated December 15, 2022. The Program would establish mechanisms, tracking, and controls to allow City-owned regional retention projects to generate credits that can be purchased by certain new development/significant re-development projects to satisfy the requirements of NDPES Permit and Waste Discharge Requirements for Areawide Urban Stormwater Runoff within Orange County, Order No. R8-2009-0030 (NPDES No. CAS618030), as amended by Order No. R8-2010-006 (Order). Pursuant to Sections XII.E.4 and XII.C.7 of the Order, permittees may establish a water quality credit system for new development/significant re-development projects where site conditions do not permit infiltration, harvesting and re-use, and/or evapotranspiration, and/or bio treatment of the 85th percentile design capture volume.

The proposed Program underwent a 30-day public review and comment period, which ended on February 16, 2023. The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) has reviewed the proposed Program and all comments received during the public comment period. Written responses to the comments received have been prepared and are released concurrently with this letter (Attachment).

After careful consideration, I find that the proposed Program does not conflict and is consistent with the requirements of the Order. Pursuant to Sections XII.E.4 and XII.C.7 of the Order, I hereby authorize the City to proceed with the proposed Program.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

If you have any further questions, please contact Nam Nguyen via email at Nam.Nguyen@waterboards.ca.gov or via phone at (951) 321-4582 or Adam Fischer via email at Adam.Fischer@waterboards.ca.gov or via phone at (951) 320-6363.

Sincerely,

 Digitally signed by
Jayne Joy
Date: 2023.04.03
11:19:59 -07'00'

Jayne E. Joy, P.E.
Executive Officer
Santa Ana Regional Water Quality Control Board

Attachment: Stormwater Credit Program – Response to Comments

cc: Recupero & Associates – Michael Recupero
GSI Environmental – Matthew Lentz
Haimann Engineering – Richard Haimann
Olaunu – Daniel Apt
Orange County Coastkeeper – Garry Brown
Orange County Water District – Michael Markus

Stormwater Credit Program – Response to Comments
April 3, 2023

| Response Number | Commenter and Date | Comment | Response |
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| 1 | Orange County Coastkeeper (February 21, 2023) | Coastkeeper has conceptually supported the proposed Program since at least 2020. Over the years, the City has engaged Coastkeeper via meetings and site walks to explain Program attributes and goals. Coastkeeper has long reiterated that our support for a final credit program would require detailed consideration of a variety of issues including long term maintenance requirements, pollutant load multipliers for credit users, and ongoing liability for ensuring that the projects remain in operation as designed. Coastkeeper continues to support the Program and ultimately encourages Board staff to approve it. | Comment noted. |
| 2 | Orange County Coastkeeper (February 21, 2023) | What are the credit lifetimes? Lifetimes should be limited to best serve local water quality goals. | Purchased credits have no expiration. Credits that have not yet been sold may be temporarily withheld or permanently expire, as described in Section 2.4.3. This is dependent on the performance of the facility and if performance can be maintained or restored through operation and maintenance. The Santa Ana Water Board’s approval of the Program does not grant a vested right to discharge waste to waters of the State, consistent with Water Code section 13263(g). |
| 3 | Orange County Coastkeeper (February 21, 2023) | Though Coastkeeper appreciates additional information will be provided in forthcoming Stormwater Credit Generation Reports (SCGRs), Coastkeeper is concerned about the lack of detail regarding O&M in sections 3.1 and 3.2. This concern is heightened by the fact that the periodic inspections discussed in section 3.1 will be “[t]he primary mechanism to oversee and enforce the provisions of the Credit Program.” | The Stormwater Credit Program specifies that periodic operations and maintenance (O&M) inspections will be performed “at a minimum annually” (p. 18). The inspection frequency is consistent with the inspection frequencies required in Sections IX, X.2. and XII.1.5. of Order R8-2009-0030. |
| 4 | Orange County Coastkeeper (February 21, 2023) | Will the public have an opportunity to comment on SCGRs? How frequently will O&M inspections occur beyond the minimum annual inspection and how will this frequency be determined? Will the Regional Board and public have a role in verifying diminished volume determinations and/or calculations? | SCGRs and related determinations and calculations will be part of a project Water Quality Management Plan (WQMP) (p.15 and p. 20). SCGRs will also be made available upon request (p. 22). SCGRs are public records and will therefore be available for public review, though they will not be formally released for public comment by the Santa Ana Water Board. Project WQMPs are reviewed and approved by the |

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| | | | <p>permittees under the Municipal Separate Storm Sewer System (MS4) Permit and subject to audit by the Santa Ana Water Board. See Response No. 3 regarding inspection frequencies. The Santa Ana Water Board does not expect to have a role in verifying diminished volume determinations and calculations except as part of programmatic audits or inspections for compliance with the MS4 Permit.</p> |
| 5 | <p>Orange County Coastkeeper (February 21, 2023)</p> | <p>Coastkeeper is concerned about the contemplated transfer of ownership in section 3.4. Coastkeeper appreciates the City anticipates retaining ownership of Credit Generators and recognizes the record notice requirements outlined in the Program, but questions what circumstances would result in private ownership of Credit Generators? How would that affect the City’s MS4 obligations/compliance?</p> | <p>The Santa Ana Water Board does not have any direct role in the transfer of ownership of Credit Generators. The City has obligations to: 1) maintain adequate legal authority under Section VI of Order R8-2009-0030; 2) control the construction and operation of post-construction structural treatment controls under Sections XII.B.3., XII.G., XII.F., XII.I. of the Order; and 3) track facilities under Section XII.H. These obligations are not affected by the Stormwater Credit Program.</p> |
| 6 | <p>Orange County Coastkeeper (February 21, 2023)</p> | <p>As the City hopes to see the on-site feasibility analysis removed from the next MS4 Permit (see page 14, footnote 5), how would the Pollutant Load Multiplier (PLM) be modified to account for the pollutant removal capacity of on-site retention for Credit Users where feasible? How else would the Program be modified to ensure a net benefit to the watershed?</p> | <p>The Stormwater Credit Program is a mechanism to comply with the requirement for inclusion of BMPs for the implementation of LID principles in the new development and significant redevelopment under Section XII.C.2. and for structural treatment controls under Section XII.B.3. of Order R8-2009-0030. The sizing of structural treatment controls is regulated by numeric criteria for the volume and flow under Section XII.B.4. The PLM does not reduce the treatment volumes or flows that must be treated and does not conflict with these provisions. Pollutant removal capacity of a facility may be a function of the need to attain a waste load allocation or water quality objectives. The City may modify the PLM to support attainment of a waste load allocation or water quality objectives at the City outfall or in the receiving water.</p> |
| 7 | <p>Orange County Coastkeeper (February 21, 2023)</p> | <p>Coastkeeper notes that Figure 3, the receiving water impairments, and narrative statements regarding the same in section 2.1 may need to be updated for the forthcoming, updated Integrated Report as the same is finalized and adopted.</p> | <p>The commenter is correct that the forthcoming 2024 Integrated Report may add new pollutant-waterbody combinations to the 303(d) List that may need to be incorporated into the Stormwater Credit Program.</p> |
| 8 | <p>Orange County Coastkeeper (February 21, 2023)</p> | <p>To the extent there are no downstream impairments for a particular pollutant, how will the Credit User decide which PLM to use to calculate the number of credits to purchase? Who will verify that selection and how?</p> | <p>If there are no downstream impairments or TMDLs, the City will have the discretion to set PLMs. The use of PLMs is discussed in the <i>Technical Basis Document: Pollutant Load Multipliers for Credit Users</i>, referenced in Section 2.4.2.1. The Stormwater Credit Program has been edited to make it clearer that PLMs do not allow the purchase of credits that are</p> |

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| | | | less than the design capture volume required by the MS4 Permit. See also Response 4. |
| 9 | Orange County Coastkeeper (February 21, 2023) | Coastkeeper requests Board staff strike the parenthetical on page 14, footnote 5, as the Program is not the appropriate place for the City to provide comments on the forthcoming revised draft MS4 permit. | Approval of the Stormwater Credit Program does not indicate that the Santa Ana Water Board agrees with any opinions expressed by the City regarding any future regulatory actions. Striking the City’s comment is not necessary. |
| 10 | Orange County Coastkeeper (February 21, 2023) | Coastkeeper underscores and appreciates the City’s commitment to prohibit trading across watersheds, a crucial element for local water quality. By the same token, Coastkeeper would strongly prefer Credit Users be tributary to Credit Generators and would like to see the Program and section 2.1 be modified accordingly. | The Stormwater Credit Program relies on voluntary transactions between the Credit Users and Generators. If the Generator could only work with Users in the tributary area of a facility, parties who decline to participate would have negative impacts on its operational funding. Allowing parties who are in the same watershed, but not tributary to a facility to participate can mitigate these negative impacts while protecting the quality of the receiving water. |
| 11 | Orange County Water District (February 16, 2023) | After reviewing Anaheim's Stormwater Credit Program, it is OCWD's understanding that only city-owned projects can generate stormwater credits. If the pilot program is successful, stormwater credits will be made available for sale to qualifying public and private projects. Stormwater credits will be the portion of the project design capture volume remaining after credit retentions and reductions. Remaining stormwater credits will be made available for sale to projects within the same sub-watershed they have been created. Anaheim will regularly monitor and perform maintenance on the stormwater credit generating facility. If capacity has been determined to be unrecoverable then the equivalent volume will be reduced from the amount for sale to public projects. To be eligible to purchase stormwater credits, stormwater infiltration must be deemed infeasible at the project location and the project is still required to develop a Water Quality Management Plan (WQMP) to document source controls and on-site structural BMPs. The ultimate amount of stormwater credits needed by a project will be determined by using a conservative land-use based pollutant loading multiplier. Funds generated by the City of Anaheim from the sale of the stormwater credits will be used to supplement ongoing | Comment noted. This understanding does not conflict with the Santa Ana Water Board’s understanding of the Stormwater Credit Program. |

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| | | monitoring and maintenance of the stormwater generating projects in perpetuity and may fund future regional stormwater capture projects. | |
| 12 | Orange County Water District (February 16, 2023) | From OCWD's perspective, as the groundwater basin manager, Anaheim's Stormwater Credit Program will more rapidly expand the volume of stormwater captured within the City of Anaheim than if the program was not adopted. This in turn will incrementally decrease stormwater flows lost to the ocean, thereby increase groundwater stored in the underlying groundwater basin. Simultaneously, this program provides a funding source for Anaheim's stormwater credit generating facilities and requires them to be routinely monitored, managed, and maintained in perpetuity. | Comment noted. |
| 13 | Orange County Water District (February 16, 2023) | In providing comments on previous draft versions of NPDES Permits and Waste Discharge Requirements for Areawide Urban Stormwater Runoff within Orange County, OCWD has commented on our concern about implementation of required maintenance of infiltration facilities constructed at private development and redevelopment sites to comply with the permits. OCWD implements a large system of recharge facilities, including wells and surface recharge basins. All recharge facilities clog due to accumulation of sediment and other material as water flows through them, causing their infiltration rate to decline through time. OCWD has been concerned that infiltration systems at private development or redevelopment projects will not be properly maintained due to changes in land ownership, infiltrations systems being 'out of sight, out of mind', and other factors. Accordingly, OCWD supports regional systems that benefit from economy of scale and other factors associated with active management by public agencies, like the City of Anaheim. | Comment noted. Approval of the Stormwater Credit Program does not indicate that the Santa Ana Water Board agrees or disagrees with any opinions expressed by the Orange County Water District regarding any future regulatory actions. |

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| <p>14</p> | <p>Orange County Water District (February 16, 2023)</p> | <p>Anaheim's Stormwater Credit Program will benefit our region by increasing accountability and assurance of long-term operation and maintenance of stormwater infiltration facilities installed to comply with the permit requirements. Additionally, the funds generated by the sale of stormwater credits may allow Anaheim to expand its network of regional stormwater capture projects. Lastly, by developing larger regional projects, the program may allow for more cost-effective stormwater capture and treatment solutions, which provide benefit to the region.</p> | <p>Comment noted. The principal purpose of the Stormwater Credit Program is to comply with requirements for LID structural treatment controls for priority projects under Order R8-2009-0030 in a manner that reduces pollution in stormwater runoff to the maximum extent practicable.</p> |
| <p>15</p> | <p>Orange County Water District (February 16, 2023)</p> | <p>The City of Anaheim has been an exceptional partner in the stormwater infiltration space. OCWD would like to commend the City of Anaheim for its forward-thinking stormwater credit program and look forward to continued coordination on stormwater credit generating projects to ensure they are appropriately located away from existing soil, soil vapor and groundwater contamination, to the extent required, and have the appropriate structural and non-structural BMPs and pretreatment necessary to ensure infiltrated stormwater is protective of groundwater quality.</p> | <p>Comment noted.</p> |