

Meeting Minutes
NPDES Technical Advisory Committee

Date and Location: May 27, 2020, 2:00 – 3:30 p.m.
Webinar and teleconference only

ITEM # 1 Introductions and Webinar Conduct

TAC Members Roll Call	Attendance
Amanda Carr, County of Orange, Chair	Present
Jim Merid, 2 nd District, City of Huntington Beach	Present
Frank Sun, 3rd District, City of Orange	Present
Keith Linker, 4th District, City of Anaheim	Present
Rich Schlesinger, 5th District, City of Mission Viejo	Present

A quorum of the Technical Advisory Committee (TAC) was present.

OCCMA-WQC Members Roll Call	Attendance
Charlie View, City of San Juan Capistrano	Present
Chris Macon, City of Laguna Woods	Present
Jill Ingram, City of Seal Beach	Present
Lisa Zawaski, City of Dana Point	Present
Scott Stiles, City of Garden Grove	Present after Item #3

A quorum of the Orange County City Managers Association Water Quality Committee (OCCMA-WQC) was present.

Following introductions, Ms. Jacqueline Sedighi presented an overview of the webinar meeting format and procedures for participants.

ITEM # 2 Selection of Chair for the Orange County City Managers Association Water Quality Committee

Ms. Sedighi noted that new members had been selected to serve on the OCCMA-WQC, but a chair had not yet been named. Mr. Charlie View asked if any members had served as chair to which Ms. Sedighi responded no. Ms. Amanda Carr added that the OCCMA-WQC generally meets once annually, and the chair is responsible for briefing the larger city manager group on what was discussed during the meeting. Mr. Chris Macon expressed interest in serving as chair of the OCCMA-WQC.

OCCMA-WQC Recommended Action: Select a chair for the OCCMA-WQC

Motion: Select Chris Macon as chair of the OCCMA-WQC
First/Second: Jill Ingram/Charlie View
Abstained: None
Outcome: Approved unanimously

ITEM # 3 Approval of January 9 TAC Meeting Minutes

The January 9, 2020, meeting minutes were presented to the TAC.

TAC Recommended Action: Approve January 9 TAC meeting minutes.

Motion: Approve meeting minutes.
First/Second: Jim Merid/Frank Sun
Abstained: Keith Linker
Outcome: Approved

ITEM # 4 Legal Update

Ms. Julia Woo began her update with a brief discussion of the current COVID-19 pandemic, the subsequent Executive Orders that were issued, and how they are affecting the stormwater programs. She also noted that as restrictions are lifted, it will become more difficult to make a case for regulatory leniency, so any requests for relief should be filed as soon as possible.

Ms. Woo then provided an update on the County of Maui, Hawaii v. Hawaii Wildlife Fund, a case regarding the regulation of groundwater discharges under the Clean Water Act. Last year, the Ninth Circuit held discharges to navigable waters through groundwater were subject to the Clean Water Act if groundwater was fairly traceable to a point source of discharge. A wastewater treatment plant was found to be partially treating and injecting wastewater hundreds of feet underground, and the Hawaii Wildlife Fund alleges water quickly discharged to the Pacific Ocean. Significant amounts of wastewater are believed to have been discharged, and dye testing and other evidence shows the discharge point was only a half mile away from injection wells. The case has been taken to the Supreme Court. One side alleges that discharges are categorically exempt and do not count as discharges to navigable waters subject to the Clean Water Act. The EPA recently took a stance that it is a state issue to decide for the local jurisdiction. The Supreme Court said the term “discharge” is too broad to apply and is hesitant to read too deeply into the language surrounding “navigable waters”. The Clean Water Act should broadly apply to “direct discharge to navigable waters” or “functional equivalent of direct discharge”. Factors for determining “functional equivalent of direct discharge” are time, distance, nature of material through which the pollutants travel, and extent of dilution or alteration through comingling or otherwise. The determination is made on a case by case basis. While this is a case of interest, Ms. Woo reiterated that the Maui infiltration well was a half mile away from the Pacific Ocean and infiltrated large volumes of water. Orange County infiltration wells may not be as vulnerable.

Additionally, Ms. Woo touched on the State Board’s proposed order on challenges to the Los Angeles County MS4 Permit, specifically regarding the approval of the Enhanced Watershed Management Programs (EWMPs) and Watershed Management Programs (WMPs). The programs granted achieving compliance status to Water Quality-Based Effluent Limitations (WQBELs), but the State Board identified several deficiencies, specifically with the reasonable assurance assessments (RAAs), repeated reference to “rigor” and “accountability”, showing work on modeling, and a lack of evidence on how implementation will lead to compliance with WQBELs. The order dispels the notion that you can iterate forever and reinforces that compliance must eventually be achieved. The State Board took away deemed compliance status from one Permittee. While the majority of Permittees kept their deemed compliance status and will have one year to make the State Board’s requested modifications, this status may be revoked if the changes are not made. Ms. Woo noted that she can provide copies of the State Board’s guidance upon request. She added that South OC Permittees filed petitions against several 2015 permit requirements. In 2016, the State Board indicated they would address these petitions after they finished their review of Los Angeles County. That said, their review of South OC petitions may be next. South OC Permittees’ compliance with Permit Provision B.3.c is not under investigation and has not been challenged.

TAC and OCCMA-WQC Recommended Action: Receive and file

Outcome: Received and filed.

ITEM # 5 Approval of FY 2020-21 NPDES Stormwater Program Shared Costs Budget

a) Cindy Rivers and James Fortuna, County of Orange, OC Environmental Resources

Ms. Cindy Rivers kicked off the fiscal year (FY) 2020-21 budget discussion by noting major themes, specifically focusing on reductions made since the proposed budget was initially presented in January. To demonstrate this, Ms. Rivers presented a timeline of events related to the COVID-19 pandemic which led to follow-up discussions with Permittee on their unique budget concerns. As a result, the proposed FY 2020-21 budget was reduced by 17% compared to January. Ms. Rivers noted that the budget includes ongoing implementation costs to address the highest priority water quality conditions and continue special studies in accordance with the milestones established in the South Orange County Water Quality Improvement Plan (South OC WQIP). She added that the South OC WQIP was written to maximize and optimize the use of non-structural strategies, reducing the potential need for expensive structural controls in the long-term. Therefore, an investment in the first 3-5 years of WQIP implementation is required to fill data gaps and is the reason South OC Permittees' budget shares are higher than North OC Permittees.

Mr. James Fortuna presented specific budgets for countywide elements and region-specific elements, comparing FY 2020-21 amounts with those from January and FY 2019-20. Lastly, he went through the three-step budget approval process involving the TAC, OCCMA-WQC, and Permittees.

Mr. Macon requested County staff elaborate on the public education budget, specifically Table 2 of Section 3, the internship line item, and how public education will be conducted considering COVID-19. Mr. Fortuna clarified that the overall public education budget was not cut substantially due to several ongoing efforts. Ms. Jenna Voss expanded on this and noted that the public education budget has decreased over the years while still fulfilling the public education program requirements of both the Santa Ana Region and San Diego Region MS4 Permits, many of which are overlapping. The SWPPP internship program is being utilized to fulfill school outreach and public education requirements as programs and school partnerships that previously utilized staff and volunteer time are no longer viable.

Mr. Macon asked why the land area and population data are pulled from 2020 and 2019, respectively, rather than using data from the same year. Ms. Rivers responded that County staff use the most up-to-date data available at the time of budget preparation. Updates to population data are not available until May or June, so same-year population data is usually not available by the time of the annual budget presentation to the TAC and OCCMA-WQC. Mr. Macon requested that County staff update the population numbers prior to distributing for Permittee approval, since 2020 data was released. Additionally, Mr. Macon commended County staff on the budget reductions made since January and asked if deferring budget items will create large budgetary impacts in future years. Ms. Rivers responded that a number of WQIP strategies are being implemented and completed in FY 2020-21. Deferred items can be absorbed in to the FY 2021-22 budget. Mr. Fortuna added the North OC Permittee obligations will change upon permit renewal, so it is difficult to anticipate what those requirements will be. Ms. Carr also noted that the FY 2020-21 proposed budget presented in January was aggressive in order to gain momentum implementing strategies. This revised budget maintains efforts but doesn't advance completion timelines. Mr. Macon appreciated the additional explanations and wanted to ensure budget cuts now would not result in substantial future increases.

Mr. Macon noted that previous TAC meeting minutes indicated that the Trash Provisions Subcommittee repurposed \$30,000 without TAC approval and asked why this reallocation was done at a subcommittee-level rather than by the TAC. Mr. Fortuna clarified that these funds were related to two tasks: the OC Stormwater Tools Trash Module and Trash Provisions Land Substitution Guidance Document. He added that the TAC recommends for approval the overall budget, but there is some flexibility built in for permit implementation and adaptive management needs. As new monitoring or data requirements come to light,

tasks are adjusted accordingly; major changes are brought to the TAC. Ms. Carr added that major changes are not typically made, but if there's a need then it is brought to the TAC. The need to shift budgets comes from discussions and work done in the Permittees' subcommittees. The requirements and deadlines within the Trash Provisions raised questions regarding the level of modeling needed, and the TAC and Permittees were consulted on options to address this. Mr. Macon requested that a more defined process for reallocating funds during a FY be created, as he would like to avoid spending year-end savings on other tasks. If changes are needed, then clear explanations should be provided to the TAC and Permittees. Mr. Chris Crompton added that the Implementation Agreement does not apply to the trash requirements since they are not included in the current MS4 Permits, while the Permittees have proactively agreed to fund activities to address them. He added that there is a need to balance TAC By-Laws with the Implementation Agreement to define processes.

Mr. Joe Ames complimented County staff on how quickly budget revisions were made. He also asked how much is budgeted for the Smart Watershed Network Project (grant funded effort with Moulton Niguel Water District) for FY 2020-21. Ms. Rivers responded that the budgeted amount for this project is \$45,000.

TAC Recommended Action: Recommend the FY 2020-21 NPDES Stormwater Program Shared Costs Budget for approval.

Motion: Recommend the FY 2020-21 NPDES Stormwater Program Shared Costs Budget for Approval
First/Second: Jim Merid/Keith Linker
Abstained: None
Outcome: Approved unanimously

OCCMA-WQC Recommended Action: Recommend the FY 2020-21 NPDES Stormwater Program Shared Costs Budget for approval.

Motion: Recommend the FY 2020-21 NPDES Stormwater Program Shared Costs Budget for Approval
First/Second: Jill Ingram/Lisa Zawaski
Abstained: None
Outcome: Approved unanimously

ITEM # 6 Written Reports

TAC and OCCMA-WQC Recommended Action: Receive and file.

Outcome: Received and filed.

ITEM # 7 TAC and OCCMA-WQC Member Comments

No committee member comments.

ITEM # 8 Public Comments

No public comments.

ITEM # 9 Adjournment

Chair, Amanda Carr adjourned the meeting.