



Concern: Dischargers may be inclined to rely on offsets in lieu of implementing watershed nutrient control BMPs in order to save money. Offset programs should be a last resort, not the preferred option, for demonstrating compliance with the TMDL.

- 1) While theoretically possible, past performance shows that this concern is probably misplaced. Discharger's have been diligently implementing watershed BMPs while simultaneously supporting in-lake offset programs for more than 10 years. BMP implementation must be documented in the discharger's annual reports.
- 2) The MS4 NPDES permit requires watershed BMPs in order to achieve on-site retention of runoff up to the 85th-percentile storm event irrespective of any other compliance obligations imposed by the TMDL. Offsets cannot be used to demonstrate compliance with this, or any other, technology-based limit.
- 3) It is much more difficult for dischargers to justify and authorize expenditures for projects, such as the offset programs, that fall outside their jurisdiction. Stakeholders also prefer projects over which they have full control to provide greater certainty re: compliance.
- 4) The most cost-effective (i.e. "feasible") BMPs focus on reducing the volume of runoff leaving the jurisdiction. While this may achieve technical compliance with the load and wasteload allocations, it does not produce the best environmental benefit for lakes that need more not less water.
- 5) BMPs take considerable time to evaluate, design, permit, fund and construct. Other BMPs are best implemented as part of the normal development process. Offset programs provide a bridge to compliance during this interim implementation period.
- 6) In this unique case, where bottom sediments are the dominant source of nutrient loading, offset programs provide a larger improvement in water quality much sooner than can be achieved by watershed BMPs. That's why in-lake offset programs should not be deemed a "last resort."
- 7) Some offset programs, such as the Lake Elsinore Aeration and Mixing System (LEAMS) were hard-wired into the original TMDL adopted by the Regional Board in 2004. Other offset programs, such as the Alum applications in Canyon Lake, were considered so useful that state grant funds were awarded to encourage its implementation.



Concern: It may take many years, perhaps decades, before we will have enough data to be able to determine whether the lakes are in compliance with dynamic response targets, expressed as Cumulative Distribution Function curves, for Chlorophyll-a, Dissolved Oxygen and Ammonia.

- 1) After the initial 10-year compliance schedule elapses, Dr. Anderson's lake simulation model can be used to predict the expected water quality in each lake under natural reference conditions given the starting elevation and the actual pattern of precipitation that occurs. The result can then be compared to the measured water quality in the lakes in year 11 and in any subsequent year to evaluate progress toward attainment. Note: the TMDL requires the implementation projects to be fully implemented within 10 years but acknowledges that re-attainment of water quality standards may take 20+ years in order to reduce net loading from the lake bottom sediments.

- 2) Compliance can also be demonstrated using any combination of the following:
 - A) Zero discharge from the jurisdiction. Zero discharge from sub-set portions of a jurisdiction can establish full compliance for those sub-areas and partial compliance for the full jurisdiction.

 - B) Flow-weighted average concentration in discharge, at the point of discharge or immediately above the confluence with the lakes, is less than or equal to target nutrient values established for the natural reference condition. Calculated as a running 10-year annualized average.

 - C) Total annual mass in discharge, at the point of discharge or immediately above the confluence with the lakes, is less than or equal to the target loads established for the natural reference condition. Calculated as a running 10-year annualized average.

 - D) Total annual mass in discharge, at the point of discharge or immediately above the confluence with the lakes, minus the annual load reduction accredited to active participation in an approved offset project, is less than or equal to the target loads established for the natural reference condition. Calculated as a running 10-year annualized average.



The following text was copied from the State Water Resources Control Board website:

"Overview of Wastewater Change Petitions: Wastewater treatment facilities discharge treated wastewater to many stream systems in the state. To better manage resources and facilitate water use efficiency, many municipalities are designing water re-use projects. If the water re-use project will decrease the amount of water in a stream or other waterway, the owner of the wastewater treatment plant needs to file a wastewater change petition with the Division of Water Rights (Division). To approve a wastewater change petition, the State Water Resources Control Board (State Water Board) must be able to find that the proposed change will not injure other legal users of water, will not unreasonably harm instream uses, and is not contrary to the public interest..."

Water Code Sections Addressing Rights to Treated Wastewater

Three sections of the Water Code explicitly address ownership and water rights with respect to treated wastewater.

Water Code Section 1210: "The owner of a waste water treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated waste water as against anyone who has supplied the water discharged into the waste water collection and treatment system, including a person using water under a water service contract, unless otherwise provided by agreement. Nothing in this article shall affect the treatment plant owner's obligations to any legal user of the discharged treated waste water. Nothing in this article is intended to interfere with the regulatory authority of the board or any California regional water quality control board under Division 7 (commencing with Section 13000)."

Water Code Section 1211: "(a) Prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, the owner of any wastewater treatment plant shall obtain approval of the board for that change. The board shall review the changes pursuant to the provisions of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2. (b) Subdivision (a) does not apply to changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse."

Water Code Section 1212: "The board shall not grant any permit or license to any person other than the treated waste water producer for the appropriation of treated waste water where the producer has introduced such water into the watercourse with the prior stated intention of maintaining or enhancing fishery, wildlife, recreational, or other instream beneficial uses. Holders of existing water rights may not use or claim such water."

Source: https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/wastewaterchange/#overview