



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Nate Smith, Deputy Director of Public Works/City Engineer
Art Vela, Director of Public Works

MEETING DATE: January 28, 2025

SUBJECT: Updating the City Council on the Implications of the Santa Ana Regional Board (SARB) Including the City of Banning in its Total Maximum Daily Load (TMDL) Basin Plan Amendment

RECOMMENDATION:

Discuss the background, staff efforts and consequences of the Santa Ana Regional Water Quality Control Board (SARB) including the City of Banning into their Total Maximum Daily Load (TMDL) Basin Plan Amendment and obtain direction on several options to dispute this action.

BACKGROUND:

The National Pollutant Discharge Elimination System (NPDES) is a federally mandated program to control pollution from both point and non-point sources, including runoff from urban (municipal), industrial, construction, and agricultural areas. The program originated under the Clean Water Act and was expanded through amendments enacted by Congress in 1987. These amendments introduced specific requirements for municipal separate storm sewer systems (MS4s), which were mandated to obtain NPDES permits by established deadlines to manage stormwater discharges and prevent pollution of receiving water bodies.

In California, the Porter Cologne Water Quality Control Act complements the federal framework by establishing the California State Water Resources Control Board and nine Regional Water Quality Control Boards. The nine Regional Water Quality Control Boards are tasked with addressing water quality issues at the local level and ensuring compliance with both state and federal water quality regulations. To control discharges from the MS4, the Regional Water Quality Control Boards issue NPDES MS4 Permits to public agencies who own, operate, or maintain an MS4. Each Regional Water Quality Control Board's jurisdiction is generally defined by hydrologic boundaries. The City of Banning sits within two distinct hydrologic boundaries, described below:

California Regional Water Quality Control Board – Colorado River Region (Region 7)

The majority of the City of Banning's drainage is tributary to the Whitewater River, which is governed by Region 7. The Whitewater River subarea includes ten municipalities, including Banning at the headwaters, as the river flows to the Salton Sea. This particular watershed does not have an outlet to an ocean, as the Salton Sea is a sump with no natural drainage outlet.

California Regional Water Quality Control Board – Santa Ana River Region (Region 8)

A small portion of the City of Banning has historic and tributary flows within Region 8, tributary to the San Jacinto River. This area encompasses a small portion of the western portion of the City, including a portion of the San Gorgonio Memorial Hospital, the Sun Lakes Village Shopping Center, and about 1/3 of

the Sun Lakes HOA. These areas drain to Potrero Creek at Highland Springs Ave and Breckenridge Ave, then south through the hills into the San Jacinto River, then to Canyon Lake, and ultimately Lake Elsinore. This watershed does not have an outlet to an ocean, as Lake Elsinore is a sump with no natural drainage outlet.

The historic watershed tributary to Potrero Creek is a little over 300 acres of the city's 23.2 square miles, or 2% of the City's jurisdictional limits. This watershed has been significantly altered over the course of 100 years of development. The portions north of Interstate 10 were re-routed easterly with construction of the Interstate, and no longer drain to Potrero Creek, but rather Smith Creek which is tributary to the Whitewater River. The watershed was also impacted by the construction of the Sun Lakes Village Shopping Center and the Sun Lakes HOA.

City MS4 and Sun Lakes Country Club/HOA

Under the MS4 Permit, every municipality is required to maintain its MS4, which includes channels, storm drains, catch basins, detention basins, and other publicly owned infrastructure, to meet the local water board's MS4 Permit requirements. This is required for any facility that is owned, operated, and/or maintained by the City of Banning. The City is also required to ensure that where these systems outlet into natural drainage courses, that water quality sampling is completed to show that end of pipe discharges meet established water quality criteria. For the areas in Banning regulated under Region 7's MS4 Permit, this is conducted at the end of the Ramsey Storm Drain system, with an outfall south of I-10 and north of the airport.

The City is not responsible for storm drain systems that are privately owned or maintained. All the storm drain lines within the Sun Lakes HOA are private facilities, outside the City of Banning's jurisdiction. As such, the City's MS4 Permit obligations end as storm water is discharged into the Sun Lakes Community. As designed, storm water from both the City of Banning and the City of Beaumont have discharges into the golf course and waterways that are not subject to MS4 Permit requirements.

The design of Sun Lakes Country Club has an effect of further reducing the watershed that is tributary to Potrero Creek that the City is responsible for under the MS4 Permit. What is left of the 300 acres is about 5.5 acres of surface flows on Highland Springs Ave, east of the centerline of the road, and from a point north of Glen Eagles Drive.

NPDES MS4 Permit Coverage

It is common for jurisdictions to fall within the boundaries of multiple Regional Water Quality Control Boards, requiring coverage under separate MS4 Permits for each watershed that they are part of. For example, Menifee and Murrieta's city boundaries are in both the Santa Ana and San Diego Regional Boards jurisdiction, and Pomona and Claremont are both within the Santa Ana and Los Angeles Regional Boards' jurisdiction.

For the City of Banning, it was not until Region 8 was updating the Santa Ana River Basin Plan, which prescribes water quality standards for water bodies within Region 8, that it was discovered that a portion of Banning that drains to Potrero Creek has not been covered under a MS4 permit in Region 8. The outcome of discussion with Region 8 staff at the time we were made aware of this lack of permit coverage, was that the City of Banning would be required to become a co-permittee to the Santa Ana River Regional Water Quality Control Board. This would include new annual expenses due to requirements listed in Region 8's MS4 Permit in addition to the expenses incurred to comply with the Region 7 MS4 Permit for the majority of the City. The City would also be obligated to pay an annual fee of \$18,196 to each Regional Water Quality Control Board.

City staff worked with Region 8 staff on alternatives for consideration, given the very limited size of the area to be regulated by Region 8. Section 13228 of the California Water Code allows one Region to designate responsibility to another region. In this case, Region 8 would designate the 5.5 acres of covered area to Region 7, with concurrence from Region 7. City staff has prepared a Request for

Designation and submitted that to Region 8 staff. That effort is currently in process and has had verbal support from Region 8 to continue with this effort. If accepted by all parties, the City of Banning would NOT be a co-permittee on the Santa Ana River Regional Water Quality Control Board and would NOT pay additional fees to Region 8. Rather, the Colorado River Regional Board would be designated as the party responsible for ensuring that outflows to Potrero Creek meet the requirements of Region 8 under our current MS4 permit with Region 7.

Each Region has a new MS4 Permit that will be adopted in 2025. The Region 8 MS4 Permit will likely be adopted prior to the City's Region 7 MS4 Permit. The Permits have different requirements and regulations, with the MS4 Permit from Region 8 having more stringent and costly requirements than the City's Region 7 MS4 Permit.

Lake Elsinore/Canyon Lake (LE/CL) Total Maximum Daily Load (TMDL)

Each Regional Water Quality Control Board has a Water Quality Control Plan, commonly referred to as "Basin Plans," which are regional planning documents to establish water quality standards and outline strategies for protecting and enhancing the beneficial uses of water within specific watersheds. The Basin Plans identify water quality objectives, implementation programs, and water quality monitoring requirements to ensure compliance with state and federal water quality laws. MS4 Permits are the implementation mechanism for Regional Water Quality Control Boards to require municipalities to meet the water quality standards listed within the Basin Plan; the Basin Plan also designates requirements for construction, industrial, and agricultural dischargers, and those dischargers have their own NPDES permits.

Through water quality monitoring mandated by NPDES Permits (including the MS4 Permit), the Regional Water Quality Control Boards evaluate the health of water bodies and determine if they are impaired according to their beneficial uses. Examples of beneficial uses include water contact recreation, drinking water supply, and warm freshwater habitat. If a water body continues to be impaired by not being able to sustain its prescribed beneficial uses, the Regional Water Quality Control Boards incorporate TMDLs into their Basin Plans to eventually restore that beneficial use. TMDLs establish the maximum amount of a pollutant that a water body can receive while still meeting water quality standards for beneficial uses.

Potrero Creek in the City of Banning drains into the Santa Ana Regional Board jurisdictional area and into the San Jacinto River sub-watershed, which outlets to Canyon Lake (CL) and Lake Elsinore (LE). Both of these lakes were found to have significant levels of pollution due to tributary runoff conveying significant amounts of nutrients, nitrogen and phosphorus. The excess nutrients caused significant eutrophication events (commonly referred to as algal blooms) and caused fish kills. Both lakes are designated with the warm freshwater habitat beneficial use within the Santa Ana River Basin Plan. As a result, Region 8 developed the LE/CL Nutrients TMDL in 2004.

To collectively work together on restoring the beneficial uses, various agencies under multiple different NPDES Permits came together to form the LE/CL Task Force. The LE/CL Task Force pools funding from various entities (including military, transportation, and agriculture) to fund projects that study the pollution within the lakes, and implement projects to restore the beneficial use, as required by each NPDES permit. The LE/CL Task Force also includes Region 8 as a non-funding task force member.

The City of Banning was NOT designated as a responsible party within the Santa Ana River Basin Plan, nor the TMDL in 2004; records of that decision were not available or clear from Region 8 as to why the City was not included.

The LE/CL Task Force began to develop an amendment to the Santa Ana River Basin Plan to revise the TMDL in 2015 since the warm freshwater habitat beneficial use had not been restored over the 11 years since the TMDL had been in effect. Since June 18, 2015, Region 8 and the LE/CL Task Force have been collaborating to revise the TMDL so that the lakes can eventually meet the water quality criteria that protects the warm freshwater habitat beneficial use.

The City of Banning was notified by the Regional Board and a consultant working for the LE/CL Task Force in June of 2023 that the City was being included as a responsible party to the TMDL, 8 years after the update process began, based on updated GIS and Historical mapping activities. City staff responded to the request by working with our regional partner, the Riverside County Flood Control and Water Conservation District, to understand the request, the impacts, and how to respond to the LE/CL Task Force and Region 8 staff. A summary of the actions completed by City staff to date is included below:

Notification and Correspondence with the Regional Board 8

- The City was first formally notified of its inclusion in the Basin Plan and TMDL when Barbara Barry, Senior Environmental Scientist for Region 8, contacted Banning staff stating she would like to discuss the fact that they just discovered that Banning flows into the San Jacinto River sub-watershed in July of 2023.
- City staff met her the next workday, assuming she did not realize Banning is in Region 7 and thought it would be a 2-minute meeting.
- Realizing that she did indeed state the City discharged into the San Jacinto River Watershed, City staff told her we would have to research the drainage and respond formally with a letter after the City could conduct research on the matter.
- At this time, the City was NOT included as a stakeholder on the LE/CL Task Force in the prior 8 years of work that was completed on the Basin Plan and TMDL update.

Initial City Response – Formal Letter to Region 8 (Att. 2) Dated January 30, 2024

- Addressed to Lauren Briggs, Environmental Scientist of Region 8, in a letter dated January 30, 2024.
- After performing research and calculations and developing detailed technical exhibits, the City determined that there is hydrologic and geographic disconnection between the City and the lakes and included seven (7) exhibits with the letter.
- The City is hydrologically disconnected from discharging into Canyon Lake and has a 3 hour 100-year retention requirement in its Stormwater Ordinance.
- The City's runoff drains to Mystic Lake first before it reaches Canyon Lake and then Lake Elsinore. Mystic Lake has not discharged water since the 1990s and has not discharged water since adoption of the TMDL in 2004. Since the TMDL was established, Banning's runoff has not reached Canyon Lake or Lake Elsinore.
- The hydraulic boundary maps, supplied by GEI, the Task Force consultant, does not correctly reflect the built-out conditions in the City and relies on old topographic data.
- The TMDL was formed in 2004 and begun revisions in 2015, and the City was notified in July of 2023 that it is a responsible party.
- The City asked the TMDL Task Force to provide detailed hydrologic modeling that shows a connection under normal stormwater conditions.
- After this formal letter, 2 follow-up emails requesting a response were sent and Region 8 responded on March 1, 2024 by arranging a meeting on March 18, 2024.

Meeting with Region 8 Staff and Executive Director held at their office on March 18, 2024

- Region 8 stated they would analyze the City's true contributions and impacts to the TMDL and confirm if they were based on information provided in the Exhibits provided by the City. They agreed any contributions were "very small."
- The Executive Officer stated this would be the "beginning" of future discussions with the City. Meeting with Region 8 staff held via Microsoft Teams on April 15, 2024.
- Region 8 staff told the City to complete the process to join the Santa Ana Region MS4 permit through submittal of a Report of Waste Discharge (ROWD). Stated they would assist the City with the process.
- Only follow up from the meeting was a request to complete this process and provide a timeline to do so, with no assistance or guidance provided to City staff.

2nd Formal Letter - Formal Letter to Region 8 (Att. 3) Dated June 26, 2024

- Addressed to Ray Akhtarshad, Water Resources Control Engineer, of Region 8, in a letter dated June 26, 2024.
- The letter is a response to a request made by Region 8 to submit the status of our timeline to submit a ROWD (NPDES) application to Region 8 .
- City provided a technical evaluation and evidence that only 5.5 acres of half street width from City of Banning drains into the San Jacinto sub watershed, not 300 acres as estimated incorrectly by the LE/CL Task Force.
- Due to this limited amount of discharge, City requested that designation continue under Region 7 for all portions of the City pertaining to the MS4.

3rd Formal Letter to Tess Dunham, LE/CL Task Force Advisor (Att. 4), dated July 29, 2024

- The City should not be listed as a responsible party and removed from the Basin Plan Amendment.
- Santa Ana Region 8 has not provided any response to the January 30, 2024 letter stating Banning should not be included in the TMDL.
- Santa Ana Region 8 has not responded to the June 26, 2024 letter providing a technical evaluation and evidence that only 5.5 acres of half street width from the City of Banning drains into the San Jacinto sub watershed, not 300 acres as estimated incorrectly by the LECL Task Force.
- The City requested again that designation continue under Region 7.

Throughout the above-listed process, Region 8 staff never responded to the City, except to state in an email that the City should complete the ROWD process to join the Region 8 NPDES Permit so the 5.5 acres of runoff can be regulated by Region 8.

September 13, 2024 Region 8 Public Meeting – Cypress, Ca

- Region 8 had stated that a public workshop on the LE/CL TMDL would occur at the September 13, 2024 Regional Board meeting, prior to formal actions regarding the adoption of the TMDL, providing the first opportunity for public comment on the TMDL prior to its adoption.
- City staff prepared to participate in this workshop.
- Prior to the formal agenda preparation and publication, the Regional Board removed the Basin Plan Amendment Workshop from the meeting agenda. This workshop would have been the first opportunity for public comment on the Basin Plan Amendment, and its cancellation left the City with no opportunity to publicly comment on the TMDL to date. The Deputy Director of Public Works/City Engineer prepared a Comment Card (Att. 5) and drove to Cypress City Hall to attend the meeting in person and have three (3) minutes of Public Comment for non-agendized items.
- He told the Santa Ana Regional Board members that Banning was not included in any meetings on the TMDL and most importantly, letters were ignored and never answered.
- The Chairwoman directed the Region 8 Executive Director to respond to Banning and provide them with an opportunity for a Presentation.

Region 8 Response to Public Comments and Chair Direction

- Region 8 did finally respond to the City's two letters on October 24, 2024 (Att. 6) and stated the City had to stay in the TMDL for now, with no regard or response to the City's assertion that only 5.5 acres are in the Region 8 watershed, it is a disadvantaged community, and it does not make sense to include the City of Banning until the TMDL Technical/De-Minimus Study is complete and shows Banning is a contributor, if at all.
- Region 8 falsely stated that it only determined in July 2023 that the City of Banning was to be part of the TMDL, however, Region 8 determined this as early as October 2016 Attachment 8 is a Source Assessment Draft from October 2016. In Figure 4.2, Banning is identified as a jurisdiction within the watershed. This is 7-years prior to the City of Banning being notified of its inclusion as a responsible party to the Basin Plan. Additionally, Attachment 9 is a draft study from TDM Smith from April 2017 that lists Banning in Table 6.3 with proposed waste load allocations. This draft was just over 6-years from when the City of Banning was first notified of its inclusion as a responsible

party to the Basin Plan.

De -Minimus Study

The Basin Plan Amendment to revise the TMDL states that the LE/CL Task Force will perform numerous tasks to meet the TMDL's requirements to protect beneficial uses in the lakes. One of these tasks is a "De-Minimus Study," which will define and identify minor sources of nutrients and identify responsible levels for TMDL implementation for such pollution. The study is intended to be completed within three (3) years of the Basin Plan Amendment's effective date. The City is expecting that its discharge will be considered "De-Minimus" and is adamant that it should not be included in the TMDL until such a determination is made. The current Basin Plan Amendment language states the City will be included in the TMDL now, prior to this De-Minimus Study being performed.

As currently proposed in the Basin Plan, and after the De-Minimus study is completed, if the City is indeed deemed to have an insignificant contribution of discharge to the San Jacinto River watershed, then it may be removed from the TMDL, after paying into it for 3 or more years. Removal from the TMDL is not guaranteed. This is problematic for the City because the current Basin Plan Amendment to revise the TMDLs does not distinguish the City of Banning from other responsible parties. The Basin Plan Amendment specifies tasks that responsible parties are to complete, including some that will be completed before the De-Minimus study is complete. Therefore, the City of Banning will be legally liable to either (a) contribute funds to the LE/CL Task Force to complete those tasks, or (b) complete those tasks on its own. Should the City not complete those tasks specified by the time frame listed in the Basin Plan Amendment, the City could be subject to enforcement and potential monetary fines. Furthermore, even if the study determined that the City of Banning contributes a "de-minimus" level of nutrients, the City of Banning would not be able to immediately remove itself from the requirements of the TMDL. The TMDL would have to go through another Basin Plan Amendment to remove the City as a responsible party. As noted above, the current Basin Plan Amendment has taken over nine years to develop and adopt, and it will take potentially up to two more years following Region 8's approval to be effective – Basin Plan Amendments must also be approved by the State Water Resources Control Board, the Office of Administrative Law, and the U.S. Environmental Protection Agency. Therefore, should the De-Minimus study prove successful for the City of Banning, the City of Banning would still be obligated to implement the requirements of the TMDL until it is effectively removed from the Basin Plan, which would take numerous years to achieve.

Staff finds this approach irrational, nonsensical and not based on scientific fact.

Continued City Concerns

Requiring the City of Banning to pay into TMDL activities would come at the expense of other General Fund programs, including public safety and parks and recreation, and the annual cost is unknown. Current minimum costs are \$30,000 annually, with 'significant cost increases' in the coming years to perhaps more than \$100,000/year, not including staff time to attend Task Force meetings, comment on reports and studies, etc. The LE/CL Technical Staff Report that supports the justification of the amendment of the Basin Plan estimates up to greater than \$1 Billion in expenses to protect the beneficial uses of the lakes, to be borne by the responsible parties listed in the Basin Plan Amendment. Public Works Engineering Division staff vehemently disagree with this requirement, from a technical, equitable and fiscal perspective and feel it is unfair, unreasonable and not correct.

The Regional Board is obligated under AB2108 (signed by Governor on 9/16/22) that added section 189.7 to the Water Code stating that 'Outreach to identify issues of environmental justice needs to begin as early as possible in state board or regional board planning, policy, and permitting processes' and to 'promoting meaningful civic engagement in the public decision making process.' This was signed into law 1-year prior to the City of Banning being notified of its inclusion as a responsible party in the Basin Plan Amendment. The only action taken by Region 8 and the Task Force was to include City staff as task force members in mid-March of 2024, about 9 years after the process began, and 8 years after Task Force documents identified Banning as within the watershed.

The Regional Board does not acknowledge in their technical studies the areas of the San Jacinto River watershed that were diverted by Interstate 10, or that are outside the City's jurisdiction in the MS4 Permit as part of the waste load allocation. The technical report perpetuates these errors by allocating waste loads and consideration on 300-acres, and not the 5.5-acres that are within the City's jurisdiction. There have not been updates by the Task Force that take into consideration the updated facts presented by the City of Banning. Had the City been included with discussion as far back as 2016, these items could have been daylighted and considered in the technical reports.

The Region 8 response did not acknowledge the City's response that we are being asked to contribute for a solution that the City has not directly caused. The June 25, 2024 letter, shown as attachment 3, states the City's arguments as to why it should not be a responsible party to this Basin Plan Amendment.

The Region 8 response also indicates that it is 'unsolicitous' for staff to evaluate individual requests and actions to exempt the City of Banning. It does not acknowledge that the Regional Board had already exempted the City in the initial actions in 2004. Doing so again would not set a new precedent but perpetuate previous Board actions. As noted previously in their response letter, the historic watershed was analyzed not considering diversions and development. The watershed boundaries did not change between 2004 when the City was exempted and with this updated Basin Plan Amendment that was started in 2015.

On February 14, 2025, Region 8 will hold a Public Hearing for the adoption of the Basin Plan Amendment to revise the TMDL. A copy of the City Engineer's draft comments to the Santa Ana Regional Board February 14, 2025 Meeting adopting the Basin Plan Amendment are included as Att. 7 to this staff report for your consideration.

JUSTIFICATION:

City staff is requesting Council's concurrence on the approach being taken with Region 8.

At the upcoming Santa Ana Regional Board meeting on Friday, February 14th in Loma Linda, City staff intends on attending and presenting to the Board members its opposition to the City's inclusion within the Basin Plan and the TMDL. The following are the key points to be included in the letter:

- An application has been submitted to designate the portion of the City under Region 8 area to Region 7, consistent with the remainder of the City.
- The LE/CL Task Force performed inadequate due diligence and outreach during the 9-year update process to include the City of Banning, only doing so for the last year and a half. Existing law (California Water Code 189.7) requires Regional Water Boards to conduct outreach to identify issues of environmental justice as early as possible in regional board planning, policy, and permitting processes. The City is unaware if Region 8 conducted such activities in the City of Banning.
- That Banning is a disadvantaged community, and the full impact of being listed as a responsible entity on the Basin Plan and TMDL may cost in excess of \$100,000 annually, taking critical and limited financial resources from Police, Parks, and Streets and Drainage maintenance activity, further reducing the quality of the City's public services and infrastructure.
- The De-Minimus criteria, that Region 8 staff informally believes the City would fall under, will not be developed for 3-years after the Basin Plan is effective, meaning the City would be obligated to implement the TMDL requirements in full and must opt to either (a) pay into the LE/CL Task Force, or (b) implement the requirements on its own until such a date and time that the De-Minimus criteria is established.
- The fact that it took 9 years to update the Basin Plan and TMDL does not give confidence that the De-Minimus Study criteria will be established and adopted in the timeframe of three years stated in the Basin Plan and TMDL.
- Request that the City of Banning be removed as a responsible party, until the De-Minimus criteria have been established. If the City is found to have an impact, the Basin Plan can be amended to

incorporate those additional jurisdictions, after the Study has been completed.

FISCAL IMPACT:

In anticipation of the upcoming new 2025 NPDES Permit cost/fiscal reporting requirements, a new stormwater fund Account 105 was created to track expenses. The TMDL Task Force has not told the City what the annual costs will be, however, Beaumont paid \$27,960 for Fiscal Year 2024-25, but that number is anticipated to significantly rise over the next five years due to the tasks required in the Basin Plan Amendment, which are estimated to cost in excess of \$1 Billion dollars. The TMDL Task Force has 33 tasks over 30 years, many consultant studies, and those costs are split amongst the 21 cities and agencies in the Task Force group.

ALTERNATIVES:

If the City Council does not agree with the approach to continue to oppose the Santa Ana Regional Board's actions to include the City in the LE/CL Basin Plan and TMDL, additional cost to the City of Banning that may be in excess of \$100,000 annually would be assessed as a responsible party to the Basin Plan, plus unknown additional staff time to attend meetings and prepare reports. City staff would continue to pursue the de-minimus criteria once available from Region 8.

If the City Council has another direction to the approach provided, staff will incorporate said approach into our comments.

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. [Att. 1 Presentation 1.28.25.pdf](#)
2. [Att. 2 2024_0130 TMDL Applicability Response Letter.pdf](#)
3. [Att. 3 2024_0626 ROWD Response Letter and Designation Request..pdf](#)
4. [Att. 4 2024_0726 Draft Basin Plan Amendment Comment Letter.pdf](#)
5. [Att. 5 2024_0913 Comments to Regional Board by NS.pdf](#)
6. [Att. 6 2024_1024 RB8 Response Letter.pdf](#)
7. [Att. 7 DRAFT PC Script to R8 Board - Feb 14th Meeting v3.1.pdf](#)
8. [Att. 8 2016_1005 Source Assessment Draft.pdf](#)
9. [Att. 9 2017_0417 CDMSmith Ch6 Allocations First Draft.pdf](#)