

Comment Summary and Responses  
Comment Deadline: February 18, 2013

Amendment to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) to establish a Total Maximum Daily Load for bacteria in San Pedro Creek and at Pacifica State Beach, and new implementation provisions for bacteria water quality objectives

List of Commenters:

Comment Reference	Organization	Representative
1	San Mateo County Resource Conservation District	Kellyx Nelson
2	Heal the Bay, Clean Water Action, and San Francisco Baykeeper	Amanda Griesbach, Kristen James, Andria Ventura, Jason Flanders
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Response to Comments:

No.	Author	Comment	Response
1.1	Kellyx Nelson	The San Mateo County Resource Conservation District (RCD), a division of the State established under Division 9 of the Public Resources Code, submits comments related to the final version of the Basin Plan that addresses confined animal facilities located within the watershed of San Pedro Creek and Pacifica State Beach. These comments were not prepared in time to submit to the San Francisco Bay Regional Water Quality Control Board due to the absence of a key staff person who was on maternity leave.	We note that the commenter points out that the San Mateo Resource Conservation District did not submit formal comments for consideration by the Regional Water Board during the 45-day public comment period that ended October 8, 2012.
1.2	Kellyx Nelson	In support of the efforts of many to improve and protect water quality in Pacifica, we want to apprise you of services offered by the RCD to work with livestock facilities, including equestrian operations, to voluntarily improve their property and operations to reduce runoff of sediment, nutrients and pathogens into surface waters. Over many years the RCD has secured funding through grant programs of the State Water Resources Control Board, the Regional Water Quality Control Board, the EPA, the Farm Bill, and more to provide conservation technical assistance to landowners, cost-share for implementation of Best Management Practices, and educational workshops.	Staff appreciates San Mateo County RCD's efforts to provide technical assistance to improve water quality in the San Pedro Creek watershed.
1.3	Kellyx Nelson	We are currently partnering with the USDA Natural Resources Conservation Service, Ecology Action of Santa Cruz, and San Mateo County to implement two Proposition 84 ASBS grants through the State Water Resources Control Board to provide assistance to confined animal operations in watersheds that drain into the Fitzgerald Area of Special Biological Significance (ASBS). With a recent Proposition 50 grant through the Regional Water Quality Control Board, we were able to work with an equestrian	Staff appreciates San Mateo County RCD's efforts to provide technical assistance to improve water quality in the San Pedro Creek watershed and will consider the BMPs identified by the RCD for addressing equestrian facilities in the watershed.

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		facility in the San Pedro watershed to develop a plan for improved manure management and implement the improvements.	
1.4	Kellyx Nelson	With nearly 75 years of experience bringing information, education, and technical assistance to landowners and land managers in San Mateo County, we have found that our approach to voluntary conservation can significantly reduce polluted runoff from such facilities. We encourage you to consider such an approach to assist in achieving the desired total maximum daily loads, and to utilize the RCD as a resource to property owners and operators.	Staff appreciates San Mateo County RCD's willingness to participate as a partner in protecting and improving water quality in the San Pedro Creek watershed. Staff looks forward to partnering with the RCD, as appropriate, to assist in achieving the TMDL's proposed water quality targets.
2.1	Amanda Griesbach, Kristen James, Andria Ventura, Jason Flanders	We became aware of this proposal with the issuance of a State Water Board public notice dated January 18, 2013, thus we did not submit comments previously. We appreciate the opportunity to provide the following comments:	Heal the Bay, Clean Water Action, and the San Francisco Baykeeper did not submit formal comments for consideration by the Regional Water Board during the 45-day public comment period that ended October 8, 2012. All three parties are included in the San Francisco Bay Regional Board's mailing lists for the project and were notified of the Regional Water Board's public review comment period and adoption hearing.
2.2	Amanda Griesbach, Kristen James, Andria Ventura, Jason Flanders	We support the use of a reference system approach in the Proposed Amendment. This approach recognizes that there are natural sources of bacteria that may cause or contribute to exceedances of the objectives for indicator bacteria. Also, a reference beach approach sets a realistic standard for impacted beaches in the absence of historical baseline data. In addition, the reference system approach has been used successfully in numerous TMDLs throughout the state including, Santa Monica Bay Beaches, Long Beach and Harbor Beaches of Ventura County.	We note the commenters' support for the use of the reference system approach in the Basin Plan.

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<p>2.3</p>	<p>Amanda Griesbach, Kristen James, Andria Ventura, Jason Flanders</p>	<p>However, we are very concerned by the provision in the Proposed Amendments' Implementation Plan that seemingly negates the reference system approach and compliance with numeric waste load allocations ("WLAs").</p> <p>Specifically, the Regional Board proposes the following:              "The Water Board may establish permit requirements to implement wasteload allocations based on implementation of BMPs in lieu of numeric limits. The wasteload allocations are not designed to be implemented directly as numeric effluent limitations applicable to a discharger, Pacifica, or San Mateo County. The Water Board will not include numeric limits, based on the wasteload allocations, in NPDES permits if the discharger demonstrates that it has fully implemented technically feasible, effective, and cost efficient BMPs to control all controllable sources to and discharges from their storm drain systems." (Basin Plan Amendment, Page 7).</p> <p>By providing this alternative means of demonstrating compliance ("technically feasible, effective, and cost efficient BMPs"), the Regional Board thus creates a safe harbor from final TMDL requirements and incorporates a provision that is inconsistent with the WLAs. Under this regime, there is no assurance that actual final TMDL limits, established to achieve water quality standards and protect beneficial uses, will ever be met in these waterbodies. Measuring the success of a TMDL based on actions and not results (water quality standards attainment) is unacceptable and contradicts the intent of a TMDL.</p> <p>Further, this provision violates the requirement at 40 C.F.R. § 122.44(d)(1)(vii)(B) that NPDES permit requirements be consistent with existing, applicable WLAs. The Clean Water Act and its implementing regulations require that NPDES permits</p>	<p>Heal the Bay, Clean Water Action, and San Francisco Baykeeper did not submit formal comments for consideration by the Regional Water Board during the 45-day public comment period that ended October 8, 2012. Nevertheless, the State Water Board has considered the comment and provides the following response. Staff disagrees that the provision of the Basin Plan amendment (BPA) quoted by the commenter negates the reference system approach or compliance with waste load allocations. The approach presented in the amendment for implementation of the waste load allocations is provided for in Federal regulations at 40 CFR § 122.44(k)(2)(3). These regulations allow non-numeric water-quality-based effluent limits (WQBELs) expressed in the form of best management practices (BMPs). Accordingly, WQBELs based on wasteload allocation(s) may be expressed through a number of different metrics depending on the assumptions and requirements of the wasteload allocation(s), including:</p> <ul style="list-style-type: none"> <li>• Non-metric limit(s) requiring implementation of specific BMPs; and</li> <li>• Non-metric limit(s) requiring a BMP-based compliance Plan.</li> </ul> <p>Implementation of the wasteload allocations in this manner is consistent with the assumptions and requirements that form the basis of the allocations. The exceedance days that form the basis of allocations for San Pedro Creek are based on the combined nature of the discharges to the Creek (e.g., sanitary sewer discharges, horse facility discharges, stormwater discharges, etc.) from the San Pedro Creek watershed. It is not feasible to parse the exceedance days into</p>
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		<p>incorporate WLAs established in existing, applicable TMDLs as water-quality based effluent limitations ("WQBELs"). 40 C.F.R. § 122.44(d)(1)(vii)(B). Thus, the MS4-related WLAs for TMDLs must be properly reflected in the MS4 Permit. To the extent a permit exempts Permittees from complying with numeric WLAs, it violates the Clean Water Act. Permittees must be required to comply with all existing, applicable WLAs.</p>	<p>parts, distinct allocations, applicable to each of the sources. Consequently, holding one of these sources accountable for compliance with a numeric limit equal to the allowable exceedance days equates to holding that source accountable for all other sources as well. In lieu of implementation of the allocations via numeric WQBELs, the BPA calls for enforceable non-numeric WQBELs based on implementation and effectiveness evaluation of BMPs and iterative improvements within a specified schedule (BPA, p.7). These non-numeric WQBELs will be incorporated into the reissued MS4 permit.</p> <p>Finally, the TMDL requires monitoring sufficient to track attainment of the allowable exceedance days and determine whether the BMPs have addressed the impairment (BPA, p.10) This monitoring will also provide information that may allow refinement of allocations in the future, if necessary, to distinguish the relative contributions of each source.</p> <p>There is no safe harbor. The TMDL sets limits (exceedance days) and a timeframe for meeting those limits. The permittees will have to iteratively implement appropriate BMPs until the wasteload allocations, numeric targets, and TMDLs are met.</p>
2.4	Amanda Griesbach, Kristen James, Andria Ventura,	Thus, we urge the State Board to remand the Proposed Amendment back to the Regional Board, requiring that the above-referenced paragraph be deleted and compliance with final waste load allocations (using the reference system approach) be met.	Heal the Bay, Clean Water Action, and San Francisco Baykeeper did not submit formal comments for consideration by the Regional Water Board during the 45-day public comment period that ended October 8, 2012. Nevertheless, the State Water Board has considered the comment and provides the following

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	Jason Flanders		response. Staff disagrees that the Proposed Amendment be remanded back to the Regional Board as the TMDL already requires that the TMDL, numeric targets and wasteload allocations must be met in San Pedro Creek and at Pacifica State Beach. Please also see responses 2.3 and 2.4 above.
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