

# Appendix E

## Comment Letters Received

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*Transmitted via email*

September 3, 2019

Farhad Ghodrati  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
farhad.ghodrati@waterboards.ca.gov

Re: San Francisco Baykeeper comments on the proposed Total Maximum Daily Load (TMDL) and Implementation Plan for Bacteria in the Petaluma River

Dear Mr. Ghodrati,

On behalf of San Francisco Baykeeper and our over 5,000 members and supporters, we respectfully submit these comments on the proposed Basin Plan amendment to “Establish a Total Maximum Daily Load (TMDL) and Implementation Plan for Bacteria in the Petaluma River Watershed” (“Proposed TMDL”).

Baykeeper is concerned that the Proposed TMDL 1) lacks Load Allocations (“LAs”) and Wasteload Allocations (“WLAs”) that recognize seasonal variation and source-dependence in the concentration and magnitude of discharges; 2) lacks a monitoring plan to judge attainment of LAs and WLAs; and 3) is insufficient to determine the effectiveness of implementation actions or whether allocations are met, in conflict with minimum TMDL requirements established in EPA guidance for TMDL development, in general, as well as for bacteria-specific TMDLs.<sup>1,2,3</sup>

In 1975 The Petaluma River was recognized as impaired for bacteria. Recent sampling indicates on-going impairment and little improvements to water quality in the intervening 44 years. Baykeeper believes the Proposed TMDL broadly represents a status quo approach with little to no consequence for non-compliance. For example, the Implementation Actions and Schedules provided in Tables 7.8.5-3 through 7.8.5-11 generally require compliance with existing regulations or guidance or submission of vaguely-specified implementation and monitoring plans by the regulated entities. If the implementation of those plans, which are not subject to public review, unsuccessfully meets LAs and WLAs for bacteria in the Petaluma River, there is no trigger for prescriptive action. Further, Table 8.8.5-11 merely requires monitoring of the Petaluma River and its tributaries, rather than the regulated discharges, which makes source attribution and compliance determinations impossible.

The San Francisco Bay Regional Water Quality Control Board has demonstrated a pattern of assigning responsibility for the development of implementation and monitoring programs to regulated entities, and pursuing decadal plan-development processes, in several TMDLs and NPDES permits approved in recent years by. This is a source of concern for Baykeeper and other observers.

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<sup>1</sup>U.S. Environmental Protection Agency (U.S. EPA), Draft Guidance for Water Quality-based Decisions: The TMDL Process (2nd Edition), EPA 841-D-99-001 (August 1999) (hereinafter, “1999 TMDL Guidance”). Available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/P1007N47.PDF?Dockey=P1007N47.PDF>.

<sup>2</sup>U.S. EPA. Protocol for Developing Pathogen TMDLs. 1st Edition. EPA-841-R-00-002. (January 2001) (hereinafter, “2001 Pathogen Guidance”). Available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/20004QSZ.PDF?Dockey=20004QSZ.PDF>.

<sup>3</sup>U.S. Environmental Protection Agency (U.S. EPA). 2007. Options for Expressing Daily Loads in TMDLs. Drafts. Washington, DC: Office of Water. (hereinafter, “2007 Daily Load Guidance”). Available at [https://www.epa.gov/sites/production/files/2015-07/documents/2007\\_06\\_26\\_tmdl\\_draft\\_daily\\_loads\\_tech.pdf](https://www.epa.gov/sites/production/files/2015-07/documents/2007_06_26_tmdl_draft_daily_loads_tech.pdf).

## CLEAN WATER ACT LEGAL BACKGROUND

Congress enacted the Clean Water Act in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>4</sup> Congress gave the Environmental Protection Agency (EPA) oversight of the substantial authority it vested in the States.<sup>5</sup> Each state must develop water quality standards (WQS) based on specification laid out in EPA regulations, and must submit these standards to EPA for review and approval. WQS consist of two components, designated uses and water quality criteria.<sup>7</sup> Because “EPA lacks the authority to control non-point source discharges through a permitting process,”<sup>8</sup> the CWA requires States to monitor their water bodies and identify when pollution limitations “are not stringent enough to implement any [applicable] water quality standard[.]”<sup>9</sup> States indicate which water bodies do not meet such standards in 303(d) lists,<sup>10</sup> and have a subsequent statutory obligation to develop TMDLs.<sup>11</sup>

The Clean Water Act requires that a TMDL “shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.”<sup>12</sup> EPA regulations define a “load” as “[a]n amount of matter or thermal energy that is introduced into a receiving water,” and they define “loading” as the act of “introduc [ing] matter or thermal energy into a receiving water.”<sup>13</sup>

Federal regulations confirm that “TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.”<sup>14</sup> High bacteria concentrations impair recreational uses because they are associated with serious risks to human health, including risk of skin infections and gastrointestinal illnesses like gastroenteritis.<sup>15</sup> Gastroenteritis encompasses a variety of diseases that cause nausea, vomiting, stomach ache, diarrhea, headache, and fever; in rare cases such diseases can even be lethal.<sup>16</sup> Current water quality conditions present such risks to individuals who use the Petaluma River for swimming, kayaking, boating, and other recreational uses.

## PROPOSED TMDL DOES NOT ESTABLISH THE LOADING CAPACITY OF THE PETALUMA RIVER FOR BACTERIA

By definition, TMDLs must establish the loading capacity of a receiving water as “[t]he greatest amount of loading that a water can receive without violating water quality standards.”<sup>17</sup> Existing or future nonpoint sources (LAs), as well as point source (WLAs), are then developed to allocate the assimilative capacity of the receiving water to achieve those standards.<sup>18,19</sup> The Proposed TMDL relies on concentration-based load allocations, equivalent to U.S.

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<sup>4</sup> 33 U.S.C. § 1251(a).

<sup>5</sup> See *Defenders of Wildlife v. EPA*, 415 F.3d 1121, 1124 (10th Cir. 2005).

<sup>6</sup> *Id.*; see 33 U.S.C. § 1313(a); 40 C.F.R. § 131.6.

<sup>7</sup> 40 C.F.R. § 131.10(a).

<sup>8</sup> *Defs. of Wildlife*, 415 F.3d at 1124.

<sup>9</sup> 33 U.S.C. § 1313(d)(1)(A).

<sup>10</sup> 40 C.F.R. § 130.7(d).

<sup>11</sup> 33 U.S.C. § 1313(d)(1)(C).

<sup>12</sup> 33 U.S.C.A. § 1313(d)(1)(C).

<sup>13</sup> 40 C.F.R. § 130.7(c).

<sup>14</sup> 40 C.F.R. § 130.7 (c)(1).

<sup>15</sup> U.S. Environmental Protection Agency, *Water Quality Standards for Coastal and Great Lakes Recreation Waters*, 69 Fed. Reg. 67217, 67220 (Nov. 16, 2004).

<sup>16</sup> *Id.*

<sup>17</sup> 40 CFR § 130.2(f).

<sup>18</sup> 40 CFR § 130.2(i).

<sup>19</sup> 2001 Pathogen Guidance.

EPA criteria and State Water Board water quality objectives for bacteria – running contrary to the intended purpose of a TMDL, which is not to state water quality targets but to establish a regulatory strategy to attain targets.

The Proposed TMDL fails to establish the loading capacity of the Petaluma River, resulting in an over-simplified approach to TMDL development based on the assumption that LAs and WLAs may mirror WQS. Baykeeper recommends referencing EPA guidance for strategies to estimate loading capacity for fecal indicator bacteria (FIB)-based TMDLs.<sup>20,21,22</sup>

#### PROPOSED TMDL DOES NOT PROVIDE WASTELOAD ALLOCATIONS OR LOAD ALLOCATIONS

TMDLs are defined by federal regulation as “[t]he sum of the individual WLAs for point sources and LAs for non-point sources and natural background.”<sup>23</sup> Bacteria TMDLs may be expressed in terms of organism counts, or resulting concentrations, per EPA guidance and under 40 CFR 130.2(i).<sup>24</sup> However, LAs and WLAs must incorporate the assimilative capacity of the Petaluma River. Stating established numeric targets is among the first steps in the TMDL development process, based on decades of established guidance and numerous examples of TMDL implementation around the nation. The next step, albeit challenging, is to rely on data and models to inform the load allocation process (Figure 1).

The Proposed TMDL does not reflect essential TMDL features required to derive numeric LAs and WLAs, including a numeric source assessment, the linkage between water quality targets and numeric targets, or numeric load allocation according to long-standing guidance.<sup>25</sup> The Staff Report accurately recognizes that “[t]he density of FIB in a discharge and/or the receiving waters is a technically relevant criteria for assessing the impact of discharges, water quality, and public health risk.”<sup>26</sup> The Staff Report, however, over-simplifies U.S. EPA guidance, which accepts that concentration-based TMDLs for FIB are acceptable alternatives to mass-based approaches. All available EPA guidance and EPA-suggested examples of FIB-based TMDLs that use concentration-based allocations incorporate a flow component, to link discharge concentrations and estimated flows to resulting concentrations in the receiving water.<sup>27,28</sup>

The Proposed TMDL also fails to recognize that specific source categories, particularly stormwater sources, will almost certainly never meet the established numeric target, based on the prescriptions established in the

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<sup>20</sup> 2007 Daily Load Guidance.

<sup>21</sup> 1999 TMDL Guidance.

<sup>22</sup> 2001 Pathogen Guidance.

<sup>23</sup> 40 CFR § 130.2(i).

<sup>24</sup> 2001 Pathogen Guidance.

<sup>25</sup> Refer to State Water Board guidance regarding the TMDL Program. Available at [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/background.html](https://www.waterboards.ca.gov/water_issues/programs/tmdl/background.html).

<sup>26</sup> Proposed TMDL Staff Report at Section 8.1.

<sup>27</sup> For example, 2007 Daily Load Guidance at page 37.

<sup>28</sup> For example, 2001 Pathogen Guidance at 7-4.

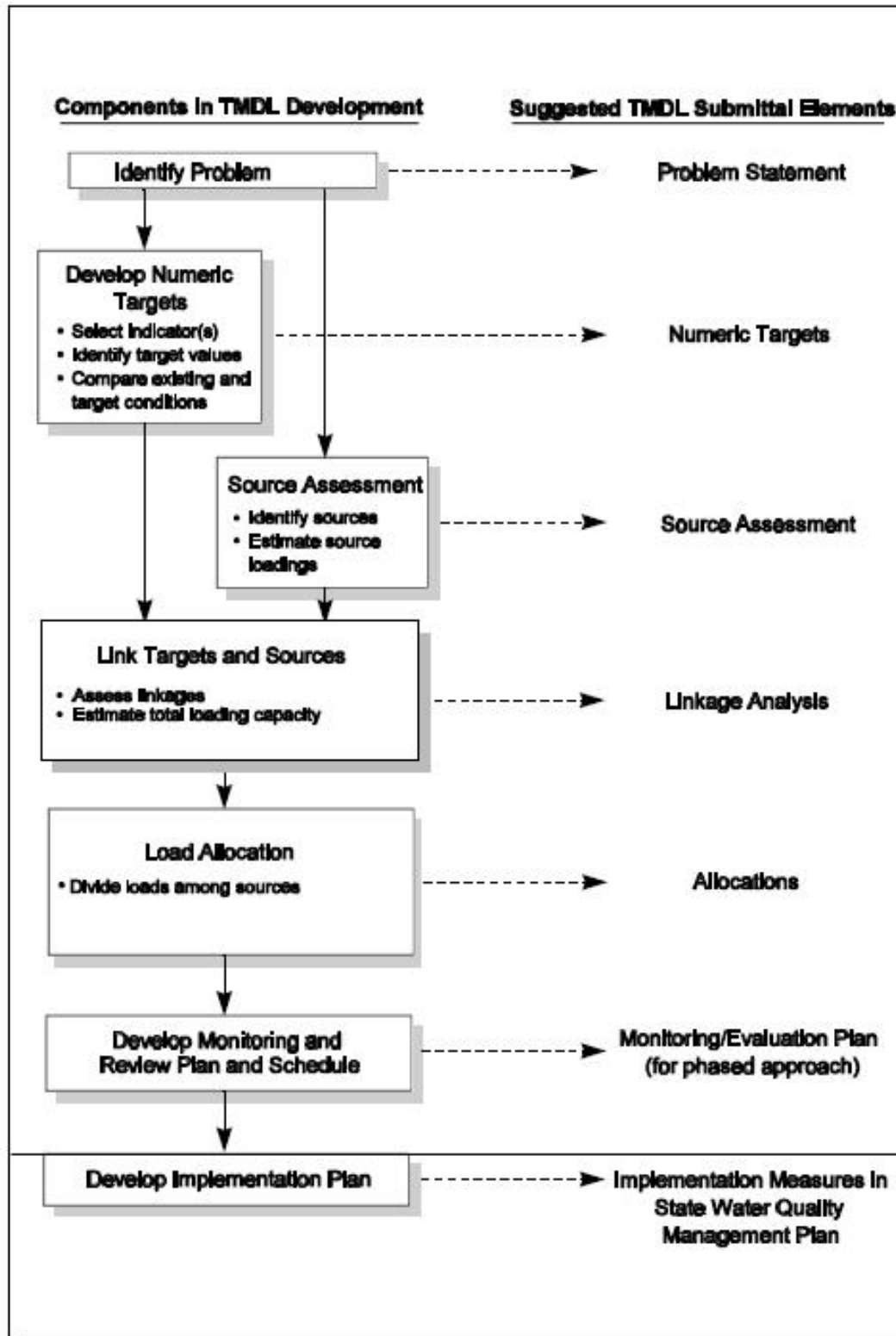


Figure 1. General components of TMDL development <sup>29</sup>

<sup>29</sup> Pathogen Guidance at 1-4

**Proposed TMDL Implementation Plan.** To illustrate the gulf between what the TMDL requests and what is currently being discharged, consider recent fecal indicator bacteria results, based on samples collected by Baykeeper in 2019, from the intake and discharge points of a pump station along a tidal portion of the Petaluma River, which drains agricultural lands and confined animal facilities (“CAFs”). These samples represent stormwater taken on a day with a recorded 24-hour precipitation depth of 1.83 inches.

Table 1. Pathogen concentrations from pump -station stormwater discharges to Petaluma River, from grazing lands and CAFs

Date	Time	Sample Location	<i>E. Coli</i> concentration (MPN/100ml)	<i>Enterococcus</i> concentration (MPN/100ml)
1/16/19	14:30	Intake	24,196	6,900
1/16/19	14:30	Discharge-a	12,033	6,100
1/16/19	14:30	Discharge-b	4,106	6,500
1/16/19	14:30		non-detect	non-detect

Compared with the load allocations reflected in Table 7.85-2 of the Proposed TMDL, *Enterococcus* concentrations must be reduced by over 100x, which seems highly unlikely given the limited scope and consequences of non-compliance with the proposed TMDL Implementation Plan. Moreover, urban runoff contains comparable or higher FIB concentrations, which generally requires a flow-reduction strategy, based on the assimilative capacity of the receiving water, as documented in other California-based TMDLs.<sup>30</sup>

The Proposed TMDL fails to perform the necessary analysis to establish numeric LAs and WLAs of fecal indicator bacteria for Petaluma River’s various sources. By setting LAs and WLAs equal to water quality standards, the Proposed TMDL arbitrarily assumes flows from all sources are equivalent and ignores long-standing guidance and TMDL examples of where load reduction via flow retention and detention is an appropriate strategy for meeting TMDL load allocations for FIB. The Proposed TMDL establishes unrealistic LAs and WLAs based on concentration-based TMDLs, which lack transparent compliance criteria. To what degree must loads be reduced? Are concentration-based allocations to be monitored at the end-of-pipe and edge-of-field? Will the Water Board be judging compliance in the receiving water? If so, how will individual allocations be monitored and judged for compliance with the TMDL? Baykeeper recommends referencing EPA guidance for strategies to estimate loading capacity and resulting LAs and WLAs.<sup>31,32</sup>

**PROPOSED TMDL DOES NOT PROVIDE A SOURCE ASSESSMENT**

Per State Water Board Guidance regarding the essential components of a TMDL, a source analysis must identify the amount, timing, and point of origin of pollutants of concern.<sup>33,34</sup> The Proposed TMDL and Staff Report provide a narrative description of known sources and compile available data, yet this information is not used to inform numeric LAs or WLAs.

<sup>30</sup> San Diego Regional Water Quality Control Board. 2010. Revised TMDL for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek): Appendix I: Methodology for Calculating Mass-Load Based TMDLs for Impaired Beaches and Creeks and Allocating to Sources. Available at [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/tmdls/docs/bacteria/updates\\_022410/2010-0210\\_Final\\_TechRpt\\_AppendixI.pdf](https://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/docs/bacteria/updates_022410/2010-0210_Final_TechRpt_AppendixI.pdf).

<sup>31</sup> 2007 Daily Load Guidance.

<sup>32</sup> 1999 TMDL Guidances.

<sup>33</sup> Refer to State Water Board guidance regarding the TMDL Program. Available at [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/background.html](https://www.waterboards.ca.gov/water_issues/programs/tmdl/background.html).

<sup>34</sup> 40 CFR § 130.7.

Baykeeper recommends referencing EPA guidance for strategies to perform source analyses that incorporate numeric analyses of the amount, timing, and point of origin of FIB loading.<sup>35,36,37</sup>

#### **PROPOSED TMDL DOES NOT CONSIDER SEASONAL VARIATIONS OR PROVIDE A MARGIN OF SAFETY**

Federal regulations require that TMDLs “be established at levels necessary to attain and maintain the applicable narrative and numerical WA with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for streamflow, loading, and water quality parameters.”<sup>38</sup> The Proposed TMDL includes statements regarding margin of safety and seasonal variation but undertakes no formal analysis needed to fulfill the regulatory intent.

The Proposed TMDL concludes that “[n]o additional or explicit margin of safety is needed for this TMDL” since concentration-based load allocations mirror the U.S. EPA criteria and State Water Board water quality objectives for bacteria.<sup>39</sup> As above, repetition of the applicable numeric criteria does not constitute a load allocation exercise. Similarly, a one-sentence statement stating that the requirement to undertake a margin of safety analysis has been performed, since allocations were set to unrealistically low concentrations that fail to consider the assimilative capacity of the Petaluma River, does not address uncertainty, and uncertainty is what motivates the need to calculate a margin of safety.

The Proposed TMDL takes a similarly abrupt approach to satisfy the need to account for seasonal variation. Without context, the Proposed TMDL explains that “[w]hile FIB densities can be greater during the winter wet season due to factors such as stormwater runoff, they can be high at any time of year.” This statement provides the rationale for ignoring seasonal variations to the TMDL and associated allocations.<sup>40</sup> Bacteria concentrations are nearly always higher during the wet season – due virtually entirely to stormwater runoff as a transport pathway for bacteria from non-point sources. This is why the EPA and TMDL writers around the nation have undertaken the difficult work of expressing seasonally-variable allocations, for various flow regimes, to represent times of peak loading and variable in-stream conditions. Recommended approaches for establishing seasonally-variable daily load expressions include, among other strategies, the load duration approach, with daily loads expressed as flow variable rates.<sup>41</sup>

The Proposed TMDL thus fails to adequately recognize a margin of safety or seasonal variation to inform the development of numeric LAs and WLAs of fecal indicator bacteria for the Petaluma River. Baykeeper recommends referencing EPA guidance for strategies to estimate loading capacity and resulting LAs and WLAs.<sup>42,43,44</sup>

<sup>35</sup> 2007 Daily Load Guidance.

<sup>36</sup> 1999 TMDL Guidance.

<sup>37</sup> 2001 Pathogen Guidance.

<sup>38</sup> 40 CFR § 130.7(c)(1).

<sup>39</sup> Proposed TMDL at Section 7.8.5.6.

<sup>40</sup> *Id.*

<sup>41</sup> 2007 Daily Load Guidance at page 12.

<sup>42</sup> *Id.*

<sup>43</sup> 1999 TMDL Guidance.

<sup>44</sup> 2001 Pathogen Guidance.



## THE PROPOSED ALLOCATION FOR THE PETALUMA RIVER IS NOT “DAILY”

The CWA and its federal implementing regulations require these TMDLs to establish “daily” load limits.<sup>45</sup> But the proposed language describing a “rolling 30-day e. Coli geometric mean” does not meet this requirement. Further, the Regional Board does not even attempt to explain how, in its view, a six-week interval E. Coli geometric mean, calculated weekly,<sup>46</sup> can function as a “daily” load. Thus, the Regional Board has not provided a daily wasteload allocation as required by law.

## STAFF REPORT UNDERESTIMATED THE SCOPE AND COST OF COMPLIANCE WITH THE PROPOSED TMDL

Based on a review of bacteria TMDLs and associated Reasonable Assurance Analyses (“RAAs”) prepared around the state, as well as requirements for stormwater retention at CAFs, the scale and associated cost of achieving water quality standards for bacteria are significantly under-represented. For example, the implementation actions for municipal stormwater in Table 7.8.5-9, which prioritizes homelessness and pet waste, does not closely resemble the implementation actions prioritized to address bacteria impairment in other areas.<sup>47</sup> Flow reduction, ‘first-flush’ capture for treatment at wastewater plants, stormwater treatment, and large-scale adoption of green infrastructure is required in other regions and would be effective, here.

Similarly, Table 7.8.5-7 requires CAFs to obtain coverage and comply with the Water Board’s General Waste Discharge Requirements Order No.R2-2016-0031 for CAFs. Ignoring the fact that such facilities are already required to obtain coverage under this permit, federal standards define CAFs as point sources and require WLAs, rather than LA’s as indicated in Table 7.8.5-2 of the Proposed TMDL.<sup>48</sup> WLAs apply to sources defined as “point sources” under NPDES regulations.<sup>49</sup> Additionally, the Regional Board’s CAF permit follows statewide standards applicable to any waste discharge requirements for CAFs, which establish the minimum standards for discharges of animal waste, serving as General Waste Discharge Requirements (“WDRs”) for discharges of waste from CAFs to waters of the State.<sup>50,51</sup> The Statewide standards require containment of manure, wash water, and stormwater runoff from animal confinement areas. CAFs must be designed and constructed to retain all facility wastewater generated, together with all precipitation on, and drainage through, manured areas during a 25-year, 24-hour storm. The Petaluma River watershed hosts CAF facilities subject to these requirements, and the Proposed TMDL Implementation Plan must reflect compliance criteria.

Baykeeper encourages a re-examination of the Implementation Plan to ensure the scope and associated costs are appropriate to achieve compliance with the TMDLs.

According to the 1999 TMDL Guidance, “[t]o be effective in improving water quality, a TMDL must be more than an estimation of necessary pollutant reductions; it must be implemented.”<sup>52</sup> Accordingly, a TMDL must include an

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<sup>45</sup> See *Friends of the Earth v. EPA*, 446 f.3d 140, 145 (D.C. Cir. 2006).

<sup>46</sup> See Proposed TMDL at Table 6.1 (“To determine the attainment of the bacteria water quality standards, the geometric mean values shall be applied based on a statistically sufficient number of samples, which is generally not less than five samples equally spaced over a six-week period”).

<sup>47</sup> Refer to Bacteria TMDLs developed in CA Water Board Regions 4, 8, and 9.

<sup>48</sup> 40 CFR § 122.23(a).

<sup>49</sup> *Id.*

<sup>50</sup> California Regional Water Quality Control Board, San Francisco Bay Region. *Order No. R2-2016-0031, General Waste Discharge Requirements for Confined Animal Facilities within the San Francisco Bay Region.*

<sup>51</sup> California Code of Regulations, Title 27, Sections 22560-22565.

<sup>52</sup> 1999 TMDL Guidance at 1-10.

implementation plan "that explains the techniques that will be used to meet the load reductions identified."<sup>53</sup> Specifically, the implementation plan must include a "description of the implementation actions and/or management measures required to implement the allocations contained in the TMDL, along with a description of the effectiveness of these actions and/or measures in achieving the required pollutant load or reductions."<sup>54</sup> The proposed TMDL does not satisfy the stated purpose or the minimum requirements of TMDL implementation plans.

Here, the Regional Board attempts to delegate its duty to describe specific measures that will be taken to reduce pollutant loads to the sources themselves. It provides that the source of bacteria discharges, such as municipal stormwater entities and cities with responsibility for homeless encampments, will develop plans to describe BMPs and other measures for implementation. The duty to develop these plans for inclusion in TMDLs, however, rests on the Regional Board.

We respectfully request for staff to conduct the requisite analysis necessary to present the minimum elements necessary for any TMDL submitted to EPA, as established by EPA guidance.

#### BACTERIA TMDL FAILS TO REQUIRE MONITORING FOR EFFECTIVENESS OF LOAD REDUCTION ACTIONS

Pursuant to Section 7.8.5.8, "[t]he implementing parties are responsible for developing and implementing a comprehensive monitoring plan." This is in conflict with EPA guidance, which requires all TMDL submittals to include a monitoring or modeling plan "designed to determine the effectiveness of the implementation actions and to help determine whether allocations are met."<sup>55</sup>

The Bacteria TMDL specifically excludes monitoring requirements for CAFs, in conflict with the Regional Board's own WDRs.<sup>56</sup> Monitoring requirements for receiving waters and for specific categories of dischargers is not provided, in conflict with bacteria TMDLs and stormwater NPDES permits throughout the Los Angeles, Santa Ana and San Diego regions. Nor does the Bacteria TMDL request refinement of bacteria source identification through, for example, methods described in *The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches*.<sup>57</sup>

Baykeeper requests that the Regional Board develop a monitoring plan sufficient to meet the dual objectives of assessing the adequacy of control actions to implement the TMDL, and to provide a basis for reviewing and revising TMDL elements or control actions in the future, in accordance with federal guidance.<sup>58</sup>

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Bacteria pollution is often overlooked in the San Francisco Bay region, due in part to the perception REC1 exposure is limited to so-called fringe activities like kiteboarding or open water swimming. In fact, San Francisco Bay is a world-class destination for such activities and all forms of board sports, sailing, swimming, and other recreational activities throughout the year. The Petaluma River is a high-quality resource for board sport enthusiasts, kayakers, and anglers. The Regional Board should use this Proposed TMDL as a means to enhance water-oriented recreation,

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 3-22.

<sup>55</sup> 1999 TMDL Guidance at 3-23.

<sup>56</sup> California Regional Water Quality Control Board, San Francisco Bay Region. *Order No. R2-2016-0031, General Waste Discharge Requirements for Confined Animal Facilities within the San Francisco Bay Region.*

<sup>57</sup> Griffith JF, Layton BA, Boehm AB, Holden PA, Jay JA, Hagedorn C, and McGee CD and Weisberg SB. 2013. *The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches.* Prepared for the Southern California Coastal Water Research Project. Available at [www.waterboards.ca.gov/water\\_issues/programs/beaches/cbi\\_projects/docs/sipp\\_manual.pdf](http://www.waterboards.ca.gov/water_issues/programs/beaches/cbi_projects/docs/sipp_manual.pdf).

<sup>58</sup> 2001 Pathogen Guidance.

in general. Technical guidance and numerous bacteria TMDLs exist from which to glean useful examples for implementation and monitoring strategies aimed at urban beach settings. We hope that staff and members of the Board amend the draft Bacteria TMDL to introduce enforceable implementation and monitoring guidelines that will ensure attainment of water quality standards within a defined period.

Sincerely,



Ben Eichenberg  
Staff Attorney, San Francisco Baykeeper

Ian Wren  
Staff Scientist, San Francisco Baykeeper

- 1) I would like my property to be excluded because the home is more than 200 feet from the creek.
- 2) There was no testing of the water or soil in the creek to develop this TMDL.
- 3) Sonoma County Water Agency refuses to clear debris from Marin Creek because of endangered species issues and this causes stormwater to overflow onto adjacent fields which are grazed by animals. At those times, stormwater picks up fecal matter carrying it into the Petaluma River. SCWA should clear the debris from the creek.
- 4) Asking homeowners to pay for inspections on their property is a violation of proposition 218.
- 5) The Water Board's selection process and criteria to identify septic systems within 200 feet of Petaluma River or its major tributaries was questionable and haphazard. We missed a number of properties with homes within 200 feet.
- 6) I ask that the Water Board assume the cost of all septic system inspections. I will give permission for Water Board or other inspectors to look at my septic system but do not want to pay for that inspection.
- 7) I am opposed to the 5-year inspection frequency into perpetuity because this puts a cloud on the property.
- 8) There are two subdivisions farther upstream on Marin Creek called West Haven and Victoria which were built on pastureland. When these homes were built, the storm flows were directed to storm drains, which are directed into a detention pond that flows into Marin Creek. This development caused the stream flow dynamics to change and increased flooding downstream of the development. During storms the stream tops its banks and the flows pass through private property where the stormwater will pick up fecal material from grazing animals.
- 9) I am a small property owner and am environmentally concerned. I don't want this TMDL to be approved.
- 10) The Water Board is re-writing Sonoma County standards with this TMDL because this TMDL seeks to address septic systems within 200 feet of the creek which is outside the 100-foot setback distance established in County ordinances.

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27  
1120 N STREET  
P.O. BOX 942874  
SACRAMENTO, CA 94274-0001  
PHONE (916) 653-7507  
FAX (916) 653-7757  
TTY (916) 653-4086



*Making Conservation  
a California Way of life.*

September 3, 2019

Mr. Farhad Ghodrati  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
[farhad.ghodrati@waterboards.ca.gov](mailto:farhad.ghodrati@waterboards.ca.gov)

**Subject: Comment Letter- Petaluma River Watershed Bacteria TMDL**

Dear Mr. Ghodrati,

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on the proposed amendment to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) to incorporate a Total Maximum Daily Load (TMDL) and Implementation Plan for bacteria in Petaluma River (Basin Plan Amendment). Caltrans supports the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board's) efforts to improve the water quality in Petaluma River and will continue to take the necessary steps to reduce its impact in the watershed. Following are our comments:

**Comment #1 - Consistent stormwater program**

The requirements in this TMDL for Caltrans do not align with the pollutant-based requirements of other bacteria TMDLs as identified within Attachment IV of the Caltrans Conformed NPDES Permit. For example, a TMDL established by the San Francisco Bay Regional Water Board for Pathogens in Richardson Bay acknowledges that "the source of bacteria in highway runoff is wildlife" and that "the Water Board will not hold discharging entities responsible for uncontrollable coliform discharges originating from wildlife/natural background sources."

*Caltrans requests that the Regional Water Board maintain a consistent statewide stormwater program to effectively use resources towards implementing stormwater strategies for priority pollutants and waterbodies. Varying monitoring and implementation requirements for bacteria TMDLs in the Petaluma River watershed restricts Caltrans' ability to use a comprehensive statewide approach. Caltrans requests that the TMDL Implementation Plan be made consistent with the requirements of Attachment IV of the Caltrans Conformed NPDES Permit.*

**Comment #2 - Caltrans' footprint and impact are likely minor to the overall bacterial loads in the watershed**

The Basin Plan Amendment assigns wet weather waste load allocations (WLAs) and requirements directly for point sources. The WLAs are based on the statewide bacteria objectives and are expressed as *E. coli* in freshwater and enterococcus in estuarine waters. Caltrans is required to achieve the WLAs through meeting the geometric mean for Enterococcus and *E. coli* for this TMDL. It is anticipated that any major pathogen loads from Caltrans highways located in Petaluma River Watershed are from natural background sources, such as wildlife and birds. In May 2002<sup>1</sup>, Caltrans completed a study on the presence of human pathogens in urban storm drains. The study found that majority of the pathogens detected in stormwater are from domestic and/or wild animals. In addition, the study states that highway facilities, including park-and-rides and maintenance stations, are not a significant source of human pathogens in urban drainage. It is important to note that homeless encampments were not observed at the time of the study. However, natural background sources, such as wildlife and birds, do exist on Caltrans roadways in the watershed.

In addition, Caltrans' percentage of impact to the watershed is likely negligible. Caltrans operates an estimated 26 centerline miles of highways and approximately 297 acres of right-of-way in the Petaluma River watershed. This is approximately 0.31 percent of the total watershed area (the total watershed area is approximately 94,530 acres). The Caltrans highway system is unique, as it is a linear municipal separate storm sewer system (MS4) agency with a relatively small footprint scattered throughout the state, with limited impacts in a watershed. Therefore, implementing resources to reduce pollutant loading from Caltrans highway within this TMDL watershed would likely have minimal impacts to the overall load reductions within Petaluma River.

*Caltrans requests that the Regional Water Board recognize that 1) the occurrence and discharge of pathogens from Caltrans' right-of-way are caused by natural background sources, such as wildlife; and 2) the impacts caused by these natural sources represent a negligible impact to the Petaluma River watershed. In addition, since the majority of the highway system's proximity to the receiving waters is greater than 0.25 miles, this reach subwatershed would fall under the low priority ranking based on the prioritization requirements of Attachment IV within the current Caltrans NPDES Permit. Therefore, the TMDL should indicate that Ca/trans is a negligible contributor of pathogens, and the WLAs assigned to Caltrans should be equal to existing loads.*

**Comment #3 - Homelessness is a multi-agency responsibility**

This TMDL indicates that Caltrans rights-of-way are a source of bacteria due to the existing homeless encampments along Pacific Coast Highway and requires Caltrans to address the source through appropriate best management practice (BMP) implementation, such as preventing the establishment of homeless encampments, cleaning near streams and homeless encampments, and

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<sup>1</sup> Caltrans (2002) *Management of Pathogens Associated with Storm Drain Discharge - Results of Investigations of the Presence of Human Pathogens in Urban Storm Drains*. (CTSW-RT-02-2005). May 2002.

providing public restroom facilities. Caltrans is required to implement appropriate measures to prevent contamination of the river and its tributaries by waste discharges from homeless encampments. In addition, according to Figure 7.11 of the Petaluma River Bacteria TMDL Staff Report (July 2019) many of the existing homeless encampments appear to be outside of Caltrans right-of-way or jurisdiction.

*Although homeless individuals lacking access to sanitation services have potential to contribute bacteria, the presence of an encampment may not necessarily result in increased waste discharges. A study conducted by the City of El Cajon in Forester Creek<sup>2</sup> did not detect a consistent bacteria source associated with a known homeless encampment. Indicator bacterial concentrations for fecal coliforms and Enterococcus were far lower in the samples from both upstream and downstream locations than the receiving water limitations, and I-IF183 was detected upstream but not downstream of the known encampment. Impacts to the watershed by homeless encampments may vary on an individual basis.*

*Further, Ca/trans requests that the Regional Water Board take into consideration that successfully addressing homeless issues requires significant resources and a coordinated multi-agency approach from several entities including law enforcement, social services, medical agencies, and mental health professionals. Caltrans alone cannot solve the homelessness issue or be solely responsible for discharges originating from homeless encampments. The same report reviewing homelessness in the City of El Cajon found homeless populations would re-establish encampments following cleanups. Three sites within Forester Creek experienced 20-31 cleanups each, due to homeless populations moving back into the area after a cleanup. A longer-term solution-beyond repeated cleaning of streams and encampments-is required to reduce the impact of homelessness to Petaluma River. Caltrans encourages an approach in which 1) both governmental and non-governmental agencies evaluate homeless services programs as a whole; and 2) agencies work jointly to identify the most efficient and effective ways to share resources across jurisdictions, thereby reducing the potential for bacterial contamination from this source.*

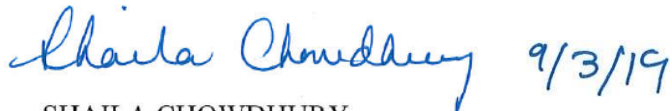
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<sup>2</sup> City of El Cajon (2019). *Feasibility Analysis of Compliance Pathways for TMDL Dry Weather Final Receiving Water Limitations*

Mr. Ghodrati  
September 3, 2019  
Page 4

Thank you for the opportunity to comment. If you have any questions, please contact Tom Rutsch, Caltrans Watershed Manager (916) 653- 7396 or through email at [Tom.rutsch@dot.ca.gov](mailto:Tom.rutsch@dot.ca.gov).

Sincerely,



SHAILA CHOWDHURY  
Chief Environmental Engineer

cc: Elizabeth Doohar, Chief Office of Stormwater Program Implementation  
Tom Rutsch, Watershed Manager  
Mauricio Serrano, Acting Stormwater Coordinator  
Dr. Bhaskar Joshi, Chief Office of Stormwater Program Development  
Gilbert Ogaz, Chief Office of Roadside Management  
Dana Hendrix, Maintenance Liaison





# SONOMA COUNTY FARM BUREAU

Affiliated with California Farm Bureau Federation and American Farm Bureau Federation

September 2, 2019

San Francisco Bay Regional Water Quality Control Board

1525 Clay Street, Suite 1400

Oakland, CA 94612

**RE: Petaluma River Bacteria & Nutrients TMDL**

Members of the San Francisco Bay Regional Water Quality Control Board,

Sonoma County Farm Bureau, a general farm organization representing nearly 2,000 family farmers, ranchers, rural landowners and agricultural businesses in Sonoma County works to promote and protect policies that provide for a prosperous local economy while preserving natural resources and a longstanding county agricultural heritage. SCFB members have been your partners in water quality programs since inception, and we applaud the NCRWQCB's diligence in drafting this plan and interest in preserving the varied Russian River uses.

The regulations imposed in the Petaluma TMDL Plan needs to be affordable for homeowners and land users and effective to a level that ensures the benefit from improved water quality exceeds the financial burden imposed on landowners.

**Sonoma County Farm Bureau is the voice for local farmers and rural landowners. Specific to this plan, we are concerned for the 17 dairies and 28 horse operations in the APMP boundary. Further, many of the rural landowners are our 4-H, FFA, and hobby farmers that are significant to the future of the agriculture industry in Sonoma County. Small farmers, horse ranches, and rural residents often suffer from the impact of overreaching regulations and broad-based land-use policies where the costs outweigh the benefits.**

**As part of your public comment process, I hope you consider modifying or striking proposed land-use requirements discussed below:**

**Confined Animal Facilities (CAF) and Grazing Land:**

We appreciate that the TMDL will only apply to grazing lands over 50 acres and will be limited to confined animal facilities that house dairy and horses. As you know, dairies are already under a WDR, and Sonoma County Farm Bureau manages the monitoring requirements for dairies in both regions covered under this directive.

The proposed regulations indicate that a grazing plan will be developed after the TMDL is approved. Although the 50 acres is adequate as a compliance trigger, we recommend that a minimum number of animal grazing units be added into the grazing land requirements. With limited water supply and low nutrient quality or feed availability on parcels in the Petaluma River Basin, landowners may only have a few head of grazers on a parcel larger than 50 acres. Low animal unit to acre ratio is an ideal BMP to wastewater management, and any requirements put on these animal owners who unknowingly are doing the right thing would only burden them with unnecessary costs.

**Please consider including minimum animal unit requirements like the Dairy WDR and other WDRs developed by neighboring water boards.**

The report estimates that there are 193 parcels with 149 owners covering 31,500 acres. This equates to an average parcel size of around 160 acres. The plan requires testing of any OWTS where the system is located within 200 feet of the top of the bank of the Petaluma River or to streams shown as a National Hydrography dataset mapped stream. With such large parcels and a tendency to build on top of hills and ridges, why require landowners to comply with the TMDL when their OWTS system may be thousands of feet away from the Petaluma River?

**We ask that you consider compliance requirements not only based on the property line proximity to the river but also based on the location of the OWTS.**

**OWTS Inspection Requirements:**

The plan outlines very rigorous inspection and reporting requirements (much more onerous than the requirements recently adopted for the Russian River TMDL):

1. A basic description and layout diagram of the existing system, including the components of the systems, north arrow, assessor's parcel number, direction of slope, and measurement to relevant features on the property, including any streams or creeks;
2. The units/structures served by the system;
3. The estimated age of the system (both tank and effluent dispersal system);
4. The capacity of the system components (e.g., the volume of the septic tank, the hydraulic capacity of the effluent dispersal area);
5. Availability and condition of the reserve replacement area of the effluent dispersal area; and
6. Inspection of all relevant documents such as permits, plans, operation and maintenance manuals, and recent pumpers report (within the last five years).

In addition, the first inspection must be completed within 18 months of the effective date of the TMDL and every five years thereafter. Realizing that these property owners most likely have owned their parcels for decades if not for several generations, compiling the information required is going to be difficult, time-consuming, and costly.

**We ask that you look at a phase-in period where property owners have five years from the TMDL effective date to do the required initial inspection and provide the necessary data requested. This will allow the small pool of OWTS professionals to be available at their regular contractual rates to help these property owners comply. Also, given the age of some of these OWTS systems and the lack of written plans or information on these systems, there could be a hardship appeal process where landowners can show the cost to have "as-built" designs excessive, especially if they will eventually be required to upgrade or replace the system.**

**Lack of Financial Assistance to Property Owners:**

People are struggling to live in Sonoma County. The Press Democrat recently published an article on the mass exodus of longtime community members choosing to move to other California cities or neighboring states. How will taxpayers see this added financial burden? The costs to comply with the requirements of this TMDL are significant. The inspection costs, coupled with the likely professional services that will be needed to respond to the reporting requirements, will be a minimum of \$1,200 every five years. Then, if there needs to be an upgrade or replacement of the OWTS, the financial burden could be closer to \$70,000.

State officials recognized the financial challenges that water quality management policy would have on property owners; thus, AB 885 was enacted. Further, the State OWTS Policy calls explicitly for the provision of low-interest loans to owners of all income levels for OWTS repair/replacement. These assistance programs are not in place yet in our County.

**The requirement for inspections to be done by Qualified Professionals (QP):**

The policy relating to Qualified Professionals imposes undue financial pressures on homeowners, and more so upon the multitudes of fixed-income, senior citizens living in the APMP boundary. The requirement for having a Qualified Professional (defined as a Registered Civil Engineer or Registered Environmental Health Specialist) perform the 5-year inspection is costly.

**We request that you allow the local LAMP to permit a licensed contractor (C42, C36, A license), or a pumper who has received certification from the National Association of Wastewater Technicians to perform the required inspections.**

**The burden on the County of Sonoma Resources:**

The proposed plan states: "The local agencies are the lead for contacting the landowner to require corrective actions, setting an appropriate schedule for compliance that shall be commensurate with the risk, and taking enforcement actions as necessary. The schedule for compliance in no case shall be more than 10 years from the TMDL effective date."

Sonoma County is trying to bounce back from one of the worst disasters in the history of our state, if not the nation. Housing stock is critically low, GSAs have been formed and require public staff efforts, and there is a significant shortage of professional job seekers in our region.

This proposed TMDL for the Petaluma River will require more local government resources than the Russian River TMDL recently approved in District 1. Is it the State's intent to overburden a local agency that is already struggling to keep up with disaster recovery efforts?

**To make this plan more achievable for the County of Sonoma and the property owners within the APMP boundaries, a more phased-in approach that allows for a longer compliance period should be considered.**

We agree there needs to be a way to monitor and improve water quality in the Petaluma River; however, the imposed action steps enacted to get to a level of acceptable water quality needs to be affordable, unencumbered by regulatory overreach and fair to all local agencies and property owners involved.

Thank you for the opportunity to comment on the proposed Petaluma River Bacteria & Nutrients TMDL and its effect on our members and farmers. Should you have any questions, please contact our Executive Director, Tawny Tesconi at Tawny@SonomaFB.org.

Sincerely,



Jeff Carlton, President  
Sonoma County Farm Bureau

Cc:

Sonoma County Board of Supervisors  
Sonoma County Farm Bureau Board of Directors



**Marin County Department of Public Works**  
**P. O. Box 4186 • San Rafael, CA 94913-4186**  
Tel. (415) 499-6528 • Fax (415) 499-7221

Farhad Ghodrati  
San Francisco Bay Regional Water Quality Board  
1515 Clay St, Suite 1400  
Oakland, CA 949612

**Member  
Agencies:**

Belvedere

Corte Madera

County  
of Marin

Fairfax

Larkspur

Mill Valley

Novato

Ross

San Anselmo

San Rafael

Sausalito

Tiburon

Subject: Marin Countywide Stormwater Pollution Prevention Program Comments on the Staff Report for the Petaluma River Watershed Bacteria TMDL and Draft Basin Plan Amendment (BPA) for the Petaluma River Watershed

August 30, 2019

Dear Mr. Ghodrati:

Thank you for the opportunity to submit comments on the Staff Report for the Petaluma River Watershed Bacteria TMDL and the associated Draft Basin Plan Amendment (BPA) for the Petaluma River Watershed. The Marin Countywide Stormwater Pollution Prevention Program (MCSTOPPPP) on behalf of the County of Marin and City of Novato greatly appreciate the time, energy, and technical expertise that went into developing and interpreting the studies that support this TMDL.

We would also like to acknowledge and thank Regional Water Board staff for engaging in preliminary discussions with stakeholders during the development of this staff report and BPA. As I am sure you will receive comments from our colleagues in the wastewater aspects of the draft BPA, MCSTOPPPP will focus comments on aspects specific to municipal stormwater runoff.

MCSTOPPPP believes current requirements under the statewide NPDES general permit (Phase II Permit) for small municipal separate storm sewer systems (MS4s), which cover both the City of Novato and the unincorporated areas of the County within the Petaluma River Watershed TMDL area, are sufficient to meet the load allocation from the MS4 sources in Marin. These requirements include implementation of public education and outreach as well as staff training on recognizing and reporting illicit discharges, pollution prevention and good housekeeping; operation of a proactive IDDE program; and prescriptive municipal operations requirements around landscape operations and the assessment and prioritized maintenance of the public MS4.

Existing activities at the City of Novato, the County of Marin and through the countywide stormwater program, MCSTOPPPP, are already directly supporting the pathogen reduction and management goals of the TMDL.

Current activities include:

1. Distribution of educational materials and opportunities to horse owners around horsekeeping for clean water best management practices.
2. Distribution of pet waste outreach materials through website, outreach events, and the Marin Humane adoption center.
3. Pet waste pledge program that distributes portable pet waste bag dispensers to residents that sign a pledge to pick up after their pet, every time.
4. Regular servicing of pet waste bag dispensers and trash cans located at public parks and open space areas.
5. Regular street sweeping and storm drain maintenance of public roads and MS4s.
6. Investigation and enforcement based on reports of illicit discharges and connections.

The implementation actions specified in the Basin Plan Amendment for contributions through municipal stormwater runoff are focused on two primary sources: 1) pet waste and 2) connections between human waste, either through homeless encampments or illegal sanitary connections, and the MS4. However, the water quality monitoring data presented in the staff report do not justify the additional implementation actions in Marin.

The impairment and pollution source assessments in the staff report included only four sites receiving water from Marin sources, and the most downstream of those (PET-2) has a small contribution from Marin's MS4, had the lowest exceedance rate of any site in the watershed, despite receiving contributions from the entire watershed. No microbial source tracking data was presented for this bottom-of-the-watershed site to indicate the contributing sources for the winter exceedances. In addition, the three other sites receiving runoff from Marin (SAN A. -10, -60, & -70) are all in a heavily agricultural area of Marin, without municipal storm sewer system infrastructure, and without a significant density of residential pets. The Water Board's bacteroides data from these three sites indicate very low levels of human markers, and the low-to-moderate levels of "dog" bacteroides markers is more likely from background wildlife sources from the local coyote population than from residential pet waste.

Our comments are summarized below:

I. Category I Actions: Effectively prohibit and prevent potential illicit discharges into storm sewer from human waste from homeless encampments. Develop an effective approach based on the size of the homeless population.

We do not believe human waste from homeless encampments is a significant contributor to bacteria levels in Marin. The latest 2019 Marin County Homeless Count & Survey Comprehensive Report<sup>1</sup> indicates very low totals of unsheltered homeless populations. Typically, homeless encampments in Marin are not in MS4 connected land uses. At this time,

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<sup>1</sup> Applied Survey Research 2019. Marin County Homeless Count & Survey Comprehensive Report: [https://www.marinhhs.org/sites/default/files/files/servicepages/2019\\_07/2019hirdreport\\_marincounty\\_final.pdf](https://www.marinhhs.org/sites/default/files/files/servicepages/2019_07/2019hirdreport_marincounty_final.pdf)

we do not believe there is sufficient evidence of pathogen sources to the municipal MS4 from homeless encampments in Marin to further develop an illicit discharge program for homeless encampments.

II. Category I Actions: Effectively prohibit and prevent illicit discharges into storm sewer from sanitary sewer collection system. Ensure at least 20% of the stormwater system is evaluated and addressed for illicit connections each year. If this work has already been performed under past permits, submit results of that evaluation.

Marin County Stormwater Pollution Prevention Program (MCSTOPPP) conducted visual inspections of all outfalls under our Phase II Permit requirements (Section E.9.a-d.) and did not find evidence of any illicit connections in the watershed. MCSTOPPP also performs yearly outfall inspections in all priority areas for each jurisdiction, including Novato. Although typically rare (and the MCSTOPPP archive had no reports from this TMDL watershed) illicit connections are typically found either during yearly maintenance and inspection activities by road and drainage crews, by our existing IDDE reporting and investigation programs, or during required re-sale inspections of sewer laterals. The development of a separate inspection program is unwarranted given the limited threat from the areas in question.

III. Category I Actions: Address potential pet waste discharges into storm sewer

The Water Board sample data failed to demonstrate Marin as a significant contributor of pet waste in the lower watershed since it did not include MST data for the PET-2 sample point. Furthermore, the upper watershed, where MST samples show low-to-moderate amounts of canine bacteria levels, is rural and agricultural, with low population density, no parks or walking paths, no MS4 infrastructure, and resident populations of wild coyotes. Therefore, we do not find it necessary to take Category I actions beyond what is already implemented through existing programs.

IV. Category II Actions: Additional Actions to Meet Wasteload Allocations

MCSTOPPP's assessment of pet waste at the public facilities (trails and boat launch) in the watershed found no evidence of the need for additional prevention activities. Diversion of stormwater to the sanitary sewer system is not feasible in Marin's contributing areas, and there is already coordination for spill response to prevent sanitary sewer overflows from reaching the storm sewer system in Novato or the unincorporated County areas.

V. Water Quality Monitoring

Marin represents 34 square miles or 23% of the Petaluma River Watersheds' 146 square miles. Over 55% of Marin's contribution area is Agricultural Use Areas, much of it outside of the Phase II Permit urbanized area boundary. MCSTOPPP does not believe that characterization monitoring in Marin will provide useful data to change existing management actions and programs. The proposed Water Board monitoring every five years should be sufficient to determine progress toward the wasteload allocation. The monitoring data presented in the Staff Report shows the highest load sources with contributions from Marin

come from upper watershed samples in San Antonio Creek where contributions from Sonoma and Marin are indistinguishable. In addition, these sources are addressed through other Water Board regulatory permits and programs such as Confined Animal Facility Permits (CAFs) and the Grazing Waiver Program. Additionally, Marin's MS4 contribution in the lower watershed is minimal. If monitoring data must be collected at the end of the watershed, cost effective sampling is unlikely to produce meaningful data to inform management decisions. The Water Boards five-year monitoring plan should be sufficient to assess progress towards attainment without additional monitoring requirements for Marin.

Marin County and the City of Novato have worked hard to develop robust MS4 programs that include addressing pathogens in stormwater throughout their jurisdictions. Elements of existing programs that functionally meet the goals and objectives of the BPA include public education and outreach, illicit discharge detection and elimination, municipal operations, new and redevelopment. The County of Marin and the City of Novato anticipate continuing to implement these existing programs to address potential pathogens in stormwater. We look forward to working with the Water Board collaboratively in the future on these important issues.

Sincerely,



Rob Carson  
MCSTOPPP Program Administrator

Cc (electronically): Raul Rojas, Marin County Public Works  
Russ Thompson, Public Works, City of Novato  
Max Korten, Marin County Parks





**North Bay Association of REALTORS®**  
475 Aviation Blvd., Suite, 220 | Santa Rosa, CA 95403  
625 Imperial Way, Suite 2 | Napa, CA 94559  
(707) 542-1579 | northbayrealtors.org  
info@northbayrealtors.org

August 31, 2019

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

### **RE: Petaluma River Bacteria & Nutrients TMDL**

Members of the San Francisco Bay Regional Water Quality Control Board,

On behalf of the North Bay Association of REALTORS®, I am writing to offer input and inquiries on the Petaluma River Bacteria and Nutrients TMDL. We offer this input in service to our mutual goals – the protection of water quality, public health, and aquatic wildlife in Petaluma.

**The North Bay Association of REALTORS® is a 4-county trade association representing 3,600 real estate professionals and affiliates. We serve as an advocate for homeowners and homeownership, the preservation of property rights, and a thriving real estate economy.**

**Our concerns are focused on the hundreds of Sonoma County property owners that fall within the APMP boundary. Homeowners can be profoundly impacted by public policy – oftentimes unnecessarily – and we urge your consideration of the following amendments prior to adoption:**

- 1. Financial Assistance: Implementation should be delayed until prescribed assistance is in place.** AB 885 (2000) and the State OWTS Policy specifically call for the provision of low-interest loans to owners of all income levels for OWTS repair/replacement. The TMDL could easily push owners into premature inspection/replacement, wreaking havoc on our local homeowners, housing stock, and economy. Despite repeated calls for assistance during the Sonoma County LAMP and Russian River TMDL processes, neither the State nor County of Sonoma established a program, leaving thousands and thousands of owners without options. Many live on Social Security alone and are struggling to meet the rising cost of ownership and cannot shoulder a ~\$1200 inspection every 5 years, much less corresponding repairs/replacement. Following the 2017 wildfires, many Sonoma County homeowners saw their insurance rates double or triple, and additional increases in interest rates, labor and materials, and so on. The average cost of an inspection in Sonoma County is \$1100, including required pumping.
- 2. APMP: What is the rationale for including parcels where OWTS are located beyond the 200-foot boundary? Please allow owners that can demonstrate that their system falls outside of the 200-foot APMP boundary to obtain an exemption.** The APMP applies to any OWTS that is partially or fully contained within the 200-foot boundary, even though that system may be thousands of feet away from the mainstem/waterway. Similarly, OWTS located on parcels just outside of the APMP would be exempt – so an OWTS located 212-feet from the mainstem/waterway could be exempt. The State and local the permitting process would identify if/when a property owner moved their system to a new site on an included parcel.



3. **Qualified Professionals (QP): Inspections could easily be performed by a licensed contractor (C42, C36), or by a pumper who has received certification from the National Association of Wastewater Technicians.**<sup>1</sup> Requiring a QP (Registered Civil Engineer or Registered Environmental Health Specialist) is excessive and costly for basic inspections. The State OWTS Policy sets minimum standards for the required registration for conducting soils analysis and OWTS design, but does not mandate this threshold for inspections. Pumpers are well qualified to recognize and correct basic OWTS problems, and if a pumper is certified, inspections could occur when the tank is pumped, streamlining the process and reducing costs to owners. **Please work with stakeholders and County decision-makers to provide this flexibility to owners.**
4. **Compliance Timeline: We urge you to increase the compliance timeline to 15-years (as the North Coast Regional Water Quality Control Board recently did for the Russian River TMDL).** As proposed, owners will have 10 years to complete upgrades/replacements. The costs of the design and installation of a new system can reach \$70,000. Zero financial assistance is in place, and our permit timeline oftentimes reaches 16-19 weeks here in Sonoma County,
5. **Housing & Homeowners: The TMDL should allow delayed or phased-in requirements to homeowners in order to preserve our vital housing stock.** The APMP requirements fall hardest on low and fixed-income owners. It is likely that people with limited resources will be unable to afford costs/loans for system upgrades. This could result in properties being sold at below market rate, rent increases, and an overall loss of availability.

Thank you for considering our comments. We are eager to collaborate with you on policies that impact housing, homeowners, public and environmental health in Sonoma County. Should you have any questions, please contact **Lisa Badenfort, Public Affairs Director, at (707) 636-4294 or [lisa@northbayrealtors.org](mailto:lisa@northbayrealtors.org).**

Respectfully,



Carol Lexa  
President-Elect, Board of Directors

cc:  
Terry Young, Chair  
Jim McGrath, Vice Chair  
Cecilia Ogbu, Board Member  
William Kissinger, Board Member  
Newsha Ajami, Board Member  
Steve Lefkovits, Board Member  
Jayne Battey, Board Member  
Farhad Ghodrati, Environmental Scientist

<sup>1</sup> National Association of Wastewater Technicians, <http://www.nawt.org>