

Response to Comments¹ on the preliminary FY2015-2018 Basin Plan Triennial Review Priority List and Work Plan²

- 1. Jian Peng
Chief, Water Quality Planning
OC Watersheds
Orange County Public Works**

Comment:

Mr. Peng stated that the Orange County Public Works staff support the following items on the [preliminary (May 15, 2015)] triennial review priority list and workplan: REC standards for inland surface waters; REC standards for bays and estuaries; Newport Bay Fecal Coliform TMDL reconsideration; Newport Bay Se TMDL, and Newport Bay Se Site Specific Objectives (SSOs).

In addition, Mr. Peng had two questions. The first question related to resource allocations. Will Basin Planning resources be used for TMDL and other issues that non-Basin Planning staff will work on? The second question; will staff shorten the list in order to assign staff resources for the issues on the list and would it help to have stakeholders speak at the Board meeting in support of the list to ensure Board approval?

Response:

As noted in the footnote below, the proposed Triennial Review Priority List and Work Plan has been modified since Mr. Peng made his comments. To clear up confusion, Regional Board staff have removed all priority issues that relate to TMDL development. TMDLs are funded from a different source than funding for Triennial Review Basin Planning issues. The new list only contains issues related to development of water quality standards (beneficial uses, water quality objectives, and antidegradation). Only those TMDL-funded issues that relate to the development of water quality standards remain in the list. Funding for work to address the issues on the revised Triennial Review Priority List will be the two Personal Years (PYs) that has been allotted for the

¹ Comments presented in this response have been summarized or paraphrased from the original. Original written comments are included in this Attachment and posted on the Santa Ana Regional Board's web site at http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml

² The preliminary list included tasks related to the reconsideration/adoption of new Total Maximum Daily Loads (TMDLs) to provide a comprehensive picture of the anticipated changes to the Basin Plan over the next three years. However, this created confusion and concern about the priorities for and ability to conduct work related specifically to water quality standards. Hence, many of the comments received address these TMDL-related priorities. Since the programmatic resources available to conduct many TMDL tasks are different from Basin Planning resources, the revised list now includes only those TMDL tasks related to water quality standards changes, per established TMDL implementation plans. TMDL funds, not Basin Planning resources, are expected to be used to perform work on these tasks.

last several years for Basin Planning, some TMDL funding, and other funding that may be made available by stakeholder groups.

Board staff welcomes expressions of support for the proposed list.

**2. Jayne Joy
Eastern Municipal Water District**

Comment:

California's drought condition has adverse impacts on the salinity levels in source waters for several agencies within the Santa Ana Regional Water Quality Control Board jurisdiction. In response to the severe drought and for sustainability, the Metropolitan Water District has been supplying more Colorado River Water and less State Project Water to water agencies in our Region. Colorado River Water contains significantly higher salinity levels than State Project Water. As the salinity rises in source water it results in commensurate increases in the salinity or total dissolved solids (TDS) concentrations in the recycled water produced for reuse or discharge in the Santa Ana Region. Complying with the TDS objectives for both groundwater and surface water discharges can be challenging during severe drought conditions. Temporary relief from these regulations may be required and reasonable due to the limited state-wide and regional water supply availability of low TDS supply water. The agencies would like to explore alternative TDS compliance criteria to protect and sustain recycled water as a viable water source during severe drought. In addition, the Regional Board is also encouraged to consider Maximum Benefit Demonstrations for groundwater basins to create additional assimilative capacity for TDS and to expedite the approval process of such effort. It is requested that the Santa Ana Regional Board work with interested agencies on the development of a course of action, possibly a basin plan amendment that would address the salinity impacts that may arise during severe drought conditions.

Response:

Regional Board staff understand the issues described and the proposed Triennial Review list has been modified to include an item for consideration of the need for and nature of a formal policy, which might be incorporated in the Basin Plan, regarding TDS compliance during drought conditions. See item 5 c. in the revised Triennial Review list. Actions to encourage and allow the use of recycled water are consistent with the State Board's Recycled Water Policy.

As shown in the revised Triennial Review priority list, only a relatively small amount of resources (0.1 PY) is proposed for FY15-16 for this work. The rationale for this is two-fold. First, the Regional Board, working extensively with the N/TDS Task Force and now the Basin Monitoring Program Task Force, has laid a significant amount of groundwork for the management of TDS in groundwater and surface water in the Region, and the State Water Resources Control Board has adopted a Recycled Water Policy (relying

heavily on the work done in the Santa Ana Region). Board staff believes that it is important to first consider whether and to what extent additional work is needed to develop such a drought policy and, if so, what form that policy should take. This would be the intent of the recommended allocation for FY15-16. Second, as Ms. Joy has suggested, Board staff believes that there are a number of potentially interested agencies and parties who might provide resource support to develop such a policy. The level of interest and resource commitment would be explored in FY15-16. It may be that an existing Task Force, e.g., the Basin Monitoring Program Task Force, could be employed to conduct necessary work to develop such a policy, if warranted. This might provide administrative/cost efficiency.

**3. Fiona M. Sanchez
Director of Water Resources
Irvine Ranch Water District**

Comment:

The Irvine Ranch Water District (IRWD) continues to express support for Issue No.12, “Revise total dissolved solids objectives for Rattlesnake, Syphon, and Sand Canyon reservoirs based on use for storage of recycled water.” Changing source water conditions, and water conservation practices, can impact the TDS concentrations of the sewage treated at IRWD’s Recycled Water Plants. Due to current and future conditions that could impact the TDS of IRWD’s recycled water and ability to discharge to their reservoirs, IRWD requests that Issue No. 12 remain on the 2015-2018 Triennial Review Priority List. IRWD is aware that issues on the approved Triennial Review Priority List may not necessarily result in an amendment to the Basin Plan. Furthermore, IRWD recognizes that they may need to commit their own resources to be able to get an approved amendment that revises the objectives for their reservoirs.

Response:

This item, to consider revisions to the TDS objectives for Rattlesnake, Syphon and Sand Canyon reservoirs, has been on prior Triennial Review lists, but Board staff resources have not been sufficient to address this issue to date.

As noted in the prior response, actions to promote and allow the use of recycled water are consistent with statewide policy. Accordingly, this item has been moved up in the revised proposed list of Triennial Review priorities (see item 8), with the expectation of resource support from IRWD.

**4. Michael R. Markus
General Manager
Orange County Water District**

Comment:

The Orange County Water District (OCWD) manages the Orange County Groundwater Basin, which is the primary water supply for 2.4 million residents in Orange County. Maintaining the quality of Santa Ana River water is important to protect the water quality of the Orange County Groundwater Basin. The OCWD urges the Regional Board to continue to provide staff support in managing N/TDS in the Santa Ana Watershed as directed in the 2004 N/TDS Basin Plan Amendment. The OCWD supports Triennial Review Issue No. 5, "Update N/TDS (Salt Management Plan) plan" and thanks the Regional Board for making it a priority.

Response:

Comments noted.

**5. Mark Norton
Santa Ana Watershed Project Authority
on Behalf of the Lake Elsinore and Canyon Lake Task Force and
Middle Santa Ana River TMDL Task Force**

Comment:

On behalf of the two Task Forces, Mr. Norton presented petitions for the review of the Lake Elsinore and Canyon Lake Nutrient TMDLs and the Middle Santa Ana River Bacterial Indicator TMDL. Each petition includes a proposed schedule to conduct the review and the commitment of resources to support this effort.

Response:

Regional Board staff agree that review and revision of both of these TMDLs is appropriate given the considerable body of data that has accrued since their adoption, and in light of the largely approved recreation standards amendments for inland fresh surface waters. We appreciate and expect to rely on the commitments of resource support.

As noted previously, Board staff has extracted TMDL development/revision items from the revised proposed Triennial Review priority list as a matter of clarity. Board staff expects to work with the stakeholders to formulate a plan and schedule for work to complete the requested, and appropriate, TMDL reviews.

**6. Ray Hiemstra
Associate Director
Orange County Coastkeeper**

Comment:

- a. Orange County Coastkeeper's (Coastkeeper) overarching concern is the long delay (almost 10 years) in the triennial review process. It is important that the Regional Board make a commitment to complete the triennial review on a regular basis. In addition, the Draft Priority List contains some priorities that are not related to a general updating of the Basin Plan and should be done outside of the scope of the triennial review. Coastkeeper believes the following issues that are listed in the draft triennial review priority list [May 15, 2015 preliminary list] are a priority and should be retained:
- Develop pathogen indicator monitoring plan identified in the 2012 Recreational Standards Amendments;
 - Review/comment on the proposed statewide policy for pathogen indicator objectives for recreational beneficial uses based on the 2012 USEPA Water Quality Criteria;
 - Develop/consider a TMDL BPA for metal in Newport Bay;
 - Develop/consider a bacteria indicator (*E. Coli*) TMDL for Knickerbocker Creek;
 - Reconsider Nutrient TMDLs for Newport Bay watershed, including review of nutrient objectives for San Diego Creek;
 - Reconsider Sediment TMDLs for Newport Bay watershed;
 - Update N/TDS plan;
 - Participate with State Board staff to develop a biological integrity assessment implementation plan;
 - Review beneficial use designations and reach descriptions for waters listed in Table 3-1;
 - Add certain Waters to Tables 3-1 and 4-1;
 - Add adopted Basin Plan Amendments to the electronic Basin Plan;
 - Reconsider Nutrient TMDLs for Canyon Lake / Lake Elsinore (San Jacinto Watershed)
 - Review and revise Big Bear Lake water quality standards and Nutrient TMDL;
 - Restructure Basin Plan to place all adopted TMDLs in Chapter 6;
 - Revise total dissolved solids objectives for Rattlesnake, Syphon, and Sand Canyon;
 - Add digital maps to Basin Plan;
 - Update and revise Basin Plan narrative program/policy discussions;
 - Review ammonia objectives for freshwater based on 2013 USEPA national criteria;
 - Prepare/administer the 2015 Triennial Review.

Response:

A significant amount of work has been undertaken and completed in response to the 2006 Triennial Review priority list. Board staff's focus has been to complete that priority work rather than to prepare and conduct the Triennial Review process. That said, Board staff has kept Triennial Review needs in mind by compiling, over time, a list of the issues that appear to warrant consideration. These issues are reflected in the proposed Triennial Review priority list and workplan.

As noted previously, Board staff has revised the proposed preliminary list by eliminating tasks related to the development of new/revision of established TMDLs, since this work will be addressed outside the Triennial Review process, using available TMDL resources. This does not diminish the importance of this work or the Board's commitment to it.

- b.** Coastkeeper stated that in addition to issues listed on the draft Triennial Review Priority List, the following should be added on the basis that they are statewide priorities or permits that will expire during the next three years:
- Adding an implementation plan for the Statewide Trash Policy, which should be the number 1 priority;
 - Renewal of the Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities (Sector Scrap Metal Permit); and
 - Designation of State Water Quality Protection Areas for existing Marine Protected areas.

Response:

The State Water Board recently (April 7, 2015) adopted an amendment to the California Ocean Plan and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (collectively referred to as the "Trash Amendments"). These Amendments include implementation requirements for permitted storm water and other dischargers. Once the amendments are approved by USEPA and become effective, the regional water boards will be expected to implement these requirements in permits. The State Water Board is responsible for the development and update of statewide water quality control plans and policies, including implementation provisions. In short, Board staff believes that this a permitting matter, rather than a Triennial Review issue.

The renewal of permits, such as the Scrap Metal Recycling Facilities permit, is outside the scope of the Triennial Review.

A detailed discussion of Marine Managed Areas (MMAs), Marine Protected Areas (MPAs) and State Water Quality Protection Areas (SWQPAs), and the multiple agencies

responsible for their designation and management, is beyond the scope of the needed response. The Santa Ana Region encompasses several SWQPAs designated as Areas of Special Biological Significance (ASBS), including the Upper Newport Bay Ecological Reserve, Newport Coast Marine Life Refuge and the Irvine Coast Marine Life Refuge. ASBS are SWQPAs that require special protection, including the prohibition of waste discharges into them. The Region also encompasses several MMAs that are State Marine Conservation Areas (Bolsa Bay, Bolsa Chica Basin and Crystal Cove).

The State Water Board has designating authority for SWQPAs. Recent (2012) amendments to the California Ocean Plan identified a second category of SWQPA (SWQPA-GP (general protection). SWQPA-GP require less restrictive protection than ASBS.

Pursuant to these Ocean Plan amendments, any individual can nominate areas of ocean waters for designation as SWQPA – ASBS or SWQPA-GP by the State Water Board. Nominations are to be made to the appropriate Regional Board and must include specified information. Coastkeeper is encouraged to make such nominations to the Regional Board.

- c. Coastkeeper states that there are several projects that appear to be TMDL re-openers or deletions related to impending or already missed deadlines, including the following issues related to the Fecal Coliform TMDL for Newport Bay:
- Consider pathogen indicator objectives for recreational beneficial uses of enclosed bays and estuaries;
 - Reconsider Fecal Coliform TMDL for Newport Bay.

Coastkeeper states that this existing TMDL should not be withdrawn and its existing requirements should be enforced until new criteria and an associated TMDL are developed. The passage of a TMDL compliance deadline is not a reason to prioritize withdrawing the TMDL. Coastkeeper supports the development of new bacteria objectives for Newport Bay based on the 2012 USEPA recommendations, but not to the detriment of Newport Bay.

Response:

Issue No. 2 on the proposed Triennial Review priority list is the deletion of obsolete fecal coliform objectives for recreational uses of enclosed bays and estuaries and the consideration of new pathogen indicator objectives based on the USEPA 2012 criteria recommendations (and based on USEPA promulgation in 2004 of enterococcus objectives for coastal waters (which include enclosed bays and estuaries)). These recommended actions are intended to assure that the applicable objectives, and any control actions required to meet them, are based on the best available science.

The preliminary (May 15, 2015) Triennial Review priority list upon which Coastkeeper bases these comments includes an item for the reconsideration of the Fecal Coliform

TMDL for Newport Bay. If and when obsolete fecal coliform objectives for the Bay are deleted and new objectives are established, then the following actions would be necessary and appropriate: (1) those parts of the Fecal Coliform TMDL that address compliance with the fecal coliform objectives for recreational uses should be withdrawn, since they are not scientifically defensible; (2) a new impairment assessment based on the new objectives should be conducted; (3) if warranted by the results of the impairment assessment, a new TMDL to address compliance with the new objectives would be developed and recommended for approval. These recommendations are motivated by the need to assure the best available science and responsible use of limited public resources to attain appropriate objectives.

Once again, for the reasons previously discussed, the issue pertaining to reconsideration of the fecal coliform TMDL has been removed from the revised recommended priority list.

- d. Coastkeeper states that the proposed revision of the shellfish objective should not be included as a priority and suggests that the proposed revision attempts to circumvent shellfish protections in the existing Fecal Coliform TMDL for Newport Bay through the Triennial Review process. Coastkeeper states that the existing objectives should be kept and enforced until new statewide objectives are completed. Prioritizing the shellfish beneficial use definition is best addressed in future triennial reviews as the Region has more significant problems to resolve than redefining terms that allow for the potential weakening of water quality protections.

Response:

Board staff believes that Coastkeeper has misconstrued the nature of and rationale for these proposed items. Board staff's recommendations are in the context of ongoing and proposed work coordinated by the State Water Board to consider the SHEL beneficial use definition and appropriate water quality objectives on a statewide basis. This effort is to assure statewide consistency, and that the objectives are based on the best available science. It is prudent to be a part of this effort. It is not clear to Board staff how this would allow for the weakening of water quality protections. Board staff agrees that the existing objectives must be maintained and enforced until replaced by new statewide objectives; Board staff has not and does not propose any action(s) to the contrary.

- e. Coastkeeper recommends the removal of Issue No. 1c, which calls for the consideration of modifications to Basin Plan recreation objectives/implementation strategies based on the anticipated statewide bacteria objectives policy, and, if necessary, the consideration of a Region-specific reference/natural source exclusion policy. Coastkeeper indicates that re-opening the matter of recreation objectives could unnecessarily antagonize stakeholders and federal regulators (who participated in the recreation standards amendments), many of whom thought this matter concluded. Coastkeeper asserts that giving this matter high priority, as

proposed, could reasonably be interpreted as an attempt to avoid an impending TMDL deadline and “a mechanism for developing new loopholes than to achieve statewide conformity”.

Response:

Once again, Board staff believes that Coastkeeper has seriously misconstrued the nature of and rationale for this item. Stakeholders, including USEPA regulators, have long recognized that a statewide objectives policy development process was underway and that the results of that process might necessitate changes to the recreation standards amendments approved by the Regional Board in 2012 and recently (April 8, 2015) largely approved by USEPA. The Regional Board is simply required to conform its Basin Plan to the requirements of an adopted statewide policy, to the extent of any conflict, unless the statewide policy explicitly endorses a region-specific approach.

Coastkeeper’s assertions regarding avoidance of deadlines and “developing new loopholes” may stem from the recommendation to consider a Region-specific reference system/natural source exclusion policy, if necessary. As State Board staff described in an informational document presented at the CEQA scoping meetings for the development of the statewide bacteria objectives policy, the statewide policy may consider the inclusion of a reference system/natural source exclusion policy approach. This is based on the recognition that it would be appropriate to account for natural and uncontrollable sources of bacteria when judging compliance with bacteria objectives, determining the need for a TMDL and/or enforcement actions. Regional Board staff have indicated their support for the inclusion of such an approach in the statewide policy. This is a matter that affects the prudent and efficient use of scarce public resources to address water quality problems that can be controlled. If this is not included in the statewide policy, then Board staff believes it would be reasonable and appropriate to develop such a policy for the Santa Ana Region. The reference system/natural source exclusion approaches have been implemented successfully by other Regional Boards.

- f. Coastkeeper recommends the deletion of the items related to the development and adoption of the Selenium TMDL for the Newport Bay watershed and selenium site-specific objectives (SSOs). Coastkeeper believes that the proposed TMDL has little chance of being approved by USEPA and the issue is currently being addressed by a time schedule order and should continue under that order.

Response:

As Coastkeeper has noted, a substantial amount of time and effort by Regional Board staff and stakeholders in the Newport Bay watershed has been expended in the development of a selenium TMDL and selenium SSOs. Work on the TMDL is expected to come to a close by the end of this year with the recommendation for Regional Board adoption of a Basin Plan amendment to incorporate the TMDL. A Basin Plan

amendment to incorporate selenium SSOs is expected to follow within one to two years. There is ample scientific evidence that selenium SSOs are necessary and appropriate.

Whether or not USEPA will approve either the TMDL or the SSOs does not determine whether or not this work should proceed. (It should be noted that efforts to develop the TMDL and SSOs have been coordinated with USEPA.) The best available science demonstrates that USEPA's Selenium TMDL for the San Diego Creek/Newport Bay watershed, promulgated in 2002, must be revised, and an implementation plan must be added. Time schedule orders are in place to address point source discharges of selenium, but this will not suffice to achieve ultimate compliance with selenium objectives. A TMDL to supplant that promulgated by USEPA is necessary and appropriate.

- g.** Coastkeeper recommends that the proposed item for review of chemical oxygen demand objectives for inland surface waters should be removed. Coastkeeper asserts that this objective was created for valid reasons and that there are no reasons known to Coastkeeper that justify an "update". Review of objectives without substantial justification is not an efficient use of scarce resources.

Response:

The recommendation for review of the chemical oxygen demands objectives for inland surface waters is at the end of the proposed priority list. Different numeric objectives are specified for different inland surface waters in the Basin Plan. The origin of these values is unclear and undocumented, and the objectives have not been reviewed or considered since at least the 1983 Basin Plan (and likely even earlier). Board staff believes that it is reasonable to consider a review of these objectives, if the demands of other higher priority work allow it.

- h.** In conclusion, Coastkeeper commends the Regional Board for issuing a draft priority list for 2015. However, Coastkeeper suggests that the list "appears to be a list of priorities from the perspective of regulated entities...and not the people who reside and recreate in the Regional Board's jurisdiction. The apparent focus on "reviewing", "reconsidering" and "revising" concerns Coastkeeper insofar as the document can be read as a plan for "regulatory retrenchment and/or retreat." Coastkeeper recommends a reorganization of the list and the addition of other items that emphasize the improvement of water quality over time (including the items identified in comment b., above).

Response:

Board staff appreciates Coastkeeper's effort to protect and improve the environment and the time taken to provide detailed comments and recommendations. However, we disagree strongly with the suggestion that the list is based on the priorities and interests of regulated entities, rather than the interests of the environment or the general public.

The proposed list is intended to reflect Board staff's professional judgment of the issues that need to be addressed to assure that Basin Plan water quality and beneficial uses are protected, and that requirements based on the Basin Plan standards are legally and scientifically justified. The proposed list respects the significant amount of work that is already underway by Regional and State Board staff, and the stakeholders. Proceeding in this way promotes the efficient use of resources. "Reviewing", "reconsidering" and "revising" are the very essence of the Triennial Review process, not a method for retrenchment or retreat.