

Comment Summary and Responses
Update of the Bacteria Objectives for Freshwater Designated for Water Contact Recreation in
the Los Angeles Region
Comment Deadline: 12pm July 8, 2011

No.	Commenter
1.	City of Thousand Oaks
2.	San Gabriel River Watershed Management Area Committee (SGRWAC)

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0.1	Multiple	Many of the comments submitted in opposition to the State Water Resources Control Board's (State Water Board) approval of this amendment were submitted verbatim to the State Water Board, without further explanation.	<p>Many of the comments submitted to the State Water Board on this matter are identical to a comment submitted to the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) at the time the draft version of this regulation was under Los Angeles Water Board consideration. During its consideration, the Los Angeles Water Board received and provided written responses to all of the many significant comments. The Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or related documentation in view of the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that that changes would not be made, and the response indicated why not.</p> <p>Where a commenter merely repeats the comment tendered below on a prior version of this regulation, but fails to disclose what quarrel, if any, the commenter has with the response provided or the action taken by the Los Angeles Water Board in response to the comment, the State Water Board is unable to address the comment. Specifically, in those cases where the Los Angeles Water Board made changes in</p>

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			<p>response to a comment, the commenter has failed to explain how the changes were allegedly inadequate. Likewise, where the Los Angeles Water Board did not make changes, the commenter has failed to explain how the response or explanation that the Los Angeles Water Board provided was allegedly inadequate, or even if the commenter even believes that the response was inadequate.</p> <p>Where a commenter has merely repeated the comment submitted below, the State Water Board cannot divine what the commenter believes has been adequately satisfied and what has not, nor can it determine the reason for any remaining dissatisfaction.</p> <p>Without that information, the State Water Board does not have a fair opportunity to understand what if any remaining concerns exist.</p>
1.0	City of Thousand Oaks	<p>“As a regulated agency, the City of Thousand Oaks appreciates the State Water Board’s efforts to bring Water Quality objectives into agreement with scientific evidence such as the removal of Fecal Coliform as a pathogenic indicator. Furthermore, we support the proposal to remove Fecal Coliform as a REC-1 and LREC-1 Water Quality Objective, given that studies have shown</p>	Comment noted.

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		that it fails to correlate with incidents of swimmer illness or other public health criteria.”	
1.1	City of Thousand Oaks	“The City is concerned that there is no procedural link to update the numerical bacteriological objectives in the Malibu Creek Watershed Bacteria TMDL once the Los Angeles Basin Plan modification for removing a fecal bacteria indicator is adopted. Being a trustee of public funds striving for efficiency in meeting regulatory requirements, we urge the State Water Board to address this concern and to request the Regional Water Quality Control Boards to change applicable bacteria TMDLs to be consistent with this ruling.”	If the proposed amendment is approved by the State Water Board, Office of Administrative Law and U.S. Environmental Protection Agency, all previous actions relying upon the fecal coliform objectives for water contact recreation will be reconsidered by the Los Angeles Water Board at either TMDL reconsideration or permit re-opener or reissuance to remove all fecal coliform requirements that may be present.
2.0	SGRWMAC	“The twenty eight Municipal Separate Storm Sewer System (MS4) Permittees within the Los Angeles County portion of the San Gabriel River Watershed appreciate the opportunity to comment on the removal of the Fecal Coliform Water Quality Objective. These comments are provided at the behest, and with the support, of the San Gabriel River Watershed Management Area Committee, but any particular comment may not be fully endorsed by each member agency, or their individual representatives.”	Comment noted.
2.1	SGRWMAC	“The SGRWMAC supports the removal of Fecal Coliform Objectives from the Los Angeles Region Basin Plan. Analyses of Fecal	Comment noted.

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		Coliform and E. coli generally provide similar or overlapping information, but the former appears less correlated to sewage contamination. Performing overlapping analyses has been a resource drain on both the regulatory and regulated communities. Indicator bacterial (Most Probably Number or MPN) analyses have notoriously imprecise reproducibility and having two essentially overlapping methods doubled the chance of non-compliance due to false positive from the methods wide confidence interval around a determined value.”	
2.2	SGRWMAC	“Objection to the inclusion of the “Incorporation of Comments by Reference” paragraph in the Public Notice. The inclusion of this paragraph is contrary to the intent of transparent and open government actions. Whenever previously submitted comments to the Regional Board are referenced or reiterated in comments to the State Board, they should remain part of the hearing record to demonstrate the consideration of all opinions and facts related to the issue before the State Board.”	The language in the State Water Board’s Notice of Opportunity for Public Comments (Notice) is consistent with the State Water Board’s regulations implementing the California Environmental Quality Act (CEQA). (Cal. Code Regs., tit. 23, § 3779, subd. (f).). This comment has no bearing on the final amendment adopted by the Los Angeles Water Board proposed for State Water Board approval. The State Water Board is not required to respond to comments that express an opinion concerning the validity of the State Water Board’s regulations for implementing CEQA, codified at California Code of Regulations, title 23, chapter 27 (section 3720 et seq.). Please also see response to comment 0.1.
2.3	SGRWMAC	“Lack of Clarity Regarding Identification of	The Notice expressly directs interested parties to

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		<p>Version. The Public Notice directs those submitting comments to address which version of the amendment those concerns reference, without providing an obvious means of doing so. The amendment linked in the public notice has no obvious version number or date attached to it, so that the only reference the public can make is through the very link provided in the Public Notice.”</p>	<p>the State Water Board’s website address which contains the version of the amendment being considered by the State Water Board. In addition, the Notice expressly states that the amendment, agenda language, and draft resolution may be received by mail by contacting the State Water Board staff by either phone or email. Please also see response to comment 2.2.</p>
2.4	SGRWMAC	<p>“Response to Comments Posted. The June 8, 2011 Public Notice makes reference to “commenter must explain why and in what manner each of the responses provided by the Los Angeles Water Board to each comment was inadequate or incorrect”. Along with these SGRWMAC comments we are providing the April 19, 2010 comments provided by Dr. Susan Paulsen of Flow Science Incorporated, on behalf of the City of Signal Hill. Several of these comments relate to the challenges that will remain in utilizing the E. coli water quality objectives, even after the Fecal Coliform objective is removed. In the Los Angeles Regional Board response to comments 1.3 to 1.8 http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/NoticeOfAvailability/Response%20to%20Comments_CEQ_A%20scoping.pdf staff cavalierly asserted “This</p>	<p>See responses to comments 0.1 and 2.2. State Water Board staff agrees with the Los Angeles Water Board staff’s assertion that this and the comments previously submitted by Dr. Susan Paulsen have no bearing on the proposed amendment. The use of E. Coli as an indicator for bacteria in freshwaters designated for water contact recreation is not under review or discussion in this amendment. This amendment proposes to simply remove the fecal coliform objectives for freshwaters designated for water contact recreation, and comments should be restricted to that topic. The State Water Board is not required to respond to comments that express a concern about an issue not presently under consideration by the State Water Board.</p> <p>This being said, the USEPA continues to recommend E. coli as the ambient water quality</p>

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		<p>comment has no bearing on the proposed action...” and “The proposed amendment is narrow in scope.” The State Board should be aware that their action will not result in a quantum improvement in analytical methods or objectives. Both Fecal Coliform and E. coli are weak analytical methods, the results of which have broad confidence intervals, that are poorly suited for making regulatory or enforcement decisions related to human health risk from sewage contamination. We concur with the Board staff that of the two methods, the Fecal Coliform is weaker and should be culled, but by the same token, the Board should be cautioned not to put undue faith in results from the E. coli method, especially when sources of human sewage are not evident.”</p>	<p>criteria to protect recreational uses of freshwaters pursuant to CWA section 304(a) and, where necessary, to promulgate ambient water quality criteria for E. coli for States, Territories or Tribes pursuant to CWA section 303(c) (see, for example, Water Quality Standards for Coastal and Great Lakes Recreation Waters, Federal Register: November 16, 2004 (Volume 69, Number 220) pp. 67217-67243; National Recommended Water Quality Criteria at http://water.epa.gov/scitech/swguidance/standards/current/index.cfm (accessed on 7/11/11).</p>
2.5	SGRWMAC	<p>“Future Board Consideration of the Los Angeles River Bacterial TMDL and REC 2. Many of the same methodological and implementation limitations, and similarly terse staff responses, are apparent in the June 10, 2010 response to comments 3-3 through 3-6 submitted by the Los Angeles County Department of Public Works (http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/NoticeOfAvailability/Response%20to%20Comments.pdf).</p>	<p>See responses to comments 0.1 and 2.2. This amendment is not considering changes to the objectives for freshwaters designated for non-contact water recreation. The Los Angeles River Bacteria TMDL is a separate proposed amendment with its individual comment period and comments associated with that amendment should be directed accordingly. The State Water Board is not required to respond to comments that express a concern about an issue not presently under consideration by the State Water Board.</p>

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		The Board should be made aware that near term actions to come before it are based at least partially on past use of the very analytical method being repudiated through this current Board action. Partially because it appears that the Fecal Coliform standard could still be applied to REC 2 (non-contact) beneficial objectives. The future potential fiscal implications of these decisions are staggering for the Los Angeles County MS4 Permittees.”	
2.6	SGRWMAC	“Once again, we appreciate the opportunity to provide comments and support both the Regional and State Board staff recommendations to remove the Fecal Coliform REC1 and LREC1 Water Quality Objectives and only wish that the Regional Board had expanded the amendment to apply similarly to REC2 objectives.”	Comment noted.