

DRAFT Comment Summary and Responses
Implementation Plan for the U.S. EPA-Established
Malibu Creek Nutrients TMDL and Malibu Creek and Lagoon Sedimentation and Nutrients TMDL
Comment Due Date: January 26, 2017

Date Received	Author
1/17/17	1. Las Virgenes-Triunfo Joint Powers Authority (JPA)
1/26/17	2. Ventura County Watershed Protection District (VCWPD)
1/25/17	3. E. D. Michael

No.	Author	Comment	Response
1.1	JPA	<p>The JPA worked extensively with staff at the Los Angeles Regional Board during development of the Implementation Plan, supports their efforts and recommends approval of the proposed Basin Plan Amendment.</p> <p>The JPA and Regional Board staff developed mutually agreeable conditions in the Implementation Plan, which the JPA feels are reasonable and achievable. The JPA is committed to the continued stewardship of the Malibu Creek Watershed and shares the State’s goals to protect in-stream biology and habitat. As part of this commitment, the JPA has already initiated a program to achieve significant additional nutrient reductions through the construction of an advanced water treatment facility. The ambitious program is the culmination of an eighteen-month stakeholder process to identify and evaluate alternatives to minimize discharges into Malibu Creek. The facility will enable indirect potable reuse of the excess recycled water from the Tapia Water Reclamation Facility. A significant</p>	Comment noted.

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		<p>effort is required, including an estimated investment of \$95 million. When completed, the JPA will be one of the first water agencies in the state to implement indirect potable reuse through reservoir augmentation, which will protect in-stream habitat and advance the prudent use of California’s limited water supply.</p> <p>The success of this program is largely dependent upon public acceptance, which the JPA is confident can be achieved within the thirteen and a half years specified in the Implementation Plan. While the JPA is confident that this time frame provides enough time to both address the complex challenges of building an advanced water treatment facility and gain public acceptance, it is still an extremely tight time frame. This was recognized by Regional Board staff during discussions on the Draft Implementation Plan when the time frame was extended from ten years. The JPA appreciates the Regional Board’s willingness to provide adequate time to ensure program success. The attached timeline highlights the tasks to be completed in the period provided.</p> <p>The JPA is committed to minimizing nutrient discharges to Malibu Creek and we look forward to continuing to work with Regional Board staff to protect water quality and natural resources in the watershed.</p>	

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2.1	VCWPD	<p>Our comments are limited to the fact that the proposed amendment does not include primary property owners such as Rancho Simi Parks & Recreation District, U.S. National Park Service, Mountains Recreation and Conservation Authority, Conejo Open Space Conservation Authority, and California Department of Parks and Recreation who own approximately 51% of undeveloped lands in upper Malibu Creek Watershed (MCW), i.e., above Los Angeles County line.</p> <p>As estimated by U.S. Environmental Protection Agency during development of Malibu Creek Nutrients TMDL and referenced in the Regional Water Quality Control Board's TMDL Staff Report, these lands contribute 25.2% of the total nitrogen load and 5.5% of the total phosphorus load during the winter period and 9.3% of the total nitrogen load and 10.6% of the total phosphorus load during the summer period. Upper MCW offers opportunities for recreation including equestrian uses, which may need to be evaluated for Best Management Practices towards nutrient reduction and improvement of water quality. The primary land owners of undeveloped lands should be subject to the same requirements as Municipal Separate Storm Sewer Systems (MS4s) including monitoring requirements for lakes, assignment of load allocations (LAs), and monitoring and implementation requirements for the upper MCW or participation in watershed-wide approach if chosen.</p>	<p>Ventura County previously made a similar comment to the Los Angeles Water Board and the Los Angeles Water Board responded to it. The State Water Board reviewed and agrees with the Los Angeles Water Board's response to Comment Nos. 2.4 and 3.9 to Los Angeles Water Board Resolution R16-009, which states:</p> <p>The Nonpoint Source Policy provides the Regional Board flexibility in determining implementation requirements for load allocations assigned to nonpoint sources. In the case of the sedimentation load allocations, the proposed Implementation Plan before the Regional Board includes the same types of requirements for State and National Parks as for local agencies. For the sedimentation load allocations, it is reasonable to require implementation actions because State and National Parks can implement stream restoration projects and other management practices to reduce sedimentation in the watershed caused by eroding and incised stream banks under their jurisdiction. In the case of the nutrient load allocations, the</p>

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		<p>The proposed TMDL Implementation Plan provides an option to the Responsible Parties to develop a watershed-wide approach towards achieving LAs and wasteload allocations (WLAs), which can be done most efficiently and successfully if all primary property owners, MS4 and other TMDL Responsible Parties are participating. County of Ventura has been working on identifying opportunities for stormwater treatment control measures in upper Malibu Creek. It has come to our attention that significant portion of the stormwater runoff entering County's storm drain system comes from properties owned by other parties, especially large undeveloped areas upstream of the County's storm drain system. If primary property owners of undeveloped lands are involved in watershed-wide efforts, more opportunities for stormwater capture may present itself within jurisdictions of all participating parties.</p> <p>As proposed in the Proposed Amendment, the U.S. National Park Service and/or California Department Parks and Recreation were only listed under Cooperative Parties for Malibou Lake and Sherwood Lake, and to meet requirements for sedimentation below Malibou Lake (outside upper MCW). The Proposed Amendment does not require the U.S. National Park Service and California Department Parks and Recreation to address nutrients and conduct monitoring required for MS4s. Other primary property owners of undeveloped lands such as Rancho Simi Parks & Recreation District, Mountains</p>	<p>proposed Implementation Plan does not include the same types of requirements for State and National Parks in order to implement the nutrient load allocations. Instead, the proposed Implementation Plan includes monitoring requirements for State and National Parks to implement the nutrient allocations. This degree of implementation is adequate to address the controllable sources of nutrients from undeveloped land, such as littering, as recommended in the 2003 TMDL.</p> <p>In response the portion of the comment about monitoring requirements, State and National Parks have been added as responsible entities for the TMDL effectiveness monitoring. It is expected that they will cooperate with other responsible entities to implement a coordinated TMDL effectiveness monitoring program. Regarding the comment that additional agencies such as the Santa Monica Mountains Conservancy and the Mountains Recreation and Conservation Authority</p>

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		<p>Recreation and Conservation Authority, and Conejo Open Space Conservation Authority are not listed in the Proposed Amendment.</p> <p><i>Request: Include the Rancho Simi Parks & Recreation District, U.S. National Park Service, Mountains Recreation and Conservation Authority, Conejo Open Space Conservation Authority, and California Department of Parks and Recreation as responsible parties in the Proposed Amendment for monitoring and implementation plan development efforts within their jurisdictional areas at the comparable requirement levels as MS4s and other TMDL Responsible Parties.</i></p> <p>The proposed addition ensures that the primary property owners of the undeveloped lands in upper MCW are responsible for implementing TMDL requirements and willing to collaborate with local agencies towards the common goal of reducing nutrient levels and improving water quality in MCW.</p>	<p>be identified in the Implementation Plan, the lands owned by these agencies are located mainly above Malibou Lake and along the upper portion of Las Virgenes Creek. The proposed Implementation Plan takes a phased approach to implementation of the load allocations for these areas. The first phase is monitoring, and if the monitoring shows an impact on nutrient or sedimentation from these areas, then the Regional Board will revise the Implementation Plan to assign waste load and load allocations for specific jurisdictions in these areas.</p> <p>According to the State Water Board’s CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)) and the State Water Board’s Notice of Opportunity to Comment concerning this Basin Plan amendment, if the Los Angeles Water Board previously responded to the comment, then the commenter must explain why it believes that the Los Angeles Water Board’s response was inadequate. This comment submitted to the State Water Board is very similar to a comment submitted to the Los Angeles Water Board at the</p>

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			<p>time the draft version of this regulation was under consideration by the Los Angeles Water Board. Ventura County has not explained why the Los Angeles Water Board's response to this comment was inadequate or incorrect, but has instead reiterated and extended its original comment. Ventura County has provided additional information about the percent of undeveloped land specifically in the upper watershed, but has compared that number to the nitrogen and phosphorus loading from undeveloped land throughout the entire watershed, implying that the contribution of nitrogen and phosphorus specifically from undeveloped land in the upper watershed is greater than it actually is.</p> <p>The Los Angeles Water Board has correctly interpreted the TMDL load allocations for undeveloped land and has set appropriate monitoring and implementation actions in the proposed Implementation Plan, including a phased approach for undeveloped areas in the upper watershed. As stated in the Los Angeles Water Board's response, the State Water Board's Nonpoint Source Policy provides flexibility in determining implementation requirements for nonpoint sources. The Los Angeles Water Board</p>

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			<p>has adequately required implementation actions for nonpoint sources and identified responsible parties.</p> <p>The State Water Board agrees that if responsible parties work collaboratively to develop a watershed wide approach, the potential for more opportunities to capture stormwater may arise. To accommodate and incentivize this approach, the proposed Implementation Plan includes a watershed-wide compliance option to be attained in 15 years from the effective date of the Implementation Plan.</p>
3.1	E. D. Michael	I have prepared a paper that I hope the Board will consider even though it may be received a day or so after the January 26 deadline. The Malibu Creek drainage area certainly needs the continued attention of the State Water Resources Control Board.	The paper was not submitted in time to be included in the record for this item. The commenter is welcome to submit information to the Los Angeles Water Board or State Water Board at any time and the information will be considered as appropriate in future actions. The assertions from the paper as summarized in this comment letter are responded to below.
3.2	E. D. Michael	<p>With regard to the subject proposed Implementation Plan, the following assertions summarized from my paper should be considered.</p> <p>1. TMDLs cannot rationally be applied to the Malibu Creek drainage area until its hydrodynamic character, which so far has been ignored, is fully understood.</p>	The proposed Basin Plan amendment is an Implementation Plan for two TMDLs previously established by USEPA. Any changes to the technical portions of the previously established TMDLs are outside of the scope of the action.

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			<p>Additionally, this comment was not raised before the Los Angeles Water Board, nor did the commenter provide an explanation of why the commenter was unable to raise the specific comment before the Los Angeles Water Board. According to the State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)) and the State Water Board's Notice of Opportunity to Comment concerning this Basin Plan amendment, the commenter must include either a statement that each of the comments was timely raised before the Los Angeles Water Board or an explanation of why the commenter was unable to raise the specific comment before the Los Angeles Water Board.</p>
3.3	E. D. Michael	2. The Malibu Creek drainage area is absolutely unique; as such, TMDLs for it cannot be based statistically on conditions of other drainage areas except possibly as applied to certain limited processes.	See response to comment 3.2
3.4	E. D. Michael	3. Neither the Malibu Lagoon Restoration and Enhancement Project facility nor any part of it is a wetland, and attempts to apply CRAM analysis to it as a measure of its environmental character are meaningless.	See response to comment 3.2

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3.5	E. D. Michael	4. A “black goo” which covers the MLREP facility channel bottoms appears to be an unnatural substance the origin and chemical character of which needs to be determined as a first step in assessing the facility’s environmental value, particularly in terms of whatever benthic community it may support.	See response to comment 3.2
3.6	E. D. Michael	5. Waters in the channels of the MLREP facility do not circulate in the accepted sense of the term, <i>i.e.</i> , by circuitous flow; rather, they drain and receive waters in a manner involving some sort of mass transfer and replacement this is not understood.	See response to comment 3.2
3.7	E. D. Michael	6. Sedimentation rates in Malibu Creek drainage area streams, as in streams everywhere, are strictly a function of streamflow velocity and sediment grain size; therefore, because it is not possible to control such rates, sedimentation TMDLs for that area would be environmentally meaningless and impossible to maintain.	See response to comment 3.2