

Comment Summary and Responses
McGrath Lake, Polychlorinated Biphenyls (PCBs), Organochlorine (OC) Pesticides,
and Sediment Toxicity TMDL
Comment Deadline: 12pm November 30, 2010

1. Hinson and Gravelle LLP – representing the California Hugos
2. Heal the Bay

No.	Author	Comment	Response
0.1	Multiple	Many of the comments submitted in opposition to the State Board’s approval of this BPA were previously submitted to the Los Angeles Water Board and submitted verbatim to the State Board, without further explanation.	<p>Many of the individual comments submitted to the State Water Resources Control Board (State Water Board) on this matter are identical to a comment submitted to the Los Angeles Water Quality Control Board (Los Angeles Water Board) at the time the draft version of this TMDL was under consideration. As part of its consideration process, the Los Angeles Water Board provided written responses to all of the comments it received. The Los Angeles Water Board’s responses either indicated that changes would be made to the regulatory provisions or to the related documentation in response to 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 included the reason.</p> <p>Where a commenter merely repeats a comment that was originally tendered to the Los Angeles Water Board on a prior version of a BPA, 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</p>

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			<p>comment. Specifically, in those cases where the Los Angeles Water Board made changes in 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 whether the commenter believes that the response was inadequate.</p> <p>Where a commenter has merely repeated a comment submitted before, 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. State Water Board staff will review the Los Angeles Water Board's responses to ensure that they are thorough and address the specific question presented.</p>
1.1	Douglas Gravelle	"There is an inadequate discussion of the reasonably foreseeable environmental impacts of dredging in the substitute environmental documents."	The commenter states that between 2,900 and 8,600 truckloads may be needed if dredging is deemed as a compliance strategy. This same argument was presented to the Los Angeles Water Board during its adoption hearing on October 1, 2009 at which point the commenter states between 2,000 and 6,000 truckloads may be needed. As Los Angeles Water Board staff responded then, if you divide the

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			<p>truckloads by a 90 day dredging period, for example, then this would equal between 32 and 98 truckloads a day. Based on the comment provided at the Los Angeles Board hearing and in the November 24, 2010 comment letter, there is no reason to presume that that number of truckloads, over the time it would take to dredge, could possibly yield a significant impact above the current levels of traffic on Highway 126 and I-5, which is the probable route to the Kettleman City or Buttonwillow landfills. Furthermore, in the CEQA document, Los Angeles Board staff identified potentially significant impacts for both air emissions and traffic with respect to the use of heavy equipment at the lake and the installation of BMPs for the Central Ditch. Thus, the Los Angeles Board has analyzed the potential air and traffic impacts that could result from implementation of this TMDL and has proposed mitigation measures for those potential impacts. State Water Board staff believes that the Los Angeles Water Board completed an adequate first-tier review of the environmental impacts of dredging. A first-tier review is appropriate because the Los Angeles Board is not requiring dredging and in fact is precluded from establishing specific means of compliance, but instead is simply identifying it as one possibility. Thus a project level evaluation is not warranted. Inclusion of a deadline to complete implementation actions</p>

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			<p>does not change that.</p> <p>The Los Angeles Water Board staff responded adequately to these comments during oral testimony at the October 1, 2009 adoption hearing and does not need to provide written responses in addition to the oral comments. See response to comment 0.1.</p>
1.2	Douglas Gravelle	"There is an inadequate analysis in the staff report on the economic factors associated with dredging."	<p>Los Angeles Water Board staff examined the reasonable range of economic factors associated with dredging the lake sediments and disposing them into a Class III disposal facility (staff report pgs 12-98). The commenter contends that the dredging material must be disposed of in a Class I facility. The commenter uses the highest levels of measured contaminants as evidence that the dredged material will need to be disposed of in this manner. However, as Los Angeles Water Board staff responded in the October 1, 2009 adoption hearing, staff used the Port Hueneme Harbor project as a basis for the costs associated with this type of dredging because that was similar project and the levels of contamination in the sediments at both sites are similar. There were a range of contaminant concentrations in existing sediment data for McGrath Lake and Port Hueneme. For some samples and pollutants, the concentrations at McGrath were higher than at Port Hueneme, and for other samples and pollutants, the concentrations at McGrath</p>

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1.3	Douglas Gravelle	"The proposed 14 year deadline for lake sediment load allocations is too short, and thus effectively leaves dredging as the only option."	<p>The Los Angeles Water Board staff report analyzed three possible compliance strategies for the in-lake sediment load allocations: (1) monitored natural attenuation, (2) in-situ capping, and (3) dredging. The staff report does not recommend any one strategy over another, although it does state that dredging would remove the contaminants most quickly. Staff analysis shows that natural attenuation could take decades and possibly centuries to work, which is longer than the implementation schedule, so cooperative parties will not likely chose this option. Staff analysis does not rule out in-situ capping, but, as the staff report states, a feasibility study would be necessary before this option could be implemented. While the commenter may infer that dredging is the preferred method of compliance, the Los Angeles Water Board does not state that is the only method of compliance. Indeed, the Los Angeles Water Board does not state that the three identified alternatives are the only methods of compliance. It is up to the cooperative parties identified to develop a compliance strategy and submit it to the Los Angeles Water Board Executive Officer for approval.</p> <p>Los Angeles Water Board Staff believes that a</p>

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			<p>14-year implementation schedule, with 10 years for the Central Ditch allocations followed by four years for the lake sediment remediation, is sufficient. This schedule balances the need for coordination of large projects with the need to timely address impairments. It allows time for cooperative parties to negotiate a memorandum of agreement, develop a lake water quality management plan, identify funding sources, and chose a remediation strategy based on the recommendations of the lake water quality management plan.</p> <p>The Los Angeles Water Board staff responded adequately to these comments during oral testimony at the October 1, 2009 adoption hearing and does not need to provide written responses in addition to the oral comments. See response to comment 0.1.</p>
1.4	Douglas Gravelle	"The BPA fails to vest discretion with the Executive Officer to account for the lack of funds for lake bed remediation."	The Basin Plan Amendment states" The MOA shall include development of the McGrath Lake Work Plan (MLWP), which must be approved by the Executive Officer, and may be amended with Executive Officer approval, as necessary. Implementation of the MOA shall be reviewed annually by the Executive Officer as part of the Monitoring and Reporting Plan (MRP) annual reports." Furthermore, it states, "The Executive Officer may require a revised MLWP to reflect the results of data obtained through TMDL implementation." State Board staff

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			<p>believes this language is adequate in giving the Los Angeles Water Board Executive Officer discretion to account for data and funding in the implementation process.</p> <p>The Los Angeles Water Board staff responded adequately to these comments during oral testimony at the October 1, 2009 adoption hearing and does not need to provide written responses in addition to the oral comments. See response to comment 0.1.</p>
1.5	Douglas Gravelle	"There is no legal authority for setting load allocations for lake bed sediments"	<p>State Water Board Staff disagrees. The Los Angeles Water Board staff's use of ERL's to determine concentration based load allocations for sediment is scientifically accurate. The lake bed sediments are clearly part of the receiving water, as the 303(d) listing is for pollutants in sediment and sediment toxicity. Furthermore, the precedent has been set and approved by the State Water Board, Office of Administrative Law (OAL), and U.S. EPA for projects including but not limited to: Calleguas Creek OC pesticides, PCBs, and Siltation TMDL, the Marina del Rey Harbor Toxic Pollutants TMDL, Ballona Creek Estuary Toxics TMDL, and most recently the Colorado Lagoon OC pesticide, PCBs, sediment toxicity, PAH and metals TMDL (pending OAL and USEPA approval). Furthermore, the lake bed sediments are correctly assigned load allocations because, as stated in the staff report, through re-suspension and desorption, the sediments are</p>

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			<p>discharging pollutants to the water column and throughout the food chain. The staff report includes a linkage analysis of the link between concentrations of pollutants in the water and sediment.</p> <p>The Los Angeles Water Board staff responded adequately to these comments during oral testimony at the October 1, 2009 adoption hearing and does not need to provide written responses in addition to the oral comments. See response to comment 0.1.</p>
1.6	Douglas Gravelle	"The description of cooperative parties should be revised to more accurately reflect the intent and scope of the BPA."	<p>Los Angeles Water Board Staff has determined, through an examination of property records and previous reports, that the greater McGrath family once owned the majority of the property in the McGrath Lake subwatershed and that the greater McGrath family now owns approximately 300 acres of the subwatershed. In June 2009, prior to the release of the TMDL for public comment, staff met with Charles Conway and William McKee to discuss the TMDL and BPA. At that meeting, staff and these representatives from the California Hugos discussed the historical and current property ownership in the subwatershed. As a result, Los Angeles Water Board staff proposed to use the general term "McGrath family" to identify cooperative parties for the lake sediment load allocations. The Basin Plan Amendment Language allows for any cooperative party identified to be</p>

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			<p>included in the MOA and MLWP process.</p> <p>The Los Angeles Water Board staff responded adequately to these comments during oral testimony at the October 1, 2009 adoption hearing and does not need to provide written responses in addition to the oral comments. See response to comment 0.1.</p>
1.7	Douglas Gravelle	"Other"	<p>The commenter incorporates previously submitted comments by other entities to the Los Angeles Water Board stating that the Los Angeles Water Board staff responses were inadequate based on the issues discussed above. In responding to comments 1.1 through 1.6, State Water Board staff has effectively responded to most of these comments by association. Regarding the comment concerning the Los Angeles Board statement that the implementation timeframe should be different for a terminal, shallow, back-dune lake, this statement is a summary of other comment responses and the analysis in the staff report. The fact that McGrath is terminal and shallow means that there is less removal or burial of contaminated sediments and thus lake sediment remediation is necessary (see staff report). The fact that it is a small back-dune lake refers to the fact that the watershed that drains to the lake is small and less time is needed to come into compliance (see original response to comment No. 5.7 on Los Angeles Water Board TMDL).</p>

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2.1	Kirsten James and Susie Santilena	"We believe the Draft TMDL is the best way to meet the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act, and thus, strongly support the proposed TMDL."	Comment noted.