

TENTATIVE RESOLUTIONS TO SUPPORT THE EFFORTS OF JURISDICTIONAL GROUPS 1 AND 4 TO ACHIEVE THE SANTA MONICA BAY BEACHES WET WEATHER BACTERIA TMDL USING AN INTEGRATED WATER RESOURCES APPROACH
RESPONSIVENESS SUMMARY FOR COMMENTS RECEIVED BY MARCH 20, 2006

Table 1. List of commenters submitting written comments before the close of the public comment period.

Comment #	Commenter	Date Received
1	Heal the Bay	3/20/06
2	Los Angeles County, Department of Public Works	3/20/06

Note: The comment # above corresponds to the first number in the Comment Number field in Table 2.

Table 2. Responsiveness summary for written comments submitted before the close of the public comment period.

COMMENT NUMBER	SUMMARY OF COMMENT	RESPONSE	REVISION	LOCATION IN DOCUMENTS
1.1	Heal the Bay has significant concerns with regard to the sufficiency of these Draft Plans to meet the goals and expectations of an IWRP approach ... the Regional Board should not grant the jurisdictions another 8 years for implementation under the TMDL. Heal the Bay is ... concerned that the Draft Plans fail to demonstrate any technical quantitative nexus between the BMPs proposed and actual attainment of TMDL.	<p>Regional Board staff has addressed these concerns by adding three new "Resolves" to the tentative resolutions to encourage responsible jurisdictions and agencies to submit quantifiable estimates of the integrated water resources benefits of the proposed projects as well as quantitative objectives and estimates of the water quality benefits of the proposed projects. This information must be submitted to the Regional Board within 9 months to allow sufficient time for staff analyses prior to the Board's reassessment of the TMDL, scheduled for July 2007. These estimates will provide the necessary information to demonstrate (1) the proposed plans will meet the interim and final WLAs and (2) the proposed actions will result in additional benefits enumerated in the definition of an integrated water resources approach contained in the TMDL.</p> <p>The Regional Board will not make a final decision to grant a longer implementation schedule (beyond 10 years and up to 18 years from the effective date of the TMDL) until the TMDL is reconsidered in 2007. Prior to the re-consideration of the TMDL, the Regional Board will carefully evaluate the estimates described above for each Jurisdictional Group.</p>	Yes	Tentative Resolution (strikeout version), see new Resolves 5, 6 and 7

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1.2	<p>The Draft Plans do not meet the basic definition for an Integrated Water Resources Planning approach as defined in the TMDL. The Draft Plans should be revised to incorporate quantitative objectives for other water resource benefits and for other pollutant reductions. Without these minimum improvements, an additional 8 years should not be granted for implementation under the TMDL.</p>	<p>Regional Board staff concluded that the Implementation Plan meets the definition of an IWR approach at a conceptual level. At a broad scale, responsible jurisdictions and agencies proposed a combination of institutional solutions and structural BMPs. While institutional solutions focus on controlling sources of bacteria specifically, many of the proposed structural BMPs are focused on capturing, eliminating or reducing runoff at multiple points throughout subwatersheds, thereby addressing multiple pollutants rather than solely bacteria. Additionally, some of the proposed BMPs would capture runoff that would then be available for a source of non-potable water supply.</p> <p>Regional Board staff has added new Resolves to the tentative resolution to clarify the type of quantifiable estimates needed prior to the reconsideration of the TMDL to clearly demonstrate that an integrated water resources approach is being pursued and will convey significant additional water resources benefits.</p>	Yes	Tentative Resolution (strikeout version), revisions to Resolves 2 and 4, and addition of new Resolves 5 and 6.
1.3	<p>The Draft Plans fail to demonstrate that the proposed BMPs and Projects will actually meet the numeric targets of the TMDL.</p>	<p>Due to the iterative, adaptive approach outlined in the Implementation Plan, it is impossible to identify the final suite of proposed actions that will be employed to meet the final WLAs. However, Regional Board staff does agree that it is critical to identify quantitative objectives that will need to be achieved to meet interim and final WLAs. Furthermore, staff agrees that quantitative estimates of the water quality benefits of proposed projects to meet the first and second interim compliance deadlines, and later ones on an iterative basis, are important to provide assurance that agencies are on track to meet</p>	Yes	Tentative Resolution (strikeout version), addition of Resolves 5 and 7

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		TMDL compliance targets.		
1.4	The Draft Plan for Jurisdictional Groups 1 and 4 fails to adequately address septic tanks.	<p>In the Wet Weather TMDL, staff concluded that with the exception of isolated sewage spills, storm water runoff conveyed by storm drains and creeks is the primary source of elevated bacterial indicator densities to SMB beaches during wet weather. Thus, responsible jurisdictions and agencies have focused their implementation plans on managing stormwater runoff.</p> <p>However, the Wet Weather TMDL establishes a load allocation of zero days of exceedance for non-point sources. To address non-compliance related to non-point sources, the TMDL includes compliance provisions to address these sources. The TMDL states, "If a beach location without a freshwater outlet is out-of-compliance or if the outlet is diverted or being treated, the adjacent municipality, County agency(s), or State or federal agency(s) shall be responsible for conducting the investigation and shall submit its findings to the Regional Board to facilitate the Regional Board exercising further authority to regulate the source of the exceedance in conformance with the Porter-Cologne Water Quality Control Act."</p>	No	
1.5	The 1-4 Draft Plan fails to adequately address additional non-point sources: agriculture and golf courses.	See response to comment 1.4.	No	
1.6	The [Marina del Rey] implementation plan should be less focused on education and investigation, and more focused on structural BMPs and institutional controls such as new ordinances and enforcement.	The comment is not related to the Implementation Plan for Jurisdictional Groups 1 and 4, but is addressed in the Responsiveness Summary for the Marina del Rey Implementation Plan.	No	
1.7	The MDR plan does not provide a mechanism to reduce pollutant loads associated from runoff	The comment is not related to the Implementation Plan for Jurisdictional Groups 1	No	

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	sheet flow, the 700 drains, and compliance assurance programs for restaurants, boats and illicit connections and illegal discharges.	and 4, but is addressed in the Responsiveness Summary for the Marina del Rey Implementation Plan.		
1.8	The MDR plan does not provide any information on what areas in the watershed are appropriate for implementation versus those sites that are more appropriate for treatment BMPs because of high groundwater. Also, the plan does not include any commitment to runoff reuse in the watershed.	The comment is not related to the Implementation Plan for Jurisdictional Groups 1 and 4, but is addressed in the Responsiveness Summary for the Marina del Rey Implementation Plan.	No	
2.1	Page 1, Items 6 and 7, and Page 2, Item 10: It is recommended that the Dry Weather TMDL reference be deleted or statements be reworded for clarification by adding the phrase, "for the Wet Weather SMBB Bacteria TMDL only."	Findings 6 and 7 provide necessary background on the SMB Beaches Bacteria TMDLs and, specifically, the decision to adopt two TMDLs -- one for dry weather and one for wet weather. Finding 10 has been revised to clarify that the implementation plan provisions contained in the TMDL specifically relate to the Wet Weather TMDL. Furthermore, Findings 13, 16, 17 and 19 explicitly link the implementation plan requirements to the Wet Weather TMDL.	Yes	Tentative Resolution (strikeout version), Finding 10
2.2	Page 2, Item 13: It is recommended that the paragraph be modified to reference the Wet Weather TMDL specifically.	Finding 13 was deleted from the tentative resolution because it was redundant with Finding 19. Finding 19 includes an explicit reference to the provisions of the Wet Weather TMDL.	Yes	Tentative Resolution (strikeout version), deletion of Finding 13
2.3	Page 4, Item 24: It is recommended that the paragraph be modified to reflect 4 instead of 6 committed local on-site structural measures and 4 subregional rather than "regional" pilot projects pending the results of feasibility studies.	Staff made the requested changes to the finding.	Yes	Tentative Resolution (strikeout version), revisions to Finding 23
2.4	Page 5, Item 26: It is recommended that the paragraph be modified to include the dates of the two stakeholder workshops held during the development of the implementation plan.	Staff made the requested changes to the finding.	Yes	Tentative Resolution (strikeout version),

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2.5	Page 5, Item 5: Responsible agencies acknowledge the need for reporting, however, annual reporting would be difficult, resource-intensive and inappropriate. The elements of a TMDL reporting program should be decided and agreed upon within the context of the Report of Waste Discharge and the final permit. It is recommended that the specific requirements for the reporting program in this item be deleted.	Staff has revised the tentative resolution to reflect that the Board should direct staff to <i>develop draft language for Board consideration</i> that incorporates into the Los Angeles County Municipal Separate Storm Sewer System (MS4) NPDES permit at reissuance explicit requirements for responsible jurisdictions and agencies to submit regular reports to the Board on progress toward achieving the required reductions set forth in the TMDLs.	Yes	revisions to Finding 25 Tentative Resolution (strikeout version), revision to Resolve 8
2.6	Page 5, Item 5 and Page 6, Item 6: The California Department of Transportation has a separate permit. It is recommended that reference be made to other NPDES permit(s) to include all responsible agencies.	Staff has revised the tentative resolution by adding an additional Resolve to state that, "The Regional Board anticipates the California Department of Transportation (Caltrans) as a responsible agency to work cooperatively with the responsible jurisdictions and agencies under the Los Angeles County MS4 NPDES permit to achieve compliance with the Santa Monica Bay Beaches Bacteria TMDL, including requirements as set forth pursuant to (8) and (9) above. In the event that Caltrans decides to proceed independently to address compliance with the TMDL, Caltrans will be required to meet the significant dates for responsible jurisdictions and agencies not pursuing an integrated water resources approach as contained in Attachment A to Resolution No. 2002-022, Table 7-4.7."	Yes	Tentative Resolution, addition of Resolve 10
2.7	Page 6, Item 6: It is assumed that the intent of the reference to "providing the opportunity for public comment" is that any reopener of the TMDL provisions of the MS4 permit will include a full and open adjudicative hearing.	The TMDL "Elements" table (Table 7-4.4) states under "Implementation" that "[e]ach NPDES permit assigned a waste load allocation shall be reopened or amended at reissuance, in accordance with applicable laws, to incorporate the applicable waste load allocation(s) as a permit requirement." The Regional Board will	No	

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		comply with all applicable laws, including the laws providing for notice, comment, and a hearing when it amends the MS4 permits.		
2.8	Page 6, Item 6: The Porter-Cologne Act restricts the Regional Board from specifying the particular manner in which compliance with a waste discharge requirement or other order of the Board may be achieved. This limitation will, of course, apply to the specification of additional implementation actions with respect to the TMDL.	The Regional Board agrees that Water Code section 13360, subdivision (a) may apply if additional implementation actions are specified in the MS4 permits, but that issue will be addressed at the time of permit amendment.	No	
2.9	Page 6, Item 6: Because the TMDL implementation provisions are being adopted in the context of an MS4 permit, any such provisions are, of course, subject to the Maximum Extent Practicable standard.	The Regional Board has the authority to impose standards that are stricter than the "maximum extent practicable" standard in MS4 permits. Building Industry Association of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866.	No	