

TENTATIVE RESOLUTION TO SUPPORT THE EFFORTS OF THE RESPONSIBLE JURISDICTIONS TO ACHIEVE THE MARINA DEL REY HARBOR MOTHERS' BEACH 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.

Letter Number	Commentor	Date Received
1	Mark Gold, Heal the Bay	3/20/06
2	Donald L. Wolfe, County of Los Angeles Department of Public Works	3/20/06
3	Cathy Chang, City of Culver City	3/20/06

Note: The letter number 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	<p>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. In addition, Heal the Bay is significantly concerned that the Draft Plans fail to demonstrate any technical quantitative nexus between the BMPs proposed and actual attainment of the TMDL.</p>	<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 final WLAs and (2) the proposed actions will result in additional benefits enumerated in the definition of an integrated water resources approach.</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 Santa Monica Bay Beaches Wet-Weather Bacteria 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 the Marina del Rey jurisdictional group.</p>	Yes	Tentative Resolution (strikeout version), addition of 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	<p>Tentative Resolution (strikeout version), revisions to Resolves 2 and 4, and addition of new Resolves 5 and 6.</p>
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 final WLAs. Furthermore, staff agrees that quantitative estimates of the water quality benefits of proposed projects to be implemented during Phases I and II, and later ones on an iterative basis, are important to provide assurance that agencies are on track to meet TMDL compliance.</p>	Yes	<p>Tentative Resolution (strikeout version), addition of new Resolves 5 and 7.</p>

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1.4	The Draft Plan for Jurisdictional Groups 1 and 4 fails to adequately address septic tanks.	The comment is not related to the Implementation Plan for Marina del Rey Harbor, but is addressed in the Responsiveness Summary for Jurisdictional Groups 1 and 4.	No	
1.5	The 1-4 Draft Plan fails to adequately address additional non-point sources: agriculture and golf courses.	The comment is not related to the Implementation Plan for Marina del Rey Harbor, but is addressed in the Responsiveness Summary for Jurisdictional Groups 1 and 4.	No	
1.6	The Marina del Rey (MDR) 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 responsible jurisdictions and agencies have committed to implementing two structural BMP projects by 2010 and to evaluate five additional projects by 2021. In addition, they have committed to aggressively implement 13 institutional programs, including developing an inter-agency task force to ensure agency cooperation in the elimination of illegal and illicit connections and discharges. Also the responsible jurisdictions and responsible agencies have committed to conducting an ordinance review to evaluate the impacts of ordinances requiring down spouts from rooftops to discharge into landscape planters, swales, dry wells, or cisterns.	No	
1.7	The MDR implementation plan does not provide a mechanism to reduce pollutant loads associated from runoff sheet flow, the 700 drains, and compliance assurance programs for restaurants, boats and illicit connections and illegal discharges.	Since the late 1990s, roughly half of the leaseholds have proposed redevelopment plans, with currently about half a dozen projects underway. The Los Angeles County Department of Beaches and Harbor has been working with each lessee through negotiations and the entitlement process to incorporated on-site stormwater BMPs to eliminate the majority of the runoff that currently sheet flows across surface parking lots and through the small drain parcel drainage system.	No	
		As required by the TMDL, a Non-Point Source		

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		Study was begun in September 2005 and will be completed in October 2006. The Non-Point Source Study proposes to inspect sewer infrastructure in the Marina, investigate illicit boat discharges, and conduct visual observation of potential bacteria sources such as maintenance practices related to restaurants and other operations in the Marina. The Non-Point Source Study will identify and characterize these non-point sources of bacteria and recommend BMPs. The BMPs recommended will be implemented to address and control the identified non-storm and stormwater pollution sources.		
1.8	The MDR implementation 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.	Based on Regional Board staff comments on the draft Implementation Plan the final Implementation Plan included a fact sheet for each proposed structural BMP project. The fact sheets contain information regarding implementation and BMP selection based on limitations such as high groundwater. In addition, the fact sheets address the potential locations for runoff reuse and other integrated water resource criteria.	No	
2.1	Page 4, Item 22: It is recommended that finding 22 be modified as follows: "The responsible jurisdictions and agencies have committed to implement five <u>two</u> subregional structural solutions to be implemented <u>projects by 2010 and to evaluate five additional projects by 2021</u> 2011 . These five <u>seven</u> projects along with commitments to implement 13 aggressive institutional programs by 2012 are expected to achieve reductions in exceedance days beyond the allowable exceedance days set forth in the TMDL."	Staff made the requested changes to the finding.	Yes	Tentative Resolution (strikeout version), revisions to Finding 21.
2.2	Page 5, Item 5: Responsible agencies	Staff has revised the tentative resolution to	Yes	Tentative

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	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.	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.		Resolution (strikeout version), revisions to Resolve 8.
2.3	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.	Regional Board staff has revised the tentative resolution by adding a new resolve that states, "The Regional Board anticipates that the California Department of Transportation (Caltrans), as a responsible agency, will work cooperatively with the responsible jurisdictions and agencies under the Los Angeles County MS4 NPDES permit to achieve compliance with the Marina del Rey Harbor Mothers' Beach and Back Basins 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 achieve compliance with the wet-weather allowable exceedance days by March 2014."	Yes	Tentative Resolution (strikeout version), addition of Resolve 10.
2.4	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 7-5.1) states under "Implementation" that "Each 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 comply with all applicable laws, including the laws providing for notice, comment, and a hearing when it amends the MS4 permits.		
2.5	Page 6, Item 6: The Porter-Cologne Act restricts	The Regional Board agrees that Water Code		

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	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.	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.		
2.6	Page 6, Item 6: Because the TMDL implementation provisions are being adopted in the context of an MS4 NPDES 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.		
3.1	Page 4, Item 22: It is recommended that finding 22 be modified as follows: "The responsible jurisdictions and agencies have committed to implement five <u>two</u> subregional structural solutions to be implemented by 2010 and to evaluate five more by 2021 <u>2014</u> . These five <u>seven</u> projects along with commitments to implement 13 aggressive institutional programs by 2012 are expected to achieve reductions in exceedance days beyond the allowable exceedance days set forth in the TMDL."	Staff made the requested changes to the finding.	Yes	Tentative Resolution (strikeout version), revisions to Finding 21
3.2	Recognizing that this tentative resolution is not the ideal medium to address this concern, Culver City would like to formally request the Regional Board's cooperation in soliciting the Los Angeles Unified School District's (LAUSD) involvement whose cooperation is essential to the success of TMDL implementation efforts.	The Statewide Small Municipal Separate Storm Sewer Systems (MS4) Permit (Permit NO. 2003-0005-DWQ) is an NPDES permit that regulates non-traditional MS4s such as federal and state facilities including school districts. Under the Small MS4 Permit, non-traditional Small MS4s, such as the LAUSD, are not automatically designated for coverage. The Regional Board must first designate the LAUSD as a non-traditional Small MS4 before it is required to apply for coverage under the Statewide Small MS4 Permit. It is unlikely that all facilities in the	No	

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		LAUSD will be designated for coverage during the upcoming fiscal year. However, the Regional Board may soon consider taking a more strategic approach to addressing water quality in the Los Angeles Region, and may designate educational facilities in high priority watersheds like the Ballona Creek watershed, which includes the Marina del Rey subwatershed.		
3.3	The City of Culver City foresees that the role of the Regional Board in soliciting the necessary cooperation of the Air Resources Board and the AQMDs will be absolutely critical and vital to the successful implementation of Metals and Toxics TMDLs.	<p>The comment does not relate to the Marina del Rey Harbor Bacteria TMDL. However, the following response is provided for informational purposes.</p> <p>On February 9, 2006, the State Water Resources Control Board (State Board) and the California Air Resources Board held a joint workshop to receive information on the relationship between atmospheric deposition and water quality. This joint workshop was the first in what will be an ongoing dialog to address the relationship between atmospheric deposition and water quality issues. State Board has set up a web page where the February workshop presentations can found as well as where updated information will be posted http://www.waterboards.ca.gov/workshops/atmospheric.html.</p>	No	
3.4	Page 5, Item 5: Since Caltrans' storm water discharges are not regulated under the MS4 NPDES permit as the rest of the responsible agencies, it appears logical to also include equivalent requirements into the Caltrans' Statewide Storm Water Permit during its reissuance.	Regional Board staff has revised the tentative resolution by adding a new resolve that states, "The Regional Board anticipates that the California Department of Transportation (Caltrans), as a responsible agency, will work cooperatively with the responsible jurisdictions and agencies under the Los Angeles County MS4 NPDES permit to achieve compliance with the Marina del Rey Harbor Mothers' Beach and	Yes	Tentative Resolution (strikeout version), addition of Resolve 10.

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		Back Basins 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 achieve compliance with the wet-weather allowable exceedance days by March 2014."		
3.5	Culver City believes that reporting on the water quality improvements and BMP effectiveness, both of which require relatively long-term monitoring and trend analyses to be meaningful, should coincide with the milestones and the schedule outlined in the final Implementation Plan and the final Monitoring Plan. An annual submittal of the latter data could result in the unnecessary diversion of the limited resources available at the responsible agencies.	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	Tentative Resolution (strikeout version), revisions to Resolve 8.