Comment Summary and Response on July 20, 2009 Draft
McGrath Lake PCBs, Organochlorine Pesticides, and Sediment Toxicity TMDL

Public Comments
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1. McGrath Lake Subwatershed Landowners		
1.1	The undersigned are the owners of the real property located within what has been referred to in the above-referenced document as the McGrath Lake Subwatershed. Approximately 10 days ago, we were advised of the comments of this proposed Basin Plan Amendment, along with the tentative Board Resolution and draft Substitute Environmental Document. On August 4th, we met as a group to discuss the scheduled hearing on this proposed TMDL set before the Regional Board on October 1, 2009. This was our first opportunity to review the specific findings and recommendations found in the TMDL and accompanying documents.	Staff attempted to involve landowners early in the TMDL development process. Staff held a stakeholder meeting on January 28, 2009 and a CEQA scoping meeting on March 18, 2009. The landowners were invited to these meetings. At those meetings, staff proposed several approaches for remediating the contaminated lake sediments and invited comments. Staff discussed the fact that the sediment contamination is both a historical and current issue and, therefore, that current pollutant loads entering the lake as well as historical pollutant loads that are now sequestered in lake sediments would need to be addressed. In addition, staff met with representatives from the Ventura County Agricultural Irrigated Lands Group (VCAILG) on June 22, 2009, one month prior to the public release of the TMDL. At that meeting, staff provided attendees with a written copy of the BPA implementation language that assigned the lake sediment load allocations to the subwatershed landowners and specified the use of a MOA to secure funding to implement the load allocations. It was the understanding of staff that VCAILG would share the information conveyed by Regional Board Staff to the sub-watershed landowners. In June 2009, Regional Board Staff also met with

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			Charles Conway and William McKee, current landowners in the subwatershed, to discuss the TMDL and BPA. Regional Board Staff also provided a copy of the BPA implementation language at that meeting. Additionally, the public comment period allowed landowners 45 days, as required, to comment on the proposed TMDL. Since the public notice of the draft TMDL, Regional Board Staff as well as Regional Board counsel have met with the landowners and their attorneys on three occasions and have been in close e-mail communication regarding the landowners concerns and proposed language changes.
	1.2	The State Water Resources Control Board's stated policy and guidance documents emphasize the need for early stakeholder involvement in developing and designing TMDL implementation plans. The need for early stakeholder involvement was particularly critical here, because the proposed TMDL implantation plan seeks to address complex issues involving the management of non-point sources to control and remediate the effects of legacy pollutants for which responsibility cannot be easily assigned.	Comment noted. Please see response to comment 1.1.
	1.3	We are requesting that this matter be removed from the Regional Board's agenda for a minimum of 6 months in order that the Regional Board staff and stakeholders can jointly consider solutions and alternatives related to the proposed McGrath Lake TMDL. Our group would be willing to participate	Regional Board Staff has concluded that a delay in the consideration of the TMDL is not necessary at this time given the opportunities for input provided prior to the public notice as well as the meetings held with landowners and their representatives

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		in a series of meetings between the Board staff and others identified in the proposed TMDL document as "responsible parties". The goal of these meetings would be to discuss the implementation plan set forth in the proposed TMDL and to explore other implementation options.	since the public notice. Regional Board staff and counsel have worked closely with the landowners and their representatives to address their concerns through a series of revisions to the proposed BPA and staff report. Language in the staff report and the tentative BPA has been amended to clarify the intent of the TMDL, which is that the lake sediment load allocations will be addressed by a group of "cooperative" parties rather than "responsible" parties. The proposed implementation schedule provides two years after the effective date of the TMDL for cooperative parties to discuss and finalize a memorandum of agreement (MOA).
	1.4	We have been actively involved in the Ventura County Agricultural Irrigated Lands Group process. During that process, we have worked closely with the Regional Board staff and provided all requested information. At no time during this process has there been any discussion with us regarding your staff's recommendation that the Board adopt a resolution requiring a small group of landowners to bear not only the cost of completely eliminating legacy pesticide loads from the subwatershed but also the cost of remediating lake sediments contaminated with legacy pollutants that, by the staff's own admission, cannot be attributed in any significant degree to the alleged "responsible parties".	During meetings with the stakeholders regarding the development of the TMDL, as a group and in some cases individually, it was discussed that the current pollutant loads and the contaminated lake sediments would need to be addressed. The resolution (as publicly noticed and with subsequent proposed revisions) does not state that the cost of remediating the lake sediments will be the responsibility of landowners. The intent of the MOA is to establish a watershed group to secure public funding for the lake sediment remediation necessary to address the historical pollutant loading. The staff report does not state that the legacy pollutants cannot be attributed to responsible parties. The staff report states that, at this time, the

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			quantity is not attributable to individual responsible parties, but that sediment contamination is a historical *and ongoing* issue. With additional time and resources, a portion of the contamination could be attributed to all current landowners within the subwatershed and also to previous landowners.
	1.5	As we set forth above, we were surprised that the documents were submitted to us without the opportunity to meet with the Regional Board staff to assess our concerns. We do not feel that this matter has been properly vetted through that process.	Comment noted. Please see response to comment 1.1.
	1.6	The proposed documents estimate that $12,000,000 in remediation costs would be borne by responsible parties. In addition, there would be costs related to the monitoring of the sediment deposited in the Lake. It seems inequitable to us to propose imposing these types of costs on a small group of landowners without giving us the adequate opportunity to investigate, discuss and review options.	While the staff report does state that dredging of the lake might cost upward of $12 million, it does not state that landowners must bear those costs. That is not the intent of the TMDL implementation plan. The TMDL documents do state that the proposed MOA group (Regional Board included) will participate in fund acquisition activities to secure the money to remediate the lake sediments. Additional language has been added to the TMDL documentation to resolve the apparent misconception that, under the proposed MOA approach, the Regional Board is placing all responsibility (and the associated financial burden) of remediating the contaminated lake sediments on the current landowners. Staff has committed to participate in the MOA to apply for funding for the remediation. To that end, staff has added a resolved clause to the tentative resolution adopting the amendment giving direction to staff to begin working with cooperative parties to

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			apply for Cleanup and Abatement Account Funding to remediate the lake sediments.
	1.7	As you are no doubt aware, we are currently working with the Ventura Irrigated Lands Group to address issues regarding discharge of water to McGrath Lake, and remain committed to that effort. We, therefore, again request a continuation of this matter for at least 6 months. Would appreciate your office letting us know as soon as possible whether or not this matter will be taken off the agenda so that we can budget our time and resources to address the issues raised by the above-referenced TMDL.	Staff appreciates the ongoing work of VCAILG and landowners within McGrath Lake subwatershed. See response to comment 1.3.
2. Coultas Ranch Company, Robert Coultas			
	2.1	Coultas Ranch Co. is an agricultural operation located in the McGrath Lake Sub-watershed. The Proposed Amendment identifies our company as an agricultural discharger to the Central Ditch and, therefore, responsible for achieving both Central Ditch and lake sediment load allocations. We feel that the TMDL imposes unreasonable and unjustifiable financial burdens on our company, particularly with respect to the remediation of contaminated lake sediment.	See responses to comments 1.4 (second paragraph) and1.6.
	2.2	Recently, we met with two members of the Regional Board staff. The meeting was organized by certain landowners in the sub-watershed and prompted by the release of the TMDL for public review and comment. At that meeting, we expressed our frustration at not being provided adequate notice or an opportunity to participate in the TMDL development process. We also stated to the staff that we see no basis whatsoever for our company being responsible for cleaning up the lake sediment.	See response to comment 1.1. Staff acknowledges the quick organization by the landowners to set up meetings with staff to discuss their concerns prior to the end of the comment period. Because the landowners were proactive, staff was able to propose language changes to address the landowners concerns.

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2.3	Coultas Ranch Co. purchased the land in 1983 and didn't begin farming the land until 1984, long after the legacy pollutants in question were banned. Any legacy pesticides that were applied to the land by our predecessors were applied in accordance with the laws and regulations in place at the time of use. We do not understand why the Regional Board is assigning our company responsibility for cleaning up pollutants that we never used and that were legally applied by others.	The load allocations are for the ongoing and historical discharge of water- and sediment-bound legacy pollutants from agriculture and other lands in the subwatershed to the lake. While the application of these pollutants has been banned since the 1970s, they remain bound to the soils in the subwatershed and continue to be discharged to the lake via tile water, irrigation, soil manipulation, and storm water runoff. This is shown by the fact that the contaminants are currently being detected in the Central Ditch, which is presently flowing into the lake. Therefore, the current landowners in the subwatershed are responsible for a portion of the contamination in the lake. The current landowners have an interest in having the lake cleaned up. Given that joint interest, and the cooperation staff has received from the landowners, staff believes that this problem, which in large measure is sourced in legacy pollution, is preferably addressed through a voluntary approach, rather than a direct regulatory approach. That said, the Regional Board retains the responsibility to ensure that the pollution is cleaned up. Therefore the fall-back enforcement provisions are necessary to make clear that if voluntary efforts are not undertaken and adequately completed, the Board will be compelled to pursue a different approach. Some of the landowners' comments seem to convey a belief that this TMDL constitutes the Board's determination about which of them

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			would be liable and subject to a cleanup and abatement (or other) order should that approach be necessary. This belief is incorrect. This TMDL does not predetermine who should or would be subject to a subsequent enforcement proceeding. If that approach is necessary, the provisions of such orders, including the basis for naming any responsible party in any such order will be clearly articulated in the order, and the responsible party(ies) so named would necessarily have the right to challenge that determination by a petition for administrative review by the State Board or judicial review, as may be appropriate, at that time. Staff has added language to the BPA clarifying this process.
	2.4	There are many statements in the staff report that are not factually correct. For example, the report states that "there are two east-west subdrains that run across the Coultas Ranch, draining the central part of the property into the Central Ditch." This is **not** correct - we altered the drainage system for the property so that nothing has drained into the Central Ditch since 1988. In addition, the report leaves out lands that historically drained into the Central Ditch. Finally, the report fails to identify the lands draining into the Central Ditch that were brought into agricultural production after legacy pesticides were banned.	The staff report included a typographical error and it has been revised to state, “There are two east-west subdrains that run across the Coultas Ranch, draining the central part of the property into the ~~Central~~ Coultas Ditch.” However, this typographical correction does not change the fact that the Coultas Ditch drains to the Central Ditch and thus to McGrath Lake under certain flow conditions. According to the sources cited in the staff report, the drainage was modified so that the Coultas Ditch flows to the Santa Clara River during conditions up to a 10-year storm event and to the Central Ditch during conditions of a 10-year storm event or greater (VRSD, 2006).

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			The report does not leave out lands that historically drained to the Central Ditch or that drained to the ditch after the TMDL constituents were banned. See page 49 of the staff report for a discussion of the historical and current landowners in the subwatershed as well as the 1969 flood that brought flows to McGrath Lake from the Santa Clara River watershed. Finally, as the commenter states, the Coultas Ranch has been farming since 1984, and thus discharging to the lake for 25 years, during all flow conditions prior to 1998 and during certain flow conditions since 1998. The Coultas Ranch therefore contributed to a portion of the contamination of the lake sediments.
	2.5	Since purchasing our lands, we have been active participants in the Ventura County Agricultural Irrigated Lands Group (VCAILG). Attached to this letter, please find a list of the BMPs that we have implemented since 1983. We have attained at least 100% efficiency from the Fox Canyon GMA each year with over 198 acre-foot water credits on register with the efficiency program. Our tile water has tested clean and is clear low flowing. In short, we have demonstrated a commitment to doing what needs to be done to control the water quality impacts of our operations.	Staff acknowledges Coultas Ranch's participation in VCAILG since the adoption of the Conditional Waiver for Irrigated Lands, and their ongoing farm management activities. Staff notes that irrigation efficiency is one effective BMP to improve water quality. Additionally, BMPs to address tile drainage and storm water runoff will likely be necessary to attain the Central Ditch load allocations. Staff is unaware of tile drain sampling data from Coultas Ranch. This data could be useful in the development of the MOA and the MLWP.
	2.6	We will continue to participate in VCAILG as long as compliance requires reasonable, cost effective strategies. However, when the regulators move in the direction of forcing innocent	The TMDL will not force landowners to pay millions of dollars to clean up pollution for which they are not responsible. See response to

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		landowners to spend millions upon millions of dollars to clean up pollution for which they are not responsible, we seriously question whether continued involvement with VCAILG is worthwhile.	comment 1.6 and 2.3. It should be noted that the Conditional Waiver for Irrigated lands is not a voluntary program. While participation in VCAILG is not mandatory, enrollment in the Waiver is required by CWC section 13269.
	2.7	We support the comments of VCAILG, the Farm Bureau of Ventura County, the Ventura Regional Sanitation District, and SC Land, Inc., and leave the more detailed policy and scientific issues surrounding the proposed TMDL to them. Please incorporate their written and oral responses into the record of our responses.	Comment noted.
	2.8	Our present objective is to let the Regional Board know that this proposed TMDL is not only based on faulty assumptions and questionable facts, but also sets a dangerous precedent for the management and control of agricultural non-point sources - a precedent that threatens the future of the entire waiver/TMDL compliance program and the economic viability of farming operations throughout California. We urge the Regional Board not to adopt the proposed TMDL as currently drafted.	Staff disagrees that the TMDL is based on faulty assumptions or questionable facts. The TMDL is supported by data meeting quality assurance and quality control (QA/QC) requirements and detailed analyses. All assumptions are clearly stated and justified in the staff report. The TMDL contains a reasonable implementation plan that calls for voluntary cooperative efforts to attain the lake sediment load allocations. If the cooperative MOA approach does not result in attainment of lake sediment load allocations, staff will identify responsible parties and issue other regulatory orders, such as CAOs, to those parties as appropriate through a separate process. See also response to 2.3.

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3. Fred Van Wingerden (Cravens Lane Partners, Santa Clara Resources and Topstar Nursery)			
	3.1	These comments to the Proposed Amendment are submitted on behalf of three agricultural operations, Cravens Lane Partners, Santa Clara Resources and Topstar Nursery located on 120 acres in the McGrath Lake Sub-Watershed (Collectively referred to as "Operations"). The Proposed Amendment identifies our Operations as agricultural dischargers to the Central Ditch responsible for achieving both Central Ditch and lake sediment load allocations. The assignment of responsibility is based on inaccurate information and imposes an unreasonable and unjustifiable financial burden, particularly with respect to the remediation of contaminated lake sediment.	See response to comment 2.1.
	3.2	In a recent meeting organized by certain landowners in the sub-watershed and prompted by the release of the TMDL for public review and comment, we expressed frustration at not being provided adequate notice or an opportunity to participate in the TMDL development process. We also stated to the Regional Board staff that there is no basis whatsoever for our operations being responsible for cleaning up the lake sediment.	See response to comment 2.2.
	3.3	Our Operations began in 1979, after legacy pollutants were banned. Therefore, if any legacy pesticides were applied to our lands, they were applied by our predecessors in accordance with the laws and regulations in place at the time of use. There is no basis for the Regional Board to assigning responsibility to our Operations for cleaning up pollutants that we never used and that were legally applied by others.	See response to comment 2.3.
	3.4	We also want to point that the TMDL inaccurately reports that we are an agricultural discharger to the Central Ditch. Approximately four or five years ago, we made a substantial investment in a system of basins for sediment retention and	The staff report acknowledges the installation of these sedimentation basins (see page 36). However, the Operations began in 1979, and thus have been discharging to the lake for 30 years,

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		infiltration. The catch basins we constructed can handle up to a 20-year flood. Due to the drainage modifications we have implemented, our lands ultimately drain into the Santa Clara River not the Central Ditch.	during all flow conditions prior to approximately four or five years ago and during high flow conditions since approximately four or five years ago. The Operations therefore contributed to a portion of the contamination of the lake sediments.
	3.5	We are actively involved in VCAILG, and support the efforts of that group in actively managing and monitoring agricultural lands in Ventura County. That being said, we cannot support a regulatory approach that seeks to achieve important water quality objectives by forcing innocent landowners to pay millions of dollars to solve a problem they didn't cause.	See response to comment 2.5.
	3.6	We support the comments of VCAILG, the Farm Bureau of Ventura County, the Ventura Regional Sanitation District and SC Land, Inc., and leave the more detailed policy and scientific issues surrounding the proposed TMDL to them. Please incorporate their written and oral responses into the record of our responses.	Comment noted.
	3.7	Our present objective is to let the Regional Board know that this proposed TMDL is not only based on faulty assumptions and questionable facts, but also sets a dangerous precedent for the management and control of agricultural non-point sources - a precedent that threatens the future of the entire Waiver/TMDL compliance program and the economic viability of farming operations throughout California. We urge the Regional Board not to adopt the proposed TMDL as currently drafted.	See response to comment 2.8.

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4. U.S. EPA Region IX			
	4.1	The U.S. Environmental Protection Agency appreciates the opportunity to review the proposed McGrath Lake PCBs, organochlorine pesticides (OC), and sediment toxicity TMDLs and associated implementation plans. Thank you for your hard work in developing these TMDLs. The proposed TMDLs meet all federal regulatory requirements and will be approvable when submitted to the EPA. We strongly urge the Regional Board to adopt these TMDLs at the next board meeting to meet the state adoption requirements under the consent decree (Heal the Bay v. Browner, C. 98-48 25 SBA, March 22, 1999). Below, we provide comments and request clarification on several items in these TMDLs.	Comment noted.
	4.2	Please clarify the rationale for choosing concentration based allocations rather than mass load allocations.	Staff proposes concentration-based allocations rather than mass-based allocations due to the limited amount of paired data on the concentrations of TMDL constituents in sediments and the rate of sediment inflow to the lake. Furthermore, the concentration-based load allocations will address the variable water column concentrations and flow conditions and ensure that load allocations are attained year-round.
	4.3	Provide details as to whether McGrath Lake is being treated as salt water, fresh water, or both in these TMDLs. If the lake is considered brackish, please change the 4,4'-DDE sediment target to the TEL value rather than using the higher ERL value.	McGrath Lake ranges from brackish to saltwater and supports estuarine beneficial uses; thus, the ERLs for marine sediments are applied as numeric targets. Page 12 of the staff report states, "The lake water tends to be brackish (ESA, 2003), with salinity increasing north to south and with depth. Water in the deepest portions of the lake may reach high enough salinities to qualify as salt

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			water." This saltwater wedge creates an environment where the sediments and benthic community are in contact with saltwater; ERLs are applicable to this environment. The use of ERLs is supported by the fact that marine sediment quality guidelines were used in the 2002 and 2006 water quality assessments and are the basis for the listings in McGrath Lake. In addition, ERLs have been used in previous TMDLs for OC pesticides in estuaries (Mugu Lagoon and Ballona Creek Estuary) and are used in the proposed TMDL for Colorado Lagoon.
	4.4	We recognize the minimum detection limit (MDL) of certain laboratories is too high for determining compliance against a standard, resulting in different approaches used to address a non-detect sample. However, we request a consistent approach be used for all similar TMDLs. Specifically, half of the MDLs for non-detect samples were used to estimate the pollutant load from the Central Lagoon but the non-detect results from the URS groundwater study were considered negligible. Since groundwater supplies half of the water entering McGrath Lake, please expand upon this assumption and/or make your treatment of non-detect samples consistent.	None of the constituents were detected in the groundwater, while chlordane, DDT, and dieldrin were all detected in the surface water in several of the samples. Therefore, none of the groundwater concentration data were useful for a quantitative source assessment, while much of the surface water data were useful for a quantitative source assessment. Staff used ½ the detection limits for the rest of the surface water data that was below the detection limit in order to incorporate all of the surface water concentration data. The conclusion that groundwater is not a significant source is also supported by the very low water solubility values of the TMDL constituents.
	4.5	The Colorado Lagoon OC pesticides TMDL has a water quality criteria value for total DDT. Please make these TMDLs consistent or explain the difference.	CTR does not include a criterion for total DDT. Therefore, the McGrath Lake TMDL contains water column numeric targets for 4-4'-DDT, 4-4'-DDE, and 4-4'-DDD. The Colorado Lagoon TMDL will

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			contain a numeric target for 4-4'-DDT. Data analysis for Colorado Lagoon shows that DDT and its metabolites do not individually exceed criteria; therefore, the criterion for 4-4'-DDT shall serve as the target for the sum of DDT and its metabolites. Data analysis for McGrath Lake shows that DDT and its metabolites individually exceed criteria; therefore, the 4-4'-DDT, 4-4'-DDE, and 4-4'-DDD will serve as individual targets.
	4.6	Many of the oil and gas sites are exempted from stormwater regulations under the 2005 Federal Energy Policy Act. Please confirm that the oilfield located within the McGrath Lake watershed is exempt from stormwater regulations (pg. 31).	Staff was unable to confirm that this site is exempt from stormwater regulations under the 2005 Federal Energy Policy Act. However, during site visits during the development of the TMDL, staff observed no point source discharge to the lake or to a tributary to the lake from this site. The staff report has been updated to reflect this information. The staff report still concludes that there are no point source discharges in the subwatershed.
	4.7	Please clarify why there are five Jacobi et al. samples listed in Table 9 but only four Jacobi et al. samples listed in Table 8.	The additional sample in Table 9 was collected from the Central Ditch.
	4.8	Clarify the use of surface flow that is 30% lower than average to calculate the annual mass loading (Table 14).	This was the only year for which a hydrologic budget was developed. The staff report states that the rainfall for this year was 30% below average in order to provide context for the source estimate and in the interest of transparency.
	4.9	We have also reviewed the implementation plan, and would appreciate your addressing the following items: a) Incorporate sediment toxicity monitoring. b) Require compliance monitoring be conducted by a certified laboratory with the lowest available MDLs or with MDLs that are	a) Sediment toxicity has been added to the monitoring section of the TMDL. b) The TMDL already includes a requirement for the use of the lowest available laboratory detection limits (page 6 of the BPA). Staff is proposing

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		below the numeric limits. c) Clarify the regional board's plan for appropriately assigning implementation responsibility of the sediment loads amongst the landowners. d) Prioritize BMP categories (e.g., On-Farm BMPs, Treatment BMPs, Redirect Discharge BMPs, etc.) according to their effectiveness to achieve the load allocation, i.e., reduce erosion and improve water quality. e) Include more specific BMP cost, effectiveness and efficiency information. f) Reference BMP information and cost from similar implementation projects funded with CWA Section 319 funds within your board or other regional boards. g) Develop and include a prioritized list of On-Farm BMPs for reducing pesticide and other chemical use; optimize BMP implementation by recommending and identifying, per parcel of agricultural land, the most effective On-Farm BMPs to reduce erosion and pesticide use. Decision factors may include crop type, distance from drainage ditch, soil erosivity, irrigation schedule, pesticide application rates, BMP cost effectiveness, etc. (e.g., http://www.reeis.usda.gov/web/crisprojectpages/205098.html) h) Establish a VCAILG Conditional Waiver Discharger Subgroup of responsible parties to oversee BMP implementation in the McGrath Lake subwatershed and monitor load allocation achievement, erosion and pesticide-use reduction, and water quality improvement. i) Amend the VCAILG Water Quality Management Plan to include the McGrath Lake TMDL Implementation Plan.	language to modify this section of the BPA, but the intent and direction to require the lowest available detection limits remains. c) The TMDL appropriately groups the implementation of load allocations among the landowners in accordance with EPA guidance. d) Water Code § 13360 prohibits the Regional Board from specifying the manner of compliance with its regulations. Responsible parties for the Central Ditch load allocations will prioritize BMPs in the WQMP required by the Conditional Waiver. e) The staff report provides an adequate level of BMP cost and effectiveness information to comply with State law. f) The staff report provides adequate BMP cost information. g) Water Code § 13360 prohibits the Regional Board from specifying the manner of compliance with its regulations. Responsible parties for the Central Ditch load allocations will prioritize BMPs in the WQMP required by the Conditional Waiver. h) The TMDL provides adequate direction for implementing the TMDL to Regional Board staff overseeing the Conditional Waiver program. It should be noted that the 2007 and 2008 WQMP already groups the McGrath Lake subwatershed area for purposes of monitoring and BMP implementation. i) The TMDL provides adequate direction for implementing the TMDL to Regional Board staff overseeing the Conditional Waiver program.

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	4.10	These TMDLs state NPDES permitted discharges are not a source in the watershed and have therefore set waste load allocations equal to zero. As recognized in the submittal, if sources currently assigned a load allocation are later determined to be point sources requiring NPDES permits, those load allocations will be treated as wasteload allocations for purposes of determining appropriate water quality based effluent limitations pursuant to 40 CFR 122.44(d)(1).	Comment noted.
	4.11	The proposal to express the McGrath Lake PCBs, OC Pesticides, and sediment toxicity TMDLs and allocations on a concentration basis in water and sediment is consistent with federal regulatory requirements. Furthermore, the implicit margin of safety in the ERLs appropriately addresses the uncertainties related to the linkage analysis. EPA finds the proposed McGrath Lake PCBs, OC Pesticides, and sediment toxicity TMDLs have provided reasonable technical analysis using the best available data, information and scientific tools. In addition, multiple lines of evidence were considered and provided for all proposed TMDLs.	Comment noted.
5. Heal the Bay			
	5.1	On behalf of Heal the Bay, we submit the following comments on the Los Angeles Regional Water Quality Control Board's ("Regional Board") proposed TMDL for PCBs, Organochlorine Pesticides, and Sediment Toxicity in McGrath Lake ("TMDL" or "Draft TMDL"). We appreciate the opportunity to provide comments.	Comment noted.
	5.2	Heal the Bay supports many aspects of the proposed TMDL. In particular, we strongly support the inclusion of concentration-based load allocations (LAs) and sediment targets based on ERLs.	Comment noted.

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	5.3	Despite these positive aspects, Heal the Bay has a number of concerns regarding the proposed TMDL: ▪ The TMDL must clarify that compliance is mandatory. ▪ The TMDL contains conflicting information on effective date of load allocations. ▪ The TMDL fails to contain any explicit margin of safety to address the many uncertainties inherent in TMDL development. ▪ The TMDL proposes a number of implementation strategies that are ineffective means of preventing environmental degradation. ▪ The TMDL does not clearly present special studies as mandatory. ▪ The monitoring provisions of the TMDL are inadequate.	See specific responses to comments 5.5, 5.6, 5.7, 5.9, 5.11, 5.12, and 5.13.
	5.4	The basic tenet of the Clean Water Act TMDL program is "to attain and maintain" water quality standards. 33 U.S.C. § 1313(d). We feel these issues must be addressed in order for water quality standards to be attained. These issues are set forth in detail below.	Comment noted. Responses to the specific issues are given below.
	5.5	**The TMDL must clarify that compliance is mandatory.** The proposed Basin Plan Amendment states "The MOA shall detail the voluntary efforts that will be undertaken to attain the load allocations." (Page 8), and refers to a "non-regulatory	An MOA between cooperating parties and the Regional Board may be used to implement the lake sediment load allocations (LAs). This is a cooperative approach that allows Regional Board

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		implementation program" to be adopted by the Regional Board (Page 9). However, TMDL compliance is not voluntary. Both of these references are inappropriate, as they imply compliance efforts are optional and unenforceable. Please clarify what is meant by the MOA approach and how responsible parties will be held responsible for meeting load allocations.	staff to work closely with landowners during the implementation period and can be an effective way to address legacy pollutants from nonpoint source discharges and attain LAs for lake sediments. This approach to implementing LAs has been previously adopted by the Regional Board, such as in the Machado Lake Nutrient TMDL (Resolution No. R08-006). Moreover, the proposed Basin Plan amendment states that if the MOA is not established or implemented, or otherwise does not achieve the TMDL LAs, the Regional Board shall issue other appropriate regulatory orders to responsible parties in order to implement the TMDL and attain the LAs. The Basin Plan amendment ensures that if the MOA process is not successful, the TMDL LAs will be implemented through other Regional Board orders.
	5.6	**The TMDL presents contradictory information on when load allocations take effect.** The implementation schedule in the Draft TMDL Basin Plan Amendment mentions that load allocations apply on the effective date of the TMDL. However, tasks 5 and 10 of the implementation schedule outline milestones to implement and attain LAs. Based on this contradictory information, it is hard to tell when responsible parties must comply with the load allocations. The Regional Board must clarify.	Table 7-37.2 has been revised. Task 1 has been deleted. Central Ditch LAs shall be attained 10 years from the effective date of the TMDL. Lake sediment LAs shall be achieved 14 years from the effective date of the TMDL.

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5.7	**Regional Board should incorporate an explicit margin of safety into the load allocations of this TMDL.** The Regional Board does not provide an adequate margin of safety in the Draft TMDL, as there is no explicit margin of safety applied to the load allocations. Staff maintains that there is an implicit margin of safety because of "conservative assumptions" made when calculating the loading to the lake and in the choice of CTR human health criteria and ERLs as numeric targets for the sediment. However, due to the number of uncertainties associated with a dynamic natural system such as a lake, there is no way to quantify whether these assumptions are conservative enough to provide an adequate margin of safety. CTR criteria themselves have associated uncertainties. For instance, as described in the Federal Registry, "[a]n aquatic life criterion derived using EPA's CWA section 304(a) method might be thought of as an **estimate** of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses." (45 FR 79341.) … EPA's 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or **underprotection**. The approach EPA used is believed to be as **well balanced** as possible…**[emphasis added]**" 40 CFR part 131. Use of CTR criteria is not a conservative assumption that provides an implicit margin of safety, but it is good policy. We support the Regional Board's use of Effects Range-Low (ERL) values as the numeric targets for sediment within McGrath Lake because the ERLs are easily measured numeric	Staff disagrees with this comment. The TMDL includes an implicit margin of safety. EPA TMDL guidance states that an implicit margin of safety may be used if conservative assumptions were used in the TMDL analysis. Staff made several conservative assumptions in the development of this TMDL. For example, when calculating pollutant loading, staff did not assume that data points reported as non-detects were negligible. Staff also chose the most protective numeric targets for water and sediment. The reference to CTR aquatic life criteria is not applicable as the water column targets and load allocations are based on the human health criteria. It should be noted that the CTR human health criteria are already below available detection limits. The National Oceanic and Atmospheric Administration (NOAA) ERL sediment guideline used in this TMDL is the concentration below which

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	values that can function as effective indicators of healthy sediments. However, we do not agree that the use of ERLs incorporates an intrinsic margin of safety. For instance, ERLs do not account for any synergistic effects of multiple pollutants or effects related to bioaccumulation. In addition, the ERL represents a level below which toxicity is observed in one or more species and, therefore, leaves no margin of safety. Also, some McGrath Lake species could be more sensitive to pollutants targeted in this TMDL than the species observed in the development of the ERL values. Therefore, though they provide a more protective standard than other sediment quality guidelines, ERLs should not be considered to add an implicit margin of safety.	effects are rarely observed and is a conservative sediment guideline. The practice of using the ERL instead of the NOAA ERM to provide an implicit margin of safety has been used in other TMDLs and is a valid regulatory approach.
	Pursuant to Section 303(d), TMDLs must include a margin of safety to reflect uncertainties regarding discharges, water quality, and capturing critical conditions. 33 U.S.C. § 1313(d); 40 C.F.R. § 130.7(c)(1) ("TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations *and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality*.") (emphasis added); *see also Minnesota Center for Environmental Advocacy v. U. S. Environmental Prot'n Agency*, 2005 U.S. Dist. LEXIS 12652 (D.Minn.2005) (holding that regulatory agencies "…must comply with the statutory and regulatory mandate to establish a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."). *Id*. Thus, Regional Board is required to include a margin of safety and it must be sufficiently protective to ensure that water quality	Staff believes that the proposed implicit margin of safety is sufficiently protective to ensure that water quality standards are attained and maintained by the TMDLs. The other TMDLs cited by the commenter are for different watersheds and/or different constituents. The proposed McGrath TMDL addresses a unique watershed and waterbody (i.e., small watershed with one source of flow into the lake, and a small, shallow terminal lake) and contains less uncertainty than the cited TMDLs. For example, the TMDL assigns concentration-based load allocations equal to numeric targets; thus, there is little uncertainty in the relationship between allocations and water quality.

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	standards are attained and maintained by the TMDLs. In order to establish an adequate margin of safety and obtain sufficiently protective load allocations in the TMDL, the Regional Board should include an explicit 10% margin of safety in this TMDL. This may be calculated by multiplying all the proposed load allocations by 0.9. The resulting lower LAs will act as a buffer in the event that assumptions and/or calculations within the TMDL are uncertain. This explicit margin of safety is necessary to ensure attainment of beneficial uses, as required by the Clean Water Act. 33 U.S.C. § 1313(d). There is a precedent for applying explicit margins of safety to a TMDL within EPA Region 9. The Pinto Creek Copper TMDL that was established by EPA included an explicit margin of safety equal to 10% of the loading capacity available for some target sites and equal to 20% of the loading capacity available for allocation for target sites containing more uncertainty in potential source areas. The mass based WLAs for ammonia in the Calleguas Creek Nitrogen and Related Effects TMDL included a 10% explicit margin of safety to account for uncertainty concerning the relationships between WLAs and attainment of the water quality standards addressing algae and other listed stressors associated with nutrient loads. Most recently, the Draft TMDL for Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals incorporated a 10% explicit margin of safety to mass based waste load allocations. Thus, in establishing an adequate margin of safety and obtaining sufficiently protective numeric targets in McGrath Lake, the Regional Board should follow these precedents by including an explicit margin of safety in the proposed TMDL.	

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5.8	**The maximum timeframe to implement sediment remediation actions should be tightened to ensure existing impairments are addressed in a timely manner.** As proposed in the Draft TMDL, responsible parties submit the McGrath Lake Work Plan three years from the effective date of the TMDL, but must begin implementation of McGrath Lake sediment remediation actions "no later than 10 years from the effective date of the TMDL." This gap in timeframe is too long. The McGrath Lake Workplan (MLWP) will be submitted three years from the effective date of the TMDL, thus what is the reasoning for allowing up to another seven years before it is implemented? Furthermore, why is it expected to take as long as three years to create the remediation plan? Implementation to remediate sediment contamination must be expedited, especially because of the rarity and sensitivity of this habitat. As mentioned in the staff report, McGrath Lake is one of the last back dune lakes in the state and provides valuable and unique habitat utilized by a large number of migratory birds such as the Brown Pelican, Western Snowy Plover and the California Least Tern. According to the staff report, the last remaining population of the endangered Ventura Marsh Milkvetch, which was once thought to be extinct, occurs just south of the lake (quoted from Federal Register, 2004 on Page 12). Bird populations are especially sensitive to the impacts of organic contaminants such as DDT. The Staff Report mentions "it is likely that a portion of the contaminants sorbed to the bottom sediments of McGrath Lake are moving into the water column and then into the food chain." (Page 40). This impact could be detrimental to birds that utilize this habitat. As you know, the pollutants in question biomagnify, and contaminants such as DDT can result in the	The TMDL staff report identifies two primary sources of contamination to McGrath Lake (1) contaminated water and sediment discharged to the lake from the Central Ditch and (2) the in-situ lake sediments. Staff finds that it is reasonable and necessary to first address the contaminated discharge entering the lake and then address remediation of the contaminated lake sediments. This approach will prevent the lake from being re-contaminated during the remediation period. The TMDL implementation schedule reflects this approach; that is why there is a time gap between the development of the McGrath Lake Work Plan and the initiation of the contaminated sediment remediation actions. In addition, it is necessary to provide time to secure the necessary funding to remediate the lake sediments. The implementation schedule of the McGrath Lake TMDL cannot be compared to the implementation schedule of the Colorado Lagoon TMDL because restoration and clean-up of Colorado Lagoon (i.e. implementation) was started prior to development of the TMDL. The short implementation schedule of the Colorado Lagoon TMDL reflects the fact that responsible parties have already initiated implementation activities. For example, funding has been secured and the environmental review process has been completed.

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		weakening of eggshells. Thus the timeframe of exposure to these impacts must be minimized. We support a 7-year schedule (after TMDL approval) for this implementation task instead. A 7-year schedule is proposed for the upcoming Colorado Lagoon TMDL, which is a waterbody similar in size with even more impairments and complex hydrology than McGrath Lake.	Staff finds that the implementation schedule set forth in the McGrath Lake TMDL allows reasonable time for responsible and cooperative parties to achieve the LAs and restore this important habitat as quickly as possible.
	5.9	**Sediment capping, monitored natural attenuation, and pollutant redirection to other water bodies are not protective implementation options for this TMDL.** The Staff Report presents monitored natural attenuation and redirection of the agriculture discharge to a different water body as a potential implementation measures. It states that "It may be possible to redirect the agriculture discharge from the Central Ditch to a different receiving waterbody, such as the Edison Canal. The Edison Canal is a Water of the State … and discharges to the Pacific Ocean." (Page 55). This implementation strategy is inappropriate as it appears to transport the pollution problem elsewhere instead of addressing the sources of the impairments. The fact that the Edison Canal discharges to the ocean makes this option even more concerning. In stark contrast, the Regional Board addressed the issue of legacy pollutants quite differently in the recently adopted Calleguas TMDL for organochlorine pesticides and PCBs, which calls for the removal of contaminated sediment. The Regional Board Staff Memorandum for the Calleguas TMDL states, "Attenuation may be occurring in the Calleguas watershed, but it is neither adequate nor reliable as the sole method for removal, due to the slow degradation rate. Also, flushing to the ocean does not represent attenuation; rather, it	The TMDL staff report merely discusses potential implementation measures; it does not require or advocate specific measures. In fact, the Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code §13360). The implementation schedule allows adequate time for review and consideration of various implementation measures presented by implementing parties.

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	represents transfer of the problem to another site…When these [hotspot] areas are identified, removal and proper disposal will be implemented." It is unclear why the sediment management approach would be any different for the McGrath Lake TMDL. Natural attenuation of legacy chlorinated organics in sediment can take a significant period of time. The staff report mentions it could take anywhere from 27 to 211 years. Indeed, the slow rate of attenuation is even more significant in the lake where there is no flushing of sediment. Thus, the pollutants at issue are not likely to degrade measurably within the compliance timeframe of the TMDL. Instead, it is highly likely that these contaminated sediments will remain there for a long time, thus preventing the attainment of beneficial uses. In addition, capping the sediment is not a fail-safe solution. As mentioned in the Staff Report, "The lake has a natural, mud bottom and natural edges…The average depth of McGrath Lake is just over 0.6 m and the deepest point is about 1.5 m" (Pages 11-12). An effective contaminated sediment cap is usually 0.5 meters to 1 meter in thickness; nearly the average depth of the lake. Such shallow depths do not allow enough clearance to make capping a feasible option. In addition, sediment caps can degrade over time as a result of storm events and other disturbances. Hence, sediment capping, redirection of runoff, and monitored natural attenuation should not be considered adequate options for implementing this TMDL. Following the example of the Calleguas TMDL, sediment removal and proper disposal should be implemented, as this is the best option for removing the source of contamination and hence for meeting water quality standards.	

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5.10	**Implementation options should include an educational component** None of the implementation options include a public education component. Although the contaminants in question are considered legacy contaminants and are no longer marketed, it is possible that old products containing these pollutants will surface in agricultural land application practices in the watershed. If this is the case, landowners in the watershed should be informed of the products to avoid and how to properly dispose of legacy contaminants that they may still possess. In addition, pesticide take-back programs may provide a useful option for preventing legacy contaminants in old stored containers from entering the environment. In the implementation plan for the Calleguas Creek Watershed OC Pesticides and PCBs TMDL, for example, responsible parties are required to develop and implement collection program for all banned OC pesticides and PCBs. Of note, a settlement between the United States and State of California has earmarked $1,315,000 in a trust account to fund restoration projects in and around McGrath Lake. As some of this money is allocated for public education, responsible parties might investigate whether the trust may contribute to implementation efforts for this TMDL.	The Regional Board is prohibited from specifying the manner of compliance with its regulations, including education components (Water Code §13360). However, it should be noted that the Los Angeles Region Conditional Waiver for Irrigated Lands Program (Order No. R4-2005-0080) includes an education component. Educational workshops throughout Ventura County have included topics such as reducing pollution from legacy pesticides. All of the agriculture landowners in this subwatershed have attended educational workshops as required by the Conditional Waiver Program.
5.11	**The Regional Board should require, not recommend, necessary special studies** Several special studies are necessary for understanding source contributions, choosing appropriate TMDL implementation strategies, and protecting beneficial uses in McGrath Lake. For instance, the Staff Report describes a sediment contamination extent study and a determination of sediment-bound versus dissolved contamination in the lake. We believe these studies	The TMDL LAs have been assigned based on adequate data and technical analysis. Special studies were not necessary to assign the LAs. Staff agrees that special studies would likely provide useful information to evaluate implementation alternatives and guide the implementation process, but they are not required.

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		are critical components of effective TMDL implementation. Without them, the impairment may not be fully addressed. From conversations with Regional Board Staff, we understand that these studies are required components of the TMDL. However, language in the Staff Report suggests otherwise. The Staff Report states that "Special studies ***may be*** utilized to evaluate the implementation alternatives outlines in the TMDL. [**emphasis added**]" (Page 62). The Staff Report goes on to say, "A special study ***could be*** undertaken to determine the horizontal and vertical extent of contamination. [**emphasis added**]" with respect to the Sediment Contamination Extent Study, and "Collected samples ***could be*** utilized to verify that the form and quantity in which contaminants are entering the Central Ditch and McGrath Lake. [**emphasis added**]". As long as these studies are presented as optional, there is no guarantee that permittees will pursue these suggestions. Hence, Board Staff should clarify that these studies are required within the Basin Plan Amendment. In addition, the implementation schedule provided in Table 22 does not give a timeframe for performing the special studies mentioned in the Staff Report. We believe these studies must be incorporated into the implementation schedule timeline prior to phase 2 of the monitoring program in order to adequately determine the sources and extent of contamination in the sediment before remediation begins.	However, responsible parties are required to attain TMDL LAs with or without information gained from special studies. It is not necessary to include the special studies in the implementation schedule because they are optional and may or may not be conducted by responsible parties. It is anticipated that the McGrath Lake Work Plan, to be developed under the MOA, will outline monitoring and/or studies needed to guide the clean-up and remediation of lake sediments. See response to comment 5.9.
	5.12	**The Regional Board does not provide clear guidelines for the monitoring program in the Draft TMDL.** We agree with the general components Regional Board requires to be a part of the monitoring program and Regional Board includes in the Draft TMDL, including ambient monitoring, compliance assessment monitoring, and special studies. While	Staff disagrees with this comment. The monitoring program outlined in the TMDL provides clear and sufficient guidedance for the development of a Monitoring and Reporting Plan (MRP). The MRP is subject to Executive Officer approval.

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		we support the Regional Board's designation of sampling sites for compliance monitoring at critical locations in the deepest portion of the lake and at the Central Ditch inlet, we also feel the Board should supply clear guidance for all phases of the monitoring program, especially for phase 1. For instance, monitoring frequencies for phase 1 are not presented in the Draft TMDL. The Machado Lake Nutrients TMDL adopted by the Regional Board on May 1, 2008 mentions that "Field samples and water samples will be collected bi-weekly on a year-round basis." In this situation, we recommend a monitoring frequency similar to that of the Marina Del Rey Toxics TMDL in which water samples should be taken monthly, and sediment samples analyzed quarterly. Any changes made to the MRP must be approved by you, the Executive Officer, a point that was not emphasized in this TMDL. In addition the Regional Board should allow for public review of the Monitoring and Reporting Plan submitted to the Board for your approval.	Staff did not specify the frequency of Phase 1 sampling in this TMDL because of variable flow conditions in the Central Ditch. An evaluation of flow conditions will need to be considered when establishing a sampling frequency. This can be done as part of the MRP development and will be approved by the Executive Officer at that time. The two examples provided by the commenter have relatively constant flow conditions, which were not a key consideration when determining sampling frequency at these waterbodies. After the monitoring plan is negotiated by the cooperative parties and the Regional Board staff, Regional Board staff will make the MLWP available for public comment prior to Executive Officer approval
	5.13	We have a few other questions and concerns regarding the monitoring program required by this TMDL. The monitoring section of the Draft Basin Plan Amendment mentions that phase 2 monitoring begins after the lake remediation. However, phase 1 does not appear to include lake and sediment monitoring. If this is the case, how will responsible parties know what sediment to remediate, especially since the extent of contaminants in the lake is yet to be determined? Will responsible parties rely on the results of the Sediment Contamination Extent Study? This further reinforces the point we made earlier that the special studies should be completed within a timeframe mentioned in the implementation schedule. In	The objective of the monitoring program outlined in the TMDL is to determine attainment of numeric targets and compliance with load allocations. Staff finds that the monitoring program proposed in the TMDL will meet this objective. The requirement to sample surficial sediments (top 2 cm) in phase 2 of the monitoring program is sufficient to determine compliance with the TMDL and is consistent with SWAMP sediment monitoring protocols.

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		addition, the regional board requires surficial sediment samples (top 2cm—less than 1 inch) to be collected annually for phase 2 of the monitoring program. How will the Board ensure that deeper legacy contamination sources will be monitored and addressed in this TMDL? The Regional Board should require deeper boring samples to aid in assessing the extent of contamination. Also, annual sampling for phase 2 is not sufficient as variability will not be captured. Hence, as mentioned above, this frequency should be increased to quarterly.	Any additional monitoring required to evaluate implementation measures will be conducted as part of the McGrath Lake Work Plan or as a special study. As previously stated the objective of the monitoring program is to determine compliance with the TMDL and thus it is not necessary to capture sample variability. The TMDL LAs are set as single sample maximums. Annual sampling is required as it is not expected that sediment quality conditions will exhibit much variability, especially given that once the Central Ditch allocations are achieved, any new additions should be very low.
	5.14	In conclusion, we urge the Regional Board to address the deficiencies of this TMDL by adding an explicit margin of safety to the numeric targets, reducing the implementation timeframe, clearly requiring special studies, and ensuring that effective implementation and monitoring plans are incorporated into the McGrath Lake TMDL in a timely manner. In addition, the Board should clarify when load allocations take effect and emphasize the enforceability of the TMDL implementation actions. Without these changes, McGrath Lake beneficial uses are likely to remain impaired.	Comment noted See responses to comments 5.5, 5.6, 5.7, 5.8, 5.9, 5.11, 5.12, 5.13.
6. Charles J. Conway Jr. on behalf of California Hugos			
	6.1	I represent Colleen F. Conway, Helen G. Haynes, William Berg, Marilyn Berg, William McKee, Madge McKee, and myself (hereafter, "California Hugos"). We own an undivided 75% interest in approximately 60 acres located west of Harbor Boulevard, which include the northern portion of McGrath Lake. Ms. Conway, Ms Hayes, Ms. Berg, Ms. McKee, and myself are	Comment noted.

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		the children of Hugo McGrath. Hugo McGrath was one of the principals of the McGrath Estate Company, Inc., which owned and operated farming property on the Oxnard plains. The other principals of the corporation were Hugo McGrath's brothers, Frank McGrath, Joseph McGrath, and Robert McGrath. Hugo McGrath died in 1946, and the corporation was dissolved in 1948. Each brother, as well as the heirs of Hugo McGrath, received properties previously belonging to the corporation.	
	6.2	The California Hugos do not own the pumps identified in the Staff Report as controlling the level of McGrath Lake. The California Hugos owned an insignificant portion of the McGrath Home Ranch prior to 1980 and have no connection with the contamination found in McGrath Lake.	Ownership of the pumps that regulate the level of McGrath Lake was not a factor in determining the cooperative parties for implementation of the lake sediment load allocations.
	6.3	**FACTUAL ERRORS:** We believe that the TMDL includes factual errors as set forth in the schedule that accompanies this letter.	See responses to specific comments, below.
	6.4	**NO FACTUAL OR ANALYTICAL RATIONALE FOR DENOMINATING THE CALIFORNIA HUGOS AS RESPONSIBLE PARTIES:** The TMDL identifies the California Hugos as responsible parties without any supporting analytical rationale connecting them to the contamination in McGrath Lake, other than the fact that they are the current owners of a portion of McGrath Lake. This is a glaring deficiency in the TMDL.	The TMDL identifies the greater McGrath family as cooperative parties based on the fact that they are the current owners of a portion of the land east of Harbor Blvd (named as agricultural landowners in the subwatershed). The TMDL identifies the Hugo McGraths as cooperative parties based on the fact that they are of the northern portion of McGrath Lake and the Central Ditch west of Harbor Blvd. While the TMDL listed current subwatershed landowners as “responsible parties”, it also stated that implementation would be through a voluntary MOA. Clarification has been added to the staff report and other TMDL documentation that if the

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			MOA approach is pursued, current landowners are considered "cooperative" parties. See also response to comment 2.3 (second paragraph).
	6.5	**THE TMDL IS NOT FEASIBLE:** The TMDL sets forth a scheme that calls for the entities it denominates as responsible parties to enter into a Memorandum of Understanding that will detail their responsibility to assist in the clean up of McGrath Lake. The Board will attempt to obtain grants and other public funds to pay for the Lake's clean up. However, if this effort is not successful in whole or in part, the Responsible Parties will be responsible for clean up costs, together with those additional parties that the Board discovers are responsible parties by an analysis of how historically McGrath Lake became polluted. Such a plan is doomed from birth. There is no incentive for the California Hugos to enter such a MOA. They would have to admit liability for a condition they did not cause with the hope that their admission would not be used against them by the Board's finding public funds to clean up the Lake, a matter far from certain. The TMDL is not feasible and can never be successful.	Language has been added to the staff report to clarify that entering into an MOA would not be an admission of liability. The language states, "The purpose of the MOA is not to create evidence of responsibility or ascertain legal liability for subsequent remediation of the lake sediments, but rather to organize stakeholders who have an interest in ensuring the remediation of the lake sediments." See also response to comment 2.3 (second paragraph).
	6.6	**JOINDER IN COMMENTS OF OTHER PARTIES:** The California Hugos hereby join in the comments made concerning the proposed TMDL by the following parties: a. Edgar Terry's September 3, 2009 letter to you on behalf of the Ventura County Agricultural Irrigated Land Group; b. The comments of the Ventura Regional Sanitation District as prepared by its attorneys, Arnold, Bluel, LaRochelle, Mathews & Zirbel, LLP; The comments of SC Land, LLC (David Gladstone, principal) as prepared by its attorneys, Arnold, Bluel, LaRochelle, Mathews & Zirbel, LLP.	Comment noted.

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6.7	The California Hugos acknowledge that we are currently in intense discussions with you and other staff members regarding possible amendment of the proposed TMDL. Therefore, we reserve the right to amend these comments at the time of the October 1, 2009 hearing to withdraw, add, or amend our comments.	Comment noted.
6.8	At page 49 of the Staff Report, the opening paragraph purports to give a history of the McGrath family. It is not accurate. The McGrath Estate Company, Inc. was a long standing corporation owning farming property located in the Oxnard plains. It had four principals, Frank McGrath, Joseph McGrath, Robert McGrath, and Hugo McGrath, who were brothers. Hugo McGrath died in 1946, and the corporation was dissolved in 1948. Each brother, as well as the heirs of Hugo McGrath, received properties previously belonging to the corporation. (Hereafter, the parties receiving assets from corporation and their descendants shall be referred to as the "Grater McGrath Family." The descendants of Hugo McGrath shall be referred to as the "Hugo McGrath Family." The Hugo McGrath Family is a distinct portion of the Greater McGrath Family.) The use of the term "McGrath family" in the staff report is ambiguous. The ambiguity in that it does not clearly identify anyone. This ambiguity is epidemic in all of the documentation supporting the TMDL and in the TMDL itself. Hereafter, it will be referred to as the McGrath Ambiguity. Neither the McGrath Estate Company, Inc. nor the Greater McGrath family ever owned all of the property identified as	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, staff proposed to use the general term “McGrath family” to identify responsible (now cooperative) parties for the lake sediment load allocations. See response to comment 6.2

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		the McGrath Lake Watershed as stated in the Staff Report. The current members of the Hugo McGrath family own approximately 60 acres located west of Harbor Boulevard, which includes the northern portion of McGrath Lake. They are first cousins and grandchildren of Hugo McGrath (hereafter, "Current Hugos"). Their parents at one time owned what was commonly known as the McGrath Home Ranch, which consisted of 1100 acres. A portion of the McGrath Home Ranch was located in the McGrath Lake Watershed. The Current Hugos do not operate the pumps discussed in the Staff Report as controlling the level of McGrath Lake. The Current Hugos owned an insignificant portion of the McGrath Home Ranch prior to 1980 and have no connection with the contamination found in McGrath Lake.	See response to comment 6.4 (first paragraph).
	6.9	Page 4 under "Load Allocations:" The term "McGrath Family" is used. This is a McGrath Ambiguity in that it does not identify who this refers to.	The column naming responsible parties has been removed from the table on page 4 of the BPA.
	6.10	Page 10 under "Application of Allocation to responsible Parties:" The term McGrath Family is tied to the current owners of the northern portion of McGrath Lake and, thus, could be understood to refer to the Current Hugos. However, there is no rationale given here or in any other of the documents supporting the TMDL as to how the Current Hugos are in any fashion responsible for the contamination in McGrath Lake.	The TMDL identifies the McGrath family (including the California Hugos) as responsible parties based on the fact that they are the current owners of the northern portion of McGrath Lake, the Central Ditch west of Harbor Blvd, and a portion of the land east of Harbor Blvd. To clarify the intent of the implementation plan, the language in the BPA has been revised to read, “cooperative parties” rather than “responsible parties”.
	6.11	Pages 11 through 12: Various tasks are assigned to the "McGrath Family" with a description that can be understood to	See response 6.10.

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		refer to the Current Hugos. However, there is no rationale given to support the notion that the Current Hugos are responsible for the contamination in McGrath Lake and should be charged with any task concerning its clean up.	
7. John Mathews (on Behalf of David Gladstone and SC Lands)			
	7.1	**The Regional Board failed to follow its own guidelines and policies by developing the McGrath Lake TMDL without early, continuous and meaningful stakeholder involvement.** The Regional Board failed to follow its own guidelines and policies by developing the McGrath Lake TMDL without early, continuous and meaningful stakeholder involvement[1] This failure is most pronounced in that portion of the Proposed Amendment addressing in-lake contaminated sediments. The Regional Board's failure to involve stakeholders in the TMDL development process is particular puzzling given Ventura County's history of cooperation with the Regional Board in implementing this state's most successful Agricultural Waiver Program. Since its inception, our client has been a member and firm supporter of the Agricultural Waiver Program. [1"]In designing implementation plans, stakeholders should be engaged early in the process in order that they can be involved in the consideration of solutions and alternatives, including costs associated with implementation." (State of California S.D. 469 TMDL Guidance, "A Process for Addressing Impaired. Waters in California," June 2005, Approved by Resolution 2005-0050, p. 6-10.).).	Please see response to comment 1.1.
	7.2	Prior to releasing the Proposed Amendment and supporting documents for public comment on July 20, 2009, the Regional Board staff made minimal, if any, attempts to fully and directly	See comment 1.1 for a detailed description of Regional Board staff outreach to stakeholders, including all landowners, during the development of

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		inform sub-watershed landowners of its intent to hold those landowners "responsible" for the remediation of in-lake contaminated sediment. On February 18, 2009, the Regional Board staff conducted the "McGrath Lake Toxics TMDL Implementation Meeting" at the California State Parks offices in Ventura, California, Staff's power-point presentation during the meeting merely mentioned remediation of sediment contamination as a "potential implementation" alternative. No mention was made as to who the Regional Board viewed as the parties responsible for implementing lake sediment LAs. We also attended a CEQA scoping meeting conducted by the Regional Board staff on March 18, 2009. Although remediation of lake sediment was considered briefly during this meeting, consideration was limited to a brief "brainstorming" session regarding potential environmental impacts of possible remediation strategies. No mention was made of the Regional Board's intent to arbitrarily assign responsibility for sediment remediation to current sub-watershed landowners. The above meetings do not constitute early, continual and meaningful stakeholder involvement in the TMDL development process; particularly in light of the fact that the Regional Board staff never once mentioned its intent to arbitrarily assign responsibility for lake sediment remediation to current sub-watershed landowners.	the TMDL, and continuing through the 45-day public comment period, in order to clarify the voluntary implementation approach proposed. The assignment of load allocations to the landowners is not arbitrary. As stated in response to comment 2.3, the landowners have an interest in ensuring the lake is free from pollution. That alone provides appropriate basis for the voluntary scheme proposed in the TMDL. Additionally, the administrative record includes evidence to demonstrate that at least some of the current landowners are presently responsible for some of the sediment contamination, at least by virtue of the fact that present farming activities on their land by themselves or by persons they have authorized, have resulted in the deposit or discharge of waste

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			(legacy OC pesticides) into waters of the state, and thereby contributed to the condition of pollution in McGrath Lake. This response is not an assignment of responsibility or a predetermination of who may be subject to an enforcement order in the event the voluntary cleanup efforts are not undertaken, or in what degree or proportion such a responsible party might be subject to such an order. The response is solely for the purpose of explaining that the program of implementation assigning initial cooperative responsibility to the landowners is not arbitrary, but supported in the record. See response to comment 2.3, which explains the process that would exist if such an order were necessary.
	7.3	The decision to hold sub-watershed landowners financially responsible for remediation of contaminated lake sediments represents such a drastic and, frankly, surprising departure from established policies, that it is difficult to understand why the Regional Board would not actively seek sustained stakeholder involvement from the earliest stages of TMDL development.	See response to comment 1.6.
	7.4	Immediately following the publication of the "Notice of Hearing" on July 20, 2009, we, along with other, of the sub-watershed landowners, contacted the Regional Board and requested a continuance to allow additional time for review and comment. Regional Board staff rejected this request in favor of two meetings designed to address landowner concerns through "non-substantive" revisions to the Proposed Amendment. As a result of those two meetings, a number of suggested revisions have been put forward for staff consideration.	See response to comment 1.3.

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7.5	The landowners who participated in the meetings are appreciative of the concentrated effort that the Regional Board staff is making in considering their suggested revisions; however, the abbreviated time-frame for public comment made it impossible to properly evaluate the underlying assumptions, scientific data, and legal principles upon which the Proposed Amendment rests.	A 45-day public comment period meets noticing requirements provided in State law and allows adequate time to evaluate the proposed TMDL and supporting information.
7.6	**There is no rational or equitable basis for the Regional Board to assign joint responsibility for the lake sediment load allocation and cleanup of the contaminated lake sediment to current landowners of the lake and current watershed landowners discharging into the lake.** In pertinent part, the TMDL states that: "... limitations in the currently available data make it difficult to attribute the legacy contaminants in the lake sediments to specific historical dischargers. In order to attribute the legacy sediment contamination to specific historical dischargers, a large amount of obscure technical information would be required. For example, a detailed review of the historical watershed hydrology and historical sediment loss from the watershed would be needed. Additional required information would also include: • Historical watershed land ownership records (size of properties, length and/or era of ownership); • Sedimentation/resuspension rates within the lake; and • Sediment contamination profile (both within the lake and throughout the subwatershed).	The Regional Board has not in this TMDL determined that assigning joint responsibility to current landowners or any of them individually is or is not appropriate. Given the cooperative process proposed in this TMDL, coupled with the interest of landowners in having a lake free from contamination, there is no need at this time to ascertain more specific responsibility. The data and supportive information obtained by staff to date does not demonstrate that current landowners are responsible for the ***entire*** quantity of sediment contamination. However, given that the contamination is both historical and ***ongoing***, there is evidence that at least some of the current landowners are responsible for a portion of the lake contamination, either as direct dischargers or as persons who allowed waste to be discharged where it polluted the lake and lake sediments. See also response to comment 7.2 (second paragraph).

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	Based on the information described above, the pollutants in the lake sediment are currently considered unattributable to individual responsible parties; therefore, *the* **Regional Board** shall assign joint responsibility for the lake sediment load allocation and cleaning of the contaminated lake sediments **to** current landowners of the lake **and current** watershed landowners discharging to the lake (emphasis added)," (TMDL Staff Report, p. 50.) The TMDL assumes "that OC pesticides were applied [by historic landowners] to agricultural lands in the sub-watershed." (TMDL Staff Report, p. 49.) It also recognizes the likelihood that a large flood in 1969 transported contaminated sediments into the McGrath Lake sub-watershed and McGrath Lake. (TMDL Staff Report, p.49.) Finally, the TMDL acknowledges that PCBs "may have been introduced to the sub-watershed through several different pathways, including "illegal dumping of equipment which contained PCBs and/or atmospheric deposition," (TMDL Staff Report, p.49.) In light of the facts cited in the TMDL Staff Report, there is no rational or equitable basis for the Regional Board to "assign joint responsibility for the lake sediment load allocation and cleanup of the contaminated lake sediment to current landowners of the lake and current watershed landowners discharging to the lake." (TMDL Staff Report, p. 50,) Those landowners should not be designated as responsible parties where the evidence strongly suggests that a majority (perhaps the vast majority) of the contaminated lake sediments were deposited over decades of rainfall, irrigation, and flood events and originated from the	

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		activities of persons or entities located beyond the sub-watershed.	
	7.7	The SWRCB states that "[l]egacy pollutants pose unique problems in TMDL development because they often are not associated with a currently identifiable party or parties, and the search for responsible parties can be a lengthy and resource intensive undertaking, In cases where a clear connection can be made to an entity or entities responsible for pollutants, the RWQCBs will take actions within their authority to hold the entities accountable (emphasis added)." ("Structure and Effectiveness of the State's Water Quality Programs: Section 303(d) of the Federal Clean Water Act and Total Maximum Daily Loads (TMDLs), SWRCB Report to the Legislature Pursuant to AB 982 of 1999, January 2001, p,42.) Here, the TMDL concludes that the legacy pollutants in the lake sediment cannot be associated with a currently identifiable party or sources, and further concludes that the search for responsible parties would be a difficult task. The TMDL then proceeds to arbitrarily allocate responsibility to current landowners who are insignificantly responsible for the contamination. The TMDL's arbitrary assignment of responsibility to current landowners in conjunction with the Proposed Amendment's enforcement provisions offends the "clear connection" standard for regulatory action set forth by the Board in the January 2001 legislative report quoted above.	See response to 7.2 (second paragraph). While the cited report to the legislature describes the structure and effectiveness of the TMDL program, it does not establish a standard for regulatory action. The TMDL proposes a voluntary, cooperative implementation strategy. The MOA approach is within the authority of the Regional Board and complies with the Impaired Waters Policy.
	7.8	In addition, State Water Resources Control Board Resolution No. 92-49 sets forth policies and procedures applicable to all investigations, and cleanup and abatement activities, for all types	California Water Code Section 13304 details the regulations of Cleanup and Abatement Orders (CAOs). A CAO is an enforcement action, while a

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	of discharges subject to California Water Code Section 13304. Prior to requiring a person to clean up waste and abate the effects of a discharge or a threat of a discharge under Section 13304, the Regional Water Board must "[m]ake a reasonable effort to identify the dischargers associated with the discharge. It is not necessary to identify all discharges for the Regional Water Board to proceed with the requirement for a discharger to investigate and clean up (emphasis added)." (State Water Resources Control Board Resolution No. 92-49.) The Proposed Amendment provides that the Regional Board may enforce the TMDL through cleanup and. abatement orders issued pursuant to California Water Code Section 13304 or other regulatory methods. Logic would dictate that the "reasonable effort" standard under Resolution No. 92-49 should apply to the assignment of responsibility in a TMDL which relies on Section 13304 for enforcement. It cannot be said that the Board made a "reasonable effort" to identify parties responsible for McGrath Lake sediment contamination when the Board identified the alleged "responsible parties" merely on the basis of ownership interest and unverified or outdated drainage patterns without regard to the fact that they may be responsible for only a minor fraction of the lake sediment contamination.	TMDL is a planning tool. The Regional Board, as yet, has not issued any enforcement order requiring any discharger within the subwatershed to investigate and cleanup any impairments resulting from PCBs, OC pesticides and sediment toxicity in McGrath Lake. The intent of the MOA approach is to set forth a voluntary implementation mechanism in order to avoid having to issue CAOs (for the benefit of the landowners, the Regional Board, and the public in general.) Furthermore, TMDLs are quasi-legislative actions of the Board that establish water quality regulation and, therefore, CWC section 13304 and Resolution 92-49 do not apply. Should it be necessary to pursue enforcement actions if the MOA is not executed or implemented, Regional Board staff will make a reasonable effort to identify parties responsible for the lake sediment contamination. See response to comment 2.3, which explains the process if such an order were necessary. Nonetheless, Regional Board staff has made reasonable efforts to identify dischargers associated with the discharge to McGrath Lake. This includes researching property ownership records for parcels within the subwatershed, examining water quality data for the Central Ditch and reviewing other reports documenting conditions in the subwatershed (such as the 2005 URS report).

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	7.9	**The Proposed Amendment's pollutant loading allocation plan was developed without adequate consideration of cost, technical achievability, and equity as required by Regional Board guidelines and policies.** "One of the most complex decisions in the analysis of impaired waters is the development of a pollutant loading allocation plan. The plan **requires the consideration of numerous factors, including cost, technical achievability, and equity**. An allocation plan that achieves an acceptable balance between these factors has a greater chance of being accepted by the public and stakeholders (emphasis added)." (State of California S.)3. 469 TMDL Guidance, "A Process for Addressing Impaired Waters in California, June 2005, Approved by Resolution 2005-0050, p. 5-18.) It is not reasonable or equitable for parties responsible for an unknown fraction of contaminated lake sediments to bear the total cost of remediating those sediments. The Regional Board should not use the TMDL process as a means of *shifting* the financial responsibility for remediating lake sediment to a small group of landowners whose contribution to sediment contamination is de minimus relative to the contribution of unidentifiable and uncontrollable sources in the Santa Clara River Watershed.	Staff disagrees. Staff proposes an implementation plan that would not impose unreasonable costs on subwatershed landowners while still resulting in tangible remediation of a valuable public resource. As discussed on pages 65 to 71 of the staff report, the costs of the reasonably foreseeable implementation alternatives were considered in the TMDL development in accordance with State law. As discussed in the comments above (and in meetings with landowners), the TMDL is not intended to force landowners to bear the cost of remediating the lake. Please see response to comment 1.6.
	7.10	**The Proposed Amendment should eliminate any regulatory provisions that could potentially force current landowners of the lake or current sub-watershed landowners to bear the responsibility for remediating contaminated lake sediment.**	The provisions should not be eliminated and are necessary to avoid the need to adopt a revision to the basin plan in two years time should the cooperative efforts not be undertaken. Eliminating language describing the backup provisions of the

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		Having arbitrarily assigned joint responsibility for in-lake sediment to current landowners, the TMDL suggests that those load allocations should be implemented through a Memorandum of Agreement (MOA) between current landowners and the Regional Board. "If a MOA is not established with responsible parties within two years of the effective date of the TMDL, or if responsible parties do not comply with the terms of the MOA, or if the MOA and MLWP are not implemented.or otherwise do not result in attainment of load allocations consistent with the provision and schedule of the TMDL, a cleanup and abatement order pursuant to Cal. Water Code section 13304, or another appropriate regulatory order, shall be issued to implement the load allocations." A TMDL may be "adopted with and reflected in a resolution or order that certifies that a non-regulatory program is being implemented by another entity, and the program will correct the impairment," (Resolution 2005-0050, Section 2(c)(ii),"Water Quality Control policy for Addressing Impaired Waters: Regulatory Structure and Options.") A TMDL adopted in accordance with Section 2(c)(ii) must comply with the following requirements set forth in Resolution 2005-0050, Section 2(d): "Any resolution under Section 2(c)(ii) must include specific findings, supported by substantial evidence in the record that demonstrates each of the following about the regulatory or non-regulatory program: One of the alternatives:	program of implementation would not be consistent with open and transparent government as it would lead stakeholders to believe that there would be no ramifications if the voluntary measures are not performed. See also response to comment 2.3 (second paragraph).

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		i) The program is consistent with the assumptions and requirements of the TMDL; ii) Sufficient mechanisms exist to provide reasonable assurance that the program will address the impairment in a reasonable period of time; iii) Sufficient mechanisms to enforce the program exist or the regional board otherwise has sufficient confidence that. the program will be implemented,. such that further regulatory action in the form of a TMDL implementation plan by the regional board is unnecessary and would be redundant. The above. findings will require a fact-specific inquiry, dependent upon the type of impairment at issue, the identity, authority, and interests of those proposing the alternative program, and a' variety of other factors." There appears to be no requirement that a non-regulatory program provide for regulatory action against a "responsible party." The Regional Board should revise the Proposed Amendment to eliminate specific regulatory actions that would force current landowners of the lake or current watershed landowners to bear the responsibility and expense for remediating lake sediment.	
	7.11	**The Proposed Amendment should identify natural attenuation as a viable remediation strategy, and adjust the implementation schedule for achieving load allocations accordingly.**	As stated on page 58 of the staff report and in the BPA, natural attenuation is included as an implementation alternative.

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		Given the complexity and cost involved in remediating legacy pollutants and the difficulty of equitably and reasonably assigning responsibility for that remediation, natural attenuation should be identified as a viable and feasible remediation strategy for lake sediment, However, by requiring responsible parties to achieve lake sediment load allocations in 14 years, the Regional Board effectively eliminates natural attenuation as a measure to clean up contaminated lake sediments. "Project analyses are performed with the goal of evaluating and selecting solutions that can be implemented,, Selection of management alternatives and TMDL allocations also incorporates knowledge of how implementation can be achieved and what cost-effective options are available ... identifying feasible and successful actions is essential to building effective plans." (State of California S.B. 469 TMDL Guidance, "A Process for Addressing Impaired Waters in California, June 2005, Approved by Resolution 20005-0050, p. 7-3) The Proposed Amendment sets forth several in-lake approaches to sediment remediation. These include: (1) Monitored Natural Attenuation; (2) In-situ Capping; and (3) Dredging.	The sediments of McGrath Lake have been documented as having some of the highest PCB and OC pesticide concentrations within the state. At the levels that have been observed in the sediments, it may take hundreds of years for contamination levels to attenuate to a point where water quality standards are met. It would not comply with the intent of the Clean Water Act or the timeframe outlined in the Clean Water Act for attaining WQS to change the implementation schedule to allow WQS to be exceeded for centuries.
		As acknowledged in the TMDL, during certain storm events the McGrath Lake subwatershed is inundated by stormwater runoff that emanates from beyond its borders. In addition, a storm event may result in the Santa Clara River Delta and McGrath Lake merging. When storm water runoff and/or waters from the Santa Clara River Delta inundate McGrath Lake, sediment is deposited in the lake that originates from agricultural lands located beyond	Staff disagrees. It took many years and very large quantities of the pesticides and PCBs to reach the high concentrations found in the lake. There is not evidence that the contaminated sediment from beyond the subwatershed will end up in the lake. The documented occurrence of this in 1969 was due to a breach in the Santa Clara River levy which

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		the McGrath Lake subwatershed. It is reasonable to assume that those lands are subject to similar levels of legacy pollutants as the sub-watershed's agricultural lands. Neither capping nor dredging alternatives will lead to a long-term solution, because inevitably contaminated sediment from beyond the sub-watershed would inundate the lake and redeposit contaminated sediment the lake, When that occurs, will the alleged "responsible parties" once again be subject to regulatory action under the TMDL? How can capping and dredging be considered feasible, cost-effective solutions if they will not achieve water quality objectives and potentially subject alleged "responsible parties" to potentially limitless legal and financial liability?	was repaired a long time ago. The current, continued mobilization of contaminants into the lake comes from the movement of the contaminated soil from the subwatershed, not the larger Santa Clara River watershed. As the ongoing discharge of pollutants from the subwatershed is also being addressed through the TMDL, there should be a significant reduction in inputs of contaminants in the future. As such, dredging would be an effective long-term solution (once the Central Ditch load allocations are attained).
	7.12	**Rather then arbitrarily assigning load allocations for lake sediment to landowners in the McGrath Lake sub-watershed, the Proposed Amendment should assign those load allocations to unidentifiable and uncontrollable sources in the Santa Clara River Watershed.** A study funded by USEPA recognizes that "the uncertainty in TMDL forecasts and in the predictions of the efficacy for control actions is often large, with the consequence that implementation actions for water quality improvements might be ineffective and therefore wasteful of limited water quality program resources." ("Adaptive Implementation of Water Quality Improvement Plans: Opportunities and Challenges," Nicholas Institute, Duke University, September 2007, p, 4,)	Comment noted. However, while the Duke University study may have been funded by the U.S. EPA, it does not mean the result were intended as guidance or policy. Regardless, in the case of McGrath Lake, an important water resource is severely impaired and the proposed implementation plan allows for cooperative and effective implementation actions.

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		The Proposed Amendment should be revised to reflect the fact that contaminated lake sediment is attributable to a wide array of disparate sources throughout the Santa Clara River Watershed. Rather then arbitrarily assigning load allocations for lake sediment to landowners in the McGrath Lake sub-watershed, the Proposed Amendment should assign those load allocations to unidentifiable and uncontrollable sources in the Santa Clara River Watershed. As discussed in Comment 1, the Regional Board admits that there is no evidence by which it can link legacy pollutants in contaminated lake sediment to a responsible party. Until the Regional Board obtains that evidence, legacy pollutants in the lake sediment should be treated as "unidentifiable" and "uncontrollable" sources in the Santa Clara River Watershed.	See response to comments 7.11 (third paragraph) and 7.2. See response to comment 7.6 (third paragraph)
	7.13	**The TMDL implementation plan should achieve Central Ditch load allocations through BMPs or other pollutant minimization actions, while addressing lake sediment contamination due to legacy pollutants under another regulatory program or authority.** The USEPA funded study referenced in Comment 6 concludes that an adaptive implementation approach is required where non-point sources cannot be clearly defined or where there are legacy sources of pollutants, The study also concludes that in a situation involving sediments contaminated with legacy pollutants "an **adaptive implementation approach would** dictate that legacy and uncontrollable loads ... be **addressed under another regulatory program or** authority. The pollutant control implementation plan would require BMPs or other pollutant minimization actions (emphasis added)." ("Adaptive	This McGrath Lake TMDL was initiated because the waterbody was included on the 1998 Clean Water Act 303(d) list of impaired water bodies. Under section 303(d), California is required to establish the TMDL for the waters on the 303(d) list. The waterbody-pollutant combination is also included on a 1999 consent decree requiring that a TMDL for the *sediment impairments* be completed by a time certain, specifically 2012. The recognized impairments that led to inclusion are PCBs and OC pesticides in sediments and sediment toxicity. Staff analysis has determined that both historical and ongoing pollutant loading have caused the impairments. Additionally, because the lake sediments are highly contaminated from both historical and ongoing sediment-bound pollutant

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		Implementation of Water Quality Improvement Plans: Opportunities and Challenges," Nicholas Institute, Duke University, September 2007, p. 38.) The Proposed Amendment should limit its scope to achieving Central Ditch load allocations through BMPs or other pollutant minimization actions, while addressing lake sediment contamination due to legacy pollutants under another regulatory program or authority.	loading, they are resulting in ongoing impairment of the water column. Addressing the contamination entering the lake through the Central Ditch will aid in preventing further contamination of lake sediments, but will not result in timely attainment of water quality standards. Thus, the TMDL must include load allocations for the lake sediments.
	7.14	It is our understanding that McGrath Lake is listed as an "estuary" under "The Bay Protection and Toxic Cleanup Program ("BPTCP"). If so, the Regional Board should consider revising the TMDL implementation plan so that remediation of in-lake contaminated sediment is handled under the BPTCP, if and when the legislature funds that program.	Staff agrees that McGrath Lake is listed as toxic hot spot by the BPTCP. It is also on the 303(d) list and requires a TMDL with load allocations for the sediment (see response to comment 7.13). The proposed implementation plan includes a mechanism to secure funding (see response to comment 1.6).
		Suggested *Revisions* to Proposed Amendment (See Attached Redlined Version Attachment A)	
	7.15	For reasons previously discussed, we request that the remediation of contaminated lake sediments be removed from the TMDL implementation plan and handled through the BPTCP or another regulatory program. In the event that the Regional Board determines that the remediation of contaminated lake sediment should remain a component of the TMDL implementation plan, we recommend that the language of the Proposed Amendment be changed as indicated in the attached redlined version. Regional Board staff has stated that supporting documents will be modified to reflect any revisions made to the Proposed Amendment.	See responses to comments 7.13, 7.14. Staff has reviewed and considered the recommended changes set forth by the commenter and incorporated them as deemed appropriate. The changes are shown in underline/strikeout versions of the staff report and BPA.

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	7.16	***Suggested Revisions to "Numeric Target" Element*** Require the Regional Board to re-assess numeric targets and load allocations for consistency with the State Board adopted sediment quality objectives.	The State Board adopted SQOs are for enclosed bays and estuaries. The SQOs define estuaries as "waters at the mouths of streams that serve as mixing zones for fresh and ocean waters during a major portion of the year". McGrath Lake does not meet this definition and therefore is not considered an estuary. Furthermore, Part 1-Sediment Quality of the Enclosed Bays and Estuaries Plan, as adopted at this time, does not establish numeric objectives for sediment quality; therefore, it cannot yet be applied when setting numeric targets in TMDLs.
	7.17	***Suggested Revisions to "Source Analysis" Element*** Clarify that agriculture is only one of several sources of contaminated surface sediment flushing into McGrath Lake via the Central Ditch.	A revision to the BPA, providing clarification has been made.
	7.18	***Suggested Revisions to "Load Allocations" Element*** • Add an annual averaging period to the load allocation tables. • Remove the listing of any specified source, responsible party or cooperative party from the allocation tables.	As McGrath Lake is listed for toxicity, an annual averaging period is not appropriate. The BPA has been revised to remove the listing of responsible and cooperative parties from the allocation tables.
	7.19	***Suggested Revisions to "Monitoring" Element*** • Distinguish between Central Ditch dischargers who are responsible for attaining Central Ditch LAs and those sub-watershed landowners who, without accepting or acknowledging responsibility for achieving lake sediment LAs, are willing to act as "cooperative parties" in developing the McGrath Lake Work Plan (MLWP) to achieve lake sediment LAs.	Clarification has been made. See underline/strikeout version of BPA.

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	• Clarify that responsible parties for the Central Ditch LAs will conduct Phase I monitoring for the Central Ditch during the first 10 years of the TMDL.	Clarification has been made. See underline/strikeout version of BPA.
	• Clarify that responsibility for Phase 2 monitoring of lake water and sediment will be determined according to the MLWP.	Clarification has been made. See underline/strikeout version of BPA.
	• Clarify that responsible parties for the Central Ditch LAs will be considered in compliance with the TMDL when samples analyzed using approved methods are below detection limits, even though lab detection limits may be greater than the numeric targets.	The TMDL must result in attainment of water quality standards, including the narrative water quality objectives, which are translated into numeric targets. As lower detection limits become available, they must be used to demonstrate attainment of the numeric targets and LAs established in the TMDL.
	• Clarify that cooperative parties shall not be required to commence, participate or fund the Phase 2 monitoring program except as may be provided in the MLWP.	Clarification has been made. See underline/strikeout version of BPA.
	Clarify that all monitoring, to the extent practicable, be required to incorporate new analytical methods with lower detection limits so that the cost efficiency of implementing new analytical methods may be considered.	Staff has addressed this by clarifying that new analytical methods with lower detection limits shall be used when they become commercially available. While cost may increase for new analytical methods, staff has concluded that once these methods are commercially available, the cost will be assumed to be reasonable.

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7.20	***Suggested Revisions to "Implementation Plan" Element*** • Clarify that compliance with the TMDL requires elimination of pollutant loads in toxic amounts, as opposed to the elimination of toxic pollutants. • Clarify that cooperative parties and the Regional Board will implement a Memorandum of Understanding (MOA) to develop the MLWP to achieve lake sediment load allocations. • Clarify that lake landowners and agricultural landowners in the sub-watershed are not "responsible parties" for the remediation of contaminated lake sediment by removing language that would make lake landowners and agricultural landowners subject to any regulatory action by the Regional Board for failing to comply with the terms o f the MOA or if the MOA and MLWP are not implemented or otherwise do not result in attainment of load allocations. Clarify that agricultural dischargers will be considered in compliance with the TMDL LAs for the Central Ditch if BMPs have been implemented in accordance with a Regional Board approved Water Quality Management Plan and compliance with all conditions of the Conditional Waiver are maintained.	Clarification has been made. A revision has been made to clarify that the MOA will be implemented to develop the MLWP and achieve lake sediment load allocations. Clarification has been made. Clarification has been made.
7.21	Clarify the following: • Pursuant to the terms of the MOA, the cooperative parties and the Regional Board will work jointly to develop the MLWP. The purpose of the MLWP is to set forth strategies to achieve lake sediment load allocations in a manner that is beneficial to sub-watershed landowners and the public in general.	Clarification has been made.

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		• By entering into the MOA and/or developing the MLWP, a cooperative party does not accept or acknowledge any degree of responsibility, financial or otherwise, for the remediation of lake sediments, Further, the Regional Board shall not impute any degree of responsibility, financial or otherwise, for the remediation of lake sediments to a cooperative party based upon that cooperative party having entered into the MOA and/or developed the MLWP. Neither the signed MOA nor the MLWP shall be used in any proceeding and/or regulatory action as evidence that a cooperative party should be held responsible, financial or otherwise, for remediating lake sediments or achieving lake sediment load allocations.	No revision has been made. The BPA is not the proper place for this type of language. The language may be included in the MOA and the MLWP. The Executive Officer would not disapprove an MOA containing language that the MOA would not be used as an admission of responsibility by cooperative parties.
	7.22	Clarify that the MOA shall outline the responsibilities of both the Regional Board and cooperative parties.	Clarification has been made.
	7.23	Clarify that the MLWP shall include any additional monitoring needed to assess the effectiveness of the MLWP 's chosen implementation strategies.	Clarification has been made.
	7.24	Clarify that the MLWP shall not require cooperative parties to provide any of the funds necessary to remediate the lake sediment or achieve lake sediment load allocations.	No revision has been made. The BPA is not the proper place for language related to the financial responsibilities of the cooperative parties to the MOA. The language may be included in the MOA and the MLWP.
	7.25	Clarify that the MLWP shall include a strategy to secure the funds necessary to remediate the lake sediment and achieve lake sediment allocations.	Clarification has been made.
	7.26	Clarify that the MLWP shall consider and address the potential impacts of lake sediment remediation strategies on the implementation of the McGrath Beach Bacteria TMDL and ongoing restoration efforts at McGrath State Beach.	Clarification has been made.

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	7.27	Clarify that management implementation actions to achieve lake sediment LAs are not limited to Sediment Capping, Dredging/Hydraulic Dredging and Monitored Natural Attenuation.	Clarification has been made.
	7.28	Clarify the definition of "responsible parties" and "cooperative parties."	Clarification has been made.
	7.29	Clarify that it is within the discretion of the Executive Officer to determine whether there is a sufficient number of cooperative parties willing to enter into the MOA for the MOA to be established.	No change has been made. It is not necessary to clarify the Executive Officer's discretionary authority regarding establishing the MOA in the BPA.
	7.30	Clarify that, in the event that the MOA is not established in a timely manner or the MOA and MLWP are not implemented or otherwise do not result in attainment of LAs consistent with the TMDL, the Regional Board shall initiate an investigation, with input from current landowners, to (1) identify the responsible parties, whether named in this TMDL or not, whose discharges of the legacy pollutants have caused or contributed to the impairment of the lake; (2) ascertain the whereabouts and capacities of those responsible parties and/or their successors; (3) determine the parties to whom responsibility for remediation of sediments should be assigned; and (4) issue appropriate regulatory orders to those responsible parties.	Clarification has been made.
	7.31	Clarify that, if the Executive Officer is unable to identify the responsible parties per the investigations above, then the TMDL shall be reconsidered.	Clarification has been made.
		Suggested Revisions to "Implementation Schedule Table 7-37.2"	
	7.32	Clarify that the Regional Board shall re-assess the numeric targets and load allocations for consistency with the State Board adopted sediment quality objective. (See redlined version Task 1).	See response to comment 7.16.

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7.33	Clarify that landowners in the sub-watershed are not responsible for establishing TMDL LAs (See redlined version Task 1).	Task 1 has been deleted from the implementation schedule. Task 1 is unnecessary; it was simply identifying the date for regulatory purposes on which the LAs had legal force and effect.
7.34	Clarify which tasks are assigned to parties responsible for achieving Central Ditch LAs, and which tasks are assigned to cooperative parties pursuant to the MOA (See redlined version Tasks 5, 6, 7).	Clarification has been made. The redundant responsible/cooperative parties column has been deleted.
7.35	Increase the time frame for responsible parties to attain Central Ditch LAs from 10 years to 15 years to allow adequate time for planning, construction and permitting (See redlined version Task 8).	During the TMDL development, staff originally included a shorter time schedule for implementation. However, after meeting with VCAILG in June 2009, staff increased the time schedule to allow for some of the considerations discussed in the comment. Staff does not feel another increase is needed. Many of the on-farm BMPs are currently being implemented as part of the current iteration of the Conditional Waiver. The VCAILG 2007 and 2008 water quality management plans include the McGrath Lake subwatershed as a priority area for BMP implementation to address exceedances of water quality benchmarks in the waiver. Responsible parties in the McGrath Lake subwatershed will have implemented these prioritized BMPs before the TMDL becomes effective. Therefore, the responsible parties will have sufficient time to determine BMP effectiveness, evaluate the need to implement a regional treatment solution, and design and plan for a regional treatment solution within the proposed implementation schedule.

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7.36	Clarify that both the Regional Board and parties identified in the MLWP will be responsible for implementing the McGrath Lake sediment remediation actions within 10 years of the effective date of the TMDL (See redlined version Task 9).	The table has been revised to remove the "Responsible Party" column. Remediation of lake sediments does not have to be completed in 10 years, but initiated within at least 10 years.
7.37	Clarify that Phase 2 monitoring will begin as outlined in the MLWP and that the Regional Board and parties identified in the MLWP will be responsible for Phase 2 monitoring. (See redlined version Task 10)	The table states that monitoring will begin as outlined in the MLWP.
7.38	Clarify that the Regional Board and parties who may be identified in the MLWP are responsible for achieving lake sediment LAs, and that the deadline for achieving lake sediment LAs is to be determined based on the MLWP. (See redlined version Task 10)	Assignment of responsibility for attainment of load allocations has been removed in order to clarify the fact that, depending on the implementation option chosen, either currently named "cooperative parties" or potentially future "responsible parties" will attain the load allocations. The deadline for attainment is not changed as this must be a fixed deadline, not tied to the MLWP. Staff has considered what is a reasonable amount of time to complete the likely implementation actions for lake sediments when setting the deadline for achieving lake sediment LAs.
7.39	**Comments by the Ventura County Agricultural Irrigated Lands Group (VCAILG).** We support the written comments submitted by VCAILG and VCAILG's consultants, other individual agricultural landowners, the Ventura Regional Sanitation District, and the Ventura County Farm Bureau who are submitting separate written comments.	Comment noted.

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		We appreciated the opportunity to submit these comments, and we look forward to productive discussions with the Regional Board and its staff as the TMDL process moves forward. We are committed to continued cooperation with the Regional Board and believe that our good-faith efforts in working with staff are evidence of that fact.	
8. State of California, Department of Parks and Recreation (Richard Rozzelle)			
	8.1	California State Parks appreciates the opportunity to provide comments on the proposed amendment to the *Water Quality Control Plan - Los Angeles Region* to incorporate a Total Maximum Daily Load for PCBs, Organochlorine Pesticides and Sediment Toxicity for McGrath Lake. As one of the stakeholders in the McGrath Lake sub-watershed and as principle owner of the lake itself, we have a vested interest in the development of a Sediment Toxicity TMDL that will eliminate the impairment in the lake and also maintain the ability of the stakeholders in the watershed to coordinate and effectively implement the TMDL.	Comment noted
	8.2	Our main concern with the proposed TMDL focuses on definition of the responsible parties. The TMDL staff report states that because of previous catastrophic flooding events in the region and a lack of accurate pesticide use records prior to 1974, it is impossible to pinpoint which historic landowners are responsible for originally introducing Organochlorides [*sic*] and PCBs into the McGrath Lake watershed. Faced with this challenge, RWQCB staff determined that all present day landowners in the watershed should be named as "responsible parties" for the purpose of load allocation calculations and determining compliance with the adopted TMDL numeric targets. As a result of this decision, California State Parks has been named as a	The TMDL has been revised. The TMDL now identifies California State Parks as a "cooperative party" in order to clarify that participation in the MOA is voluntary. Language has also been added that clarifies that if the MOA does not result in attainment of load allocations, a separate process for identifying "responsible parties" whose discharges of the legacy pollutants have caused or contributed to the impairment of the lake will be undertaken with input from subwatershed landowners.

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		responsible party for a portion of this TMDL since it currently owns approximately 95% of the affected receiving water body.	
	8.3	The TMDL staff report identifies the most likely source of contamination to be the intense use of Organochloride [*sic*] pesticides such as DDT, Chlordane and Dieldrin on agricultural fields and through the use of PCBs as a pesticide extender and a dust control agent on dirt roads. We feel that there is sufficient evidence that these suspect land use practices were not used by State Parks from the time it acquired the property from the McGrath family in 1948 to the present. Simply put, the mission statement and long standing core values fostered by the California State Parks system are inconsistent with the type of agricultural production which is the most likely source of contamination, Land use practices incorporated by State Parks, if anything, have served to mitigate the existing problem by allowing persistent vegetative cover to establish on potentially contaminated soils within State ownership surrounding the lake. This vegetation serves to stabilize the soil and thus discourages the mobilization and eventual transportation of contaminated sediments into the lake during storm events.	Comment noted. If it became necessary to identify individual responsible parties for the lake sediment LAs, this information would be considered by the Regional Board.
	8.4	Given the stated facts we feel it is important to make a distinction between California State Parks and other identified responsible parties to avoid confusion going into the future as the various stakeholders in the watershed collaborate together in order to implement the adopted TMDL. Our primary concern is that without a clear distinction, the State Parks system will be harnessed to a level of cost sharing obligation during the TMDL implementation process that is grossly disproportionate to its level of involvement in creating the current water and sediment impairments at McGrath Lake. We are also concerned that any potential project that is developed to	Comment noted. See response to comment 8.2. The implementation plan and the MOA are not intended to assign financial responsibility for lake sediment remediation. The Regional Board has committed to participate in the MOA to apply for funding for the remediation. To that end, staff has added a resolved clause to the tentative Board resolution adopting the amendment that staff begin working with cooperative parties to apply for

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		remediate the toxic sediment within McGrath Lake is consistent with ongoing McGrath Lake Trustee Council efforts to mitigate damages caused during the 1993 Berry Petroleum Company oil spill and subsequent cleanup efforts.	Cleanup and Abatement Account Funding to remediate the lake sediments. As part of the TMDL implementation, under the MOA, there will be an opportunity to discuss and coordinate TMDL implementation actions with ongoing restoration projects in the McGrath Lake area.
	8.5	Thank you for the opportunity to comment and we look forward to continuing our collaboration toward a reasonable solution to improve water quality. Please feel free to contact me at (805) 585-1847 if you would like to discuss these comments further.	Comment noted.
9. Ventura County Agricultural Irrigated Lands Group, Edgar Terry			
	9.1	These comments are being submitted on behalf of the Ventura County Agricultural Irrigated Lands Group (VCAILG). VCAILG is a discharger group formed to comply with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080). During the TMDL development process, VCAILG and its consultants have attended both public meetings leading up to the release of this draft TMDL and also engaged in additional discussions with Regional Board staff. VCAILG appreciates having an opportunity to provide suggestions on some aspects of this TMDL prior to its public release.	Comment noted.
	9.2	Comments presented in this letter relate to the numeric targets, implementation timeline, and how this TMDL relates to present and future discharges from agricultural lands within the McGrath Lake subwatershed. VCAILG does not have the authority to	Comment noted. Neither the staff report nor other TMDL documents state that VCAILG would be required to accept

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		accept responsibility for or on the behalf of the agricultural dischargers in this subwatershed for past uses of PCBs or organochlorine pesticides. Additionally, it is not within the scope of VCAILG to enter into any proposed Memorandums of Agreement to plan and implement the remediation and attainment of TMDL load allocations within McGrath Lake.	responsibility for or on behalf of agricultural dischargers, nor enter into the MOA.
		1. Major Comments on Proposed Amendment to the Water Quality Control Plan-Los Angeles Region to Incorporate the TMDL for PCBs, Pesticides and Sediment Toxicity in McGrath Lake (Tentative BPA)	
	9.3	**1.1 Remove Numeric Sediment Targets and Load Allocations SQuiRTs sediment guidelines are not appropriate TMDL Targets** The use of ERLs as numeric targets is a misapplication of the sediment guidelines, which are presented by the National Oceanic and Atmospheric Administration (NOAA) as Screening Quick Reference Tables (SQuiRTs) with the following disclaimer: *The SQuiRT cards were developed for internal use by the Coastal Protection & Restoration Division (CPR) of NOAA. The CPR Division identifies potential impacts to coastal resource and habitats likely to be affected by hazardous waste sites. To initially identify substances which may threaten resources of concern to NOAA, environmental concentrations are compared to these screening levels. These Tables are intended for preliminary screening purposes only: they do not represent official NOAA policy and do no constitute criteria or clean-up levels. NOAA does not endorse their use for any other purposes.*	Staff acknowledges that ERLs and ERMs were developed for screening purposes; however, their use as targets is consistent with the State Board Listing Policy and with previous TMDLs completed for regional waterbodies. The "disclaimer" does not preclude the Regional Board from using the guidelines to define numeric targets for TMDLs.

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		Use of these sediment guidelines as TMDL targets assumes exceeding an ERL concentration in a bulk sediment analysis equates with impairment. The validity of this assumption is improbable, based on the scientific underpinnings of the ERL values, as noted above. In addition, the reliance upon ERLs as numeric targets is inconsistent with the scientific findings of other State efforts, including the ongoing development of Sediment Quality Objectives (SQOs) by the State Water Resources Control Board (SWRCB), and the SWRCB's 303(d) Listing Policy provisions pertaining to surface sediments. We believe the Regional Board should avoid reliance upon ERLs as numeric targets and instead, should describe an iterative process to identify causative linkages between sediment contaminant concentrations and other effects-based measures (e.g., sediment toxicity and benthic community response) employing multiple lines of evidence (MLOE) as outlined in the Phase 1 SQOs. It has been shown in scientific studies that there is no predictable relationship between ERLs and the threshold point of toxicity (O'Connor, 2004), which is a major reason that these chemical concentrations should not be used as numeric targets above which sediment is presumed to be "impaired" for a particular constituent. ERLs are unlikely to predict either sediment toxicity or actual effects on local aquatic organisms. Much of the time, ERLs predict sediments will be toxic when they actually are not (O'Connor, 2004). ERLs have poor capability to predict toxicity because they do not accurately predict the bioavailability or toxicity of chemicals, nor do they	Staff believes use of ERLs is consistent with SWRCB's 303(d) Listing Policy. The Listing Policy recommends the use of ERMs along with another line of evidence such as sediment toxicity. The use of ERMs for listing is appropriate as this is the level at which adverse effects are occurring, while ERLs are appropriate as numeric targets because they represent the threshold below which adverse effects are likely not occurring. Thus, ERLs represent a reliable measure of when beneficial uses are fully supported. TMDLs require a numeric target. The use of an iterative process, such as is utilized in the Phase 1 SQOs does not contain a mechanism to translate the narrative water quality objective into a numeric target. The use of ERLs to translate narrative water quality objectives into numeric targets is an acceptable approach that has been used in several previous TMDLs adopted in this region. The selection of the ERLs as the numeric targets is consistent with the goal of the TMDL, which is to restore beneficial uses. In order to restore beneficial uses, the numeric targets need to limit adverse effects to aquatic life. The ERLs pose, with a high degree of confidence, no potential threat to aquatic life. They are the most protective guidelines developed by a government resource agency (NOAA). The selection of the most protective criteria provides an implicit margin of

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		account for the complex interactions that influence community-level impacts.	safety to account for the uncertainty in the linkage between pollutant sediment concentrations and toxicity.
	9.4	**The statement on Page 30 Staff Report that "the use of the SQOs would not be appropriate for the McGrath Lake TMDL" is inaccurate.** The SQOs list McGrath Lake as a Region 4 estuary, see Table 3.6 "Summary of Sediment Quality Related 303(d) Listing of Bays and Estuaries in the Los Angeles Region" in the *Final Staff Report Water Quality Control Plan for Bays and Estuaries, Part 1: Sediment Quality*. Additionally, this water body has estuarine listed as one of the existing beneficial uses and marine numeric targets are used in the Tentative Basin Plan Amendment.	Staff disagrees. As stated in the staff report (page 28 and 29), and with additional review, staff finds it would not be appropriate to apply the SQOs to this TMDL. Table 3.6 of the referenced SQO staff report includes the impairments of McGrath Lake among the other bay and estuary impairments based on the beneficial uses included in the 2006 303(d) fact sheets. As prescribed in the Basin Plan, estuarine habitat is included as a beneficial use of McGrath Lake. This does not mean the lake is an estuary but rather that the lake includes "uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish or wildlife (e.g. estuarine mammals, waterfowl, shorebirds)" (LARWQCB Basin Plan). The Enclosed Bays and Estuaries Plan which includes Part 1-Sediment Quality, defines estuaries and coastal lagoons as "Waters at the mouths of streams that serve as mixing zones for fresh and ocean waters during a major portion of the year. Mouths of streams that are temporarily separated from the ocean by sandbars shall be considered as estuaries." McGrath Lake is separated from the ocean during most occasions with breaches only resulting from anthropogenic activities or very rare

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		storm events. It also is not fed by a stream.
	If the Regional Board chooses to accept the McGrath Lake Staff Report assertion that the waterbody does not meet the definition of an estuary, then it is recommended that the estuarine beneficial use be removed.	A TMDL is not the appropriate avenue to revise the beneficial uses included in the Basin Plan, and such revision is not necessary as discussed above. This issue may be considered through a separate basin plan amendment process at a later time.
	Consequently, the procedures outlined in the SQOs should have been followed to identify whether or not OC Pesticides and PCBs were causing toxicity to the benthic community in the lake using three lines of evidence: sediment toxicity, benthic community condition, and sediment chemistry. This information could then have been utilized to identify appropriate sediment numeric targets for the TMDL once appropriate stressor identification has been completed. Given that time and resource constraints limited the ability to do the appropriate analysis, the TMDL should acknowledge this fact and allow for modifications of the targets and associated allocations once the analysis has been completed.	Staff disagrees. In addition to the reasons documented above, at the time the TMDL was released for public comment, adoption of the SQOs was not finalized. While the triad approach was not included in the TMDL development, staff did evaluate sediment toxicity, benthic community data and sediment chemistry. The TMDL has been revised to include provisions for a TIE if sediment toxicity is observed to continue once the lake sediments have been remediated.
	We recognize that ERLs have been used as sediment targets for other approved OC Pesticide and PCB TMDLs in the Los Angeles Region. In this case, the use of these sediment targets has resulted in problematic assumptions for implementation requirements (as discussed in the following comment) that were not present in other TMDLs. Consequently, if Regional Board staff chooses not to remove the sediment targets and allocation, we request that Table 7-	Staff disagrees. Marina del Rey Harbor meets the definition of an enclosed bay as put forward in the *Final Staff Report Water Quality Control Plan for Bays and Estuaries, Part 1: Sediment Quality*, McGrath Lake does not. Therefore, the reconsideration included in the Marina del Rey Toxic Pollutants TMDL would not be appropriate in this TMDL. Furthermore, now that the Phase 1 SQOs are finalized, staff has reviewed them and

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		37.2 of the Tentative Basin Plan Amendment include a reconsideration of the TMDL in which the Regional Board will re-assess the numeric targets and waste load allocations for consistency with the State Board adopted sediment quality objectives, as included in the Marina del Rey Harbor Toxic Pollutants TMDL (Resolution No. 2005-012).	determined that they do not currently contain a mechanism to translate the narrative water quality objective into a numeric target.
	9.5	**1.2 Remove Lake Load Allocations and Requirements to Remediate Lake Sediments** The Clean Water Act requires TMDLs to result in compliance with water quality standards. In the case of McGrath Lake, the only adopted water quality standards to be met are sediment toxicity, the CTR and Basin Plan standards. Sediment targets included in the TMDL are surrogates for addressing sediment toxicity and meeting Basin Plan narrative objectives, but, as discussed above, the selected sediment targets do not definitively demonstrate that toxicity is due to these constituents nor does the TMDL provide clear evidence that the toxicity is due to these constituents (i.e. TIEs or other information determined per the SQO guidelines). The only evidence provided is that the sediment targets are exceeded, which is not definitive evidence. Therefore, it is possible that sediment toxicity, CTR and Basin Plan standards will be achieved without meeting the sediment targets. As a result, the presumption in the TMDL that the lake requires remediation to meet the sediment targets in order to protect beneficial uses is problematic.	Staff disagrees. The lake is on the CWA 303(d) list of impaired waterbodies for both sediment toxicity and elevated levels of chlordane, dieldrin, DDT, and PCBs in sediment. These elevated levels do not meet the narrative water quality objectives in the Basin Plan for chemical constituents, bioaccumulation, pesticides, and toxicity. Therefore, a TMDL is required to address the elevated levels of these contaminants in sediment. Furthermore, the studies upon which the listings were based (Jacobi et al., 1999) concluded that the sediment toxicity was likely due to these constituents. Thus, the TMDL includes load allocations for these constituents in sediment to address the sediment toxicity and meet the objectives in the Basin Plan.

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	Secondly, the only justification provided for the need to remediate sediments in the lake itself is the need to protect beneficial uses and the time it would take for monitored natural attenuation to occur. For protection of beneficial uses, the TMDL primarily focuses on the impact of the release of pesticides and PCBs from the sediment back into the water column and the impact that could have on aquatic life and wildlife. In estimating the potential contaminant flux into the water from the sediment (as shown in Table 15 of the staff report), Regional Board staff in all cases calculated higher concentrations than were observed in the water column. Although the calculations may indicate that the sediment is a source to the water column, the magnitude of the source is questionable. As a result, the presumption in the TMDL that sediment concentrations need to be remediated to the level of the sediment targets to ensure protection of aquatic life and wildlife may be incorrect. The information provided in the TMDL indicates that higher sediment concentrations may be allowable and still achieve the water column targets and protect beneficial uses. Additionally, without definitive determination that the sediment toxicity in the lake is due to OC pesticides and/or PCBs, requiring remediation of the lake sediments to meet the sediment targets is inappropriate.	The calculations made by staff were included to demonstrate the likelihood that contaminants were moving across the sediment-water interface rather then solely sequestered in the lake bed and thereby causing an impairment of both the sediments and the water column. Regardless of the magnitude of the source of contaminants to the water column, the TMDL must address the contaminants in sediment in order to protect all aquatic life beneficial uses, including benthic organisms. The assumption that the sediment toxicity is caused by the elevated levels of OC pesticides and PCBs is supported by data. The TMDL has been revised to include TIE studies after sediment remediation has occurred to verify this assumption.
	Additionally, it is inappropriate to base a requirement for costly implementation actions on the time it would take to pursue a more environmentally appropriate and cost effective implementation strategy. The time estimates in the TMDL are all based on achieving the sediment targets. As discussed above, protection of beneficial uses may occur prior to achieving these	The Regional Board does not dictate the method of implementation and compliance for TMDLs. While staff considers dredging to be the best available option considering the environmental and site conditions, the contaminant levels and the value of site resources, the TMDL does not dictate that

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	targets and the time frame may be shorter. Additionally, the TMDL does not appear to account for the potential burial of the contaminated sediments by clean sediments once the discharges to the lake have been reduced. This could also reduce the time necessary to protect beneficial uses and meet water quality standards (thereby complying with the TMDL). Finally, a search of EPA's ATTAINs database was conducted to review lake TMDLs for OC Pesticides and PCBs throughout the country. Five TMDLs were identified: **Location, Constituents, Implementation Period** • Weiss Lake, Alabama; PCBs; No specified implementation actions. • Lake Chelan, Washington; DDT, PCBs; 50 years • Lake Roland, Maryland; Chlordane; No specific time period, allow for natural attenuation. • Pere Marquette River and Lake Michigan; PCBs; No specified implementation actions. • Boone Reservoir, Tennessee; Chlordane, PCBs; No specific time period. None of those TMDLs require remediation of in-lake sediments. Only one of the TMDLs has a time frame for implementation, allowing 50 years for attainment of standards in the lake. Although a similar type of TMDL does not exist in California, the TMDL for another bioaccumulative pollutant (mercury) in Clear Lake also does not require remediation of the lake sediments. The Clear Lake TMDL relies on burial of the mercury contaminated sediments by clean sediments and states that	dredging be utilized. However, it would be inconsistent with the Clean Water Act and State law to allow possibly centuries for the site to attain water quality standards. Commenter appears to be using "remediation" and "dredging" interchangeably. This is misleading as monitored natural attenuation is also considered a form of remediation (therefore, contrary to the comment submitted, the Clear Lake TMDL is requiring remediation). The development of TMDLs and the implementation strategies used included in the process to address impaired waters depend on

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		water quality objectives will be met in 80 years. As stated in the SED for the TMDL, the environmental consequences of remediation are likely to be more significant than monitored natural attenuation. Finally, the TMDL provides no justification for assigning responsibility to the McGrath watershed landowners for remediation of the lake. As stated in the Staff Report, there is no available evidence that the current landowners are the cause of the sediment contamination and additional studies would likely show they are not the cause. The flow regime to the lake has varied significantly over time (as discussed in the Staff Report). Since the constituents addressed by the TMDL were historically used, the flows discharging to the lake at the time of use were likely very different from the current drainage area. Additionally, Santa Clara River sources were identified as a potential source of contaminants to the lake historically. Requiring the current landowners to conduct costly clean ups for discharges that they were likely not responsible for is unprecedented, especially when viable alternatives are available. In summary, we request that the TMDL remove the requirements to remediate the sediment in the lake and only require agricultural dischargers to McGrath Lake to address current discharges from their properties into the lake. We	site specific conditions. The timeframes for these other referenced TMDLs are not appropriate for McGrath Lake; a terminal, shallow, back-dune lake. While Staff disagrees that the TMDL does not provide justification for assigning responsibility to the subwatershed landowners, it is not the intent of the implementation approach outlined in the TMDL to hold the current landowners responsible if an MOA can be established and implemented to develop a MLWP to remediate the lake sediments. The staff report does show evidence that the current landowners are the cause of at least some portion of the lake contamination. While the contaminants were historically used, they are continuously eroded from the subwatershed and loaded to the lake via tile water, irrigation, and storm water runoff. This is shown by the fact that the contaminants are currently being detected in the Central Ditch which is presently flowing into the lake. The TMDL, as currently proposed, is not requiring current landowners to fund the remediation of the lake sediments. Additional language has been added to the staff report and other TMDL documents to clarify that current landowners are not responsible for the remediation of contaminated lake sediments under the proposed implementation approach of

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		request that the lake LAs be removed from the TMDL staff report and Basin Plan Amendment along with the associated implementation actions. Should Regional Board staff choose not to address this issue by removing these requirements, we request that the language in the Tentative BPA and staff report be revised to ensure that the listed responsible parties are not held solely responsible for meeting the inlake sediment allocations. In recent conversations with Regional Board staff, potential language changes have been discussed that may be appropriate. VCAILG would support language changes that clearly identify the only compliance requirements for the listed parties as participation in the process to identify solutions (i.e. the MOA and MLWP) and does not have compliance requirements for meeting the in-lake sediment LAs. Additionally, VCAILG supports suggested language changes provided by McGrath Lake agricultural dischargers and Ventura Regional Sanitation District.	establishing an MOA and cooperatively developing and implementing a MLWP to remediate lake sediments. Comment Noted.
		2. General Comments on BPA and Staff Report	
	9.6	**2.1 ERLs are not water quality objectives.** Throughout the Basin Plan Amendment and the Staff Report, exceedances of sediment ERLs are referred to as exceedances of water quality objectives. Sediment ERLs are not water quality objectives and it is inappropriate to make that statement in the documents. We request that you remove these references and replace them with exceedances of sediment targets or other appropriate language.	Sediments are subject to narrative water quality objectives including bioaccumulation and toxicity. There are exceedances of the narrative objectives as measured by the ERLs (which allow for a numeric translation of the narrative objectives found in the Basin Plan).

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	9.7	**2.2 Assessment of Sources** An oilfield is located north of McGrath Lake within the defined subwatershed. It is stated in the Staff Report that under the 2005 Federal Energy Policy Act, such sites are exempt from stormwater regulations. However, as a possible source of PCBs and contaminated sediment, it is not the responsibility of the other dischargers in the subwatershed to take responsibility for these contributions. Therefore, the Tentative BPA and Staff Report should include language to ensure if this oilfield is a PCB source, it will be addressed in future TMDL revisions and the current responsible parties will not be held responsible for discharges from the oilfield.	There is no evidence that the oilfield is contributing, or has contributed, to the PCB contamination of the lake. Additional language is not needed.
		3. Specific Edits for Elements Table 7-37.1	
	9.8	<u>Page 4, add an annual averaging period to the load allocation tables.</u> *Rationale: Impacts from OC Pesticides and PCBs occur over long time periods and are not instantaneous. The allocations as written do not include an averaging period and could be construed as instantaneous maximum values. The Calleguas Creek OC Pesticide and PCB TMDL included annual averaging periods for the load allocations and the same averaging periods should be applied in this TMDL.*	The environmental conditions of McGrath Lake are different from Calleguas Creek, and thus the TMDLs are different. As McGrath Lake is listed for toxicity, an annual averaging period is not appropriate.
	9.9	<u>Page 6, end of the second full paragraph on the page, add text shown below; add same text to</u> <u>Page 7, end of third paragraph:</u> Responsible parties will be considered in compliance with this TMDL when samples analyzed using methods approved by the Executive Officer in the MRP and QAPP are below detection limits, though lab detection limits may be greater than the	See response to comment 7.19.

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		numeric targets.	
	9.10	First sentence on Page 8, change text as shown below, additional text is in bold: Compliance with this TMDL will require the elimination of toxic pollutant loads **in toxic amounts** from the subwatershed to the lake…	This proposed change has been made for clarification purposes.
	9.11	Page 8, end of Section I, add the following text: "Agricultural Dischargers will be considered in compliance with the TMDL LAs if BMPs have been implemented in accordance with a Regional Board approved Water Quality Management Plan and compliance with all provisions of the Conditional Waiver is maintained."	Clarification has been made.
		4. Suggested Changes to the Implementation Schedule Table 7-37.2	
	9.12	Remove Task 1. The load allocations are not effective on the effective date of the TMDL, but rather at the end of the implementation period. Making the load allocations effective at the effective date of the TMDL would effectively put everyone out of compliance at the TMDL effective date. This change should be made on page 48 of the staff report as well.	See response to comment 7.33.
	9.13	Change Agricultural Dischargers to Agricultural Dischargers within the McGrath Lake subwatershed throughout the table.	The column "Responsible Party" has been removed from the table; therefore, the change is not necessary.
	9.14	Change the following dates in Table 7-37.2: Task Number 8. 15 years from effective date of the TMDL. Task Number 9. 15 years from effective date of the TMDL. Task Number 10. 17 years from the effective date of the TMDL.	See response to comment 7.35.

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		Rationale: Implementation of this TMDL hinges on the implementation of on-farm BMPs, regional BMPs, regional treatment, or redirection of agricultural discharge to meet the load allocations for flow of the TMDL constituents into the lake. Many of these options take time for planning and construction and some require permits, which require more time than allotted in the Implementation Schedule. Additionally, extending the implementation schedule allows time for natural attenuation of constituents within the lake, which is an implementation option noted in the Staff Report.	
	9.15	<u>Insert the following new item in Table 7-37.2:</u> Task: Reconsideration of the TMDL targets, allocations and implementation schedule based on the results of monitoring, special studies, and target evaluation. Responsible Party: Regional Board Date: 16 years from the effective date of the TMDL. *Rationale: Including a reconsideration of the TMDL allows for an assessment of the actions taken to mitigate Central Ditch discharges, results of any special studies, and current condition of McGrath Lake.*	The Board always has the discretion to reconsider a TMDL, even if not explicitly provided for in the BPA. Including a specific date for reconsideration would require the Board to reconsider regardless of whether the situation warrants reconsideration.
	9.16	Members of VCAILG within the McGrath Lake subwatershed thank you for considering these comments. We would also like to provide support for the comments submitted by Ventura County Farm Bureau and other subwatershed landowners.	Comment noted.

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10. Farm Bureau of Ventura County, John Krist, Chief Executive Officer		
10.1	I am writing on behalf of the Ventura County Agricultural Irrigated Lands Group (VCAILG) and several of its members who own property located within the McGrath Lake subwatershed. I believe they have already contacted you to request that the abovereferenced McGrath Lake TMDL, currently scheduled for a hearing before the Regional Board on Oct. 1, be postponed for a minimum of six months. I support their request and urge you to grant the postponement.	Comment noted
10.2	As you know, VCAILG represents owners of more than 94 percent of the irrigated lands in Ventura County and coordinates their compliance with various TMDLs and the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080). VCAILG is a subsidiary of the Farm Bureau, and I manage its day-to-day program activities. VCAILG and its consultants have been engaged in the development of. the McGrath Lake TMDL, and have had several discussions with your staff during the process.	Comment noted.
10.3	During these public and private meetings, your staff indicated that they intended hold the owners of property draining to the lake responsible only for contaminant loads in current and future discharges of storm water and irrigation tail water, which would be subject to monitoring and BMP implementation requirements. At no time during this process was there any discussion with us regarding your staff's current recommendation that the Board require a small group of landowners to bear not only the cost of eliminating legacy pesticide pollutant loads from these discharges, but also the cost of remediating lake sediment contaminated with legacy pollutants.	See response to comments 1.1 and 1.4.

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	10.4	VCAILG and its consultants were informed of the proposed sediment-remediation requirement in a conference call on June 22, and no written document was provided for our analysis until the draft TMDL was released for public review on July 20. This dramatic change caught us by surprise, and should not have been made without providing the affected landowners the opportunity to meet with the Regional Board staff to assess and discuss their concerns. Given that remediation of historic sediments in the lake could cost the responsible parties as much as $12 million – a cost that would be shared among only eight discrete landowners- their level of concern is justifiably high. As they were not given the chance to analyze this complex and potentially precedent setting proposal before the draft was released, they deserve adequate time to do so now. That will require a postponement.	See response to comments 1.1, 1.3, 1.4, and 1.6.
	10.5	I also want to make clear that although the monitoring and reporting requirements associated with current and future discharges clearly fall within VCAILG's scope of responsibilities; neither VCAILG nor the Farm Bureau has the authority or the ability to enter into a Memorandum of Agreement on the property owners' behalf. Nor do we have any means of compelling them to do so. Although the draft TMDL proposes the MOA as a mechanism for planning and implementing the sediment remediation, any such agreement would have to be negotiated directly by the property owners themselves and their attorneys. VCAILG will not play any role in that process.	Regional Board staff understands the roles and responsibilities of VCAILG with regard to TMDL implementation. Regional Board staff expects to work with all of the subwatershed landowners as cooperative parties to establish a MOA. Since VCAILG is not a landowner in the subwatershed, it is not named as a cooperative party nor is it expected that it would be a party to the MOA.
	10.6	Finally, although we appreciate your staffs verbal assurance that they will seek funding to help landowners pay for the remediation, we also are acutely aware of the financial constraints affecting the State of California. Until and unless a	See response to comment 1.6.

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		specific source of funds is identified and guaranteed, the property owners would be unwise to rely on such speculative assurances as they consider their options.	
	10.7	Thank you for your prompt attention to this matter.	Comment noted.
11. Farm Bureau of Ventura County, John Krist, Chief Executive Officer			
	11.1	I am writing on behalf of the Farm Bureau of Ventura County, which administers the Ventura County Agricultural Irrigated Lands Group (VCAILG). As you know, VCAILG represents owners of more than 94 percent of the irrigated lands in Ventura County and coordinates their compliance with various TMDLs and the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080).	Comment noted.
	11.2	VCAILG is a subsidiary of the Farm Bureau, and I manage its day-to-day program activities. I have been engaged in the development of the McGrath Lake TMDL, and have had several discussions with Regional Board staff during the process.	Comment noted.
	11.3	Regional Board staff has already been apprised of concerns expressed by landowners in the McGrath Lake subwatershed over liability for extremely costly lake-sediment remediation contemplated by the proposed TMDL. In addition, VCAILG's consultants, Larry Walker Associates, have submitted a separate comment letter addressing what we believe are significant technical flaws in the sediment targets, load allocations and linkage assessment that are integral to the proposed TMDL. We have also submitted letters objecting to the extremely brief period of time allowed for review and comment on this complicated and highly unusual regulatory strategy.	Comment noted. See response to comment 1.4.

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11.4	The purpose of my comments is not to repeat the concerns raised previously, but to emphasize the significant risk the current TMDL proposal poses to the continued effectiveness of VCAILG and the TMDL/Waiver compliance program in Ventura County.	Comment noted, see detailed responses below.
11.5	As I have noted during previous communications with the Regional Board, the apparent success of VCAILG rests on a deceptively slender foundation. When it comes to water quality, Ventura County landowners have demonstrated by their participation in this program that they want to do the right thing, and are willing to undertake reasonable and cost-effective steps to address impairments caused by their activities. But they expect to be treated fairly, and they cannot undertake compliance activities without regard to cost. If they believe the rules are not being applied equitably or reasonably, or that they are being asked to shoulder burdens that will quite literally put them out of business, they will abandon the voluntary compliance program. With each new TMDL, VCAILG Steering Committee members, Farm Bureau directors and Farm Bureau staff hear from more and more growers wondering how much more they can be expected to spend. They also question whether they should draw the line somewhere and simply refuse to cooperate any longer with the Regional Board.	Regional Board staff appreciates the work and cooperation of VCAILG on both the Conditional Waiver and TMDLs in Ventura County. However, staff disagrees with the implication that Ventura County agriculture landowners have been treated unfairly or inequitably. The Regional Board has a record of cooperation and responsive action to the concerns of agriculture stakeholders. Additionally, the Regional Board has often worked to develop and implement regulations that consider the unique aspects of the agriculture industry. In that vein, staff met with the representatives of VCAILG prior to the public notice of the McGrath Lake TMDL to discuss the TMDL and its implementation plan and how it would impact agriculture landowners in the subwatershed. Staff appreciates the challenges faced by the agriculture industry, including cost considerations; this appreciation is reflected in the considerable time allowed for the implementation of on-farm BMPs and the cooperative approach proposed for the attainment of the lake sediment LAs. Throughout the development and implementation of the Conditional Waiver for Irrigated Lands,

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			representatives of VCAILG, the Farm Bureau, and Regional Board staff have discussed the fact that the waiver is designed as an iterative BMP process. Therefore, agriculture landowners should expect continued monitoring and ever-improving BMPs until waiver water quality benchmarks and TMDL LAs are attained. Moreover, there are other impaired waterbodies and upcoming TMDLs, which will identify agriculture as a source of pollutants. Agriculture landowners should expect continued involvement with the Regional Board. In order to continue and improve the stakeholder relationship between the Regional Board and agriculture landowners, staff commits to continued outreach and communication with the agriculture community in Ventura County. The Conditional Waiver for Irrigated Lands (Order No. R4-2005-0080) is not a voluntary program; compliance is required. Participation in VCAILG is voluntary and is only one compliance option that may be pursued by agriculture discharges under the Conditional Waiver. See also response to comment 1.6.
	11.6	With the proposed McGrath Lake TMDL - specifically, the element calling for a very small group of landowners to spend potentially millions of dollars removing sediment from the lake bottom - that line is very much in danger of being crossed. The staff analysis fails to make the case that current landowners	See response to comment 1.6. The lake is impaired by elevated levels of chlordane, dieldrin, DDT, and PCBs in sediment. These elevated levels do not meet the narrative

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		are solely or even primarily responsible for the historic sediment deposition. It fails to link existing levels of OC pesticides and PCBs in the sediment to any observed impairment of legitimate beneficial uses. Yet this TMDL has the potential to impose significant costs on landowners and perhaps render their property worthless by clouding title for many years.	water quality objectives in the Basin Plan for chemical constituents, bioaccumulation, pesticides, and toxicity, which are set to protect the beneficial uses of McGrath Lake. See also response to comment 2.3 (first paragraph).
	11.7	The McGrath Lake TMDL is, in other words, the sort of worst-case scenario the skeptics have been warning about since VCAILG was formed. Adopting it in its current form will likely undermine continued support for VCAILG and the entire Waiver/TMDL compliance program, by making it clear that voluntary participation renders landowners vulnerable to ruinously expensive and poorly justified compliance strategies. I urge Regional Board staff to reconsider the sediment-remediation element of the proposed TMDL.	Staff believes that the proposed language changes will assure landowners that the TMDL implementation is intended to be a cooperative effort to restore a valuable water resource. See also response to comment 11.5.
	11.8	Thank you for considering these comments. If you have any questions, please contact me at (805) 289-0155.	Comment noted.
12. Ventura Regional Sanitation District, Mark Lawlar General Manager			
	12.1	The Ventura Regional Sanitation District (VRSD) has received and reviewed the Proposed Amendment referenced above. We appreciate the opportunity to review this document and to provide you with our comments and concerns. The VRSD is a public agency providing water, wastewater and solid waste management services throughout the County of Ventura. Our Board of Directors is comprised of nine elected officials including eight council members from each of the eight cities within the district and one representative from the special districts. As a regional agency, our Board of Directors is proud of VRSD's reputation for environmental stewardship and innovative	Comment noted.

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		solutions to water quality issues. As a property owner within the defined subwatershed, it is our goal to work with your staff to develop a TMDL that is reasonable and effective. Therefore, we appreciate the time that your staff has spent with us over the past week as well as your consideration of the following comments. It is important to note that the following comments relate to the original Proposed Amendment language, not revisions which we have subsequently discussed with staff. Hopefully, these comments will be fully addressed by revisions forthcoming from ongoing discussions.	
	12.2	**1. The Regional Board failed to follow its own guidelines and policies by developing the McGrath Lake TMDL without early, continuous and meaningful stakeholder involvement.** The Regional Board failed to follow its own guidelines and policies by developing the McGrath Lake TMDL without early, continuous and meaningful stakeholder involvement.[1] This failure is most pronounced in that portion of the proposed amendment addressing in-lake contaminated sediments. [1]"In designing implementation plans, stakeholders should be engaged early in the process in order that they can be involved in the consideration of solutions and alternatives, including costs associated with implementation." (State of California S.D. 469 TMDL Guidance, "A Process for Addressing Impaired. Waters in California," June 2005, Approved by Resolution 2005-0050, p. 6-10.).).	See response to comment 1.1 (first and last paragraph).
	12.3	Prior to releasing the proposed amendment and supporting documents for public comment on July 20, 2009, the Regional Board staff made little, if any, attempt to fully and directly inform	See response to comment 7.2.

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		the so called "McGrath Lake sub-watershed landowners" of its intent to hold those designated landowners "responsible" for the remediation of in-lake contaminated sediment. The decision to hold sub-watershed landowners financially responsible for remediation of contaminated lake sediments represents such a drastic and surprising departure from established policies, that it is difficult to understand why the Regional Board would not actively seek sustained stakeholder involvement from the earliest stages of TMDL development. Immediately following the publication of the "Notice of Hearing" on July 20, 2009, a number of sub-watershed landowners, including VRSD, contacted the Regional Board and requested a continuance to allow additional time for review and comment. Regional Board staff rejected this request in favor of two meetings designed to address landowner concerns through last minute revisions to the proposed amendment. As a result of those two meetings, a number of suggested revisions were put forward by landowners, including VRSD, for staff consideration. Regional Board staffs response to those suggested revisions is pending at the writing of this comment letter. VRSD is appreciative of the effort that the Regional Board staff made in considering their suggested revisions. VRSD is hopeful that revisions mutually acceptable to Regional Board staff and the affected parties can be recommended to the Regional Board at the October 1, 2009 hearing. In the event such revisions cannot be recommended, VRSD will contend that the abbreviated time-frame for public comment has made it impossible to properly evaluate the underlying assumptions, scientific data, and legal principles upon which the Proposed Amendment rests.	See response to comments 1.3 and 7.5.

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12.4	**There is no rational or equitable basis for the Regional Board to assign joint responsibility for the lake sediment load allocation and cleanup of the contaminated lake sediment to current landowners of the lake and current watershed landowners discharging into the lake.** At the outset it should be noted that VRSD has been identified as owning property located within the McGrath Lake sub-watershed even though VRSD's property drains to the Santa Clara River and even though there is no evidence of agricultural activity, much less application of the legacy pesticides, on VRSD's property before or after VRSD acquired ownership of the property in 1993. In pertinent part, the TMDL states that: "... limitations in the currently available data make it difficult to attribute the legacy contaminants in the lake sediments to specific historical dischargers. In order to attribute the legacy sediment contamination to specific historical dischargers, a large amount of obscure technical information would be required. For example, a detailed review of the historical watershed hydrology and historical sediment loss from the watershed would be needed. Additional required information would also include: • Historical watershed land ownership records (size of properties, length and/or era of ownership); • Sedimentation/resuspension rates within the lake; and • Sediment contamination profile (both within the lake and throughout the subwatershed).	See response to comments 7.6 and 7.7. In an effort to determine flow regimes in the subwatershed, staff utilized other reports that investigated hydrologic conditions in the area. These reports indicated that during larger storm events, water from part of the landfill is directed down the subwatershed and into McGrath Lake. The area of the landfill may not have been used actively for agriculture, but still could be a source of pesticides and PCBs due to historical disposal of the materials at the site.

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	Based on the information described above, the pollutants in the lake sediment are currently considered unattributable to individual responsible parties; therefore, *the* **Regional Board** shall assign joint responsibility for the lake sediment load allocation and cleaning of the contaminated lake sediments **to** current landowners of the lake **and current** watershed landowners discharging to the lake (emphasis added)," (TMDL Staff Report, p. 50.) In light of the facts cited in the TMDL Staff Report, there is no rational or equitable basis for the Regional Board to assign joint responsibility for the lake sediment load allocation and cleanup of the contaminated lake sediment to current landowners of the lake and current watershed landowners discharging into the lake. Current landowners should not be designated as responsible parties where the evidence indicates that prior owners who farmed these lands have dissolved decades ago. Moreover, the evidence strongly suggests that a majority of the contaminated lake sediments were deposited over decades of rainfall, irrigation, and major flood events and originate from the activities of persons or entities located beyond the sub-watershed. This conclusion is particularly applicable to VRSD, which had absolutely nothing to do with the discharge of any legacy pesticides to this watershed. Here, the TMDL concludes that the legacy pollutants in the lake sediment cannot be associated with a currently identifiable party or parties, and further concludes that the search for responsible parties would be a difficult task. The TMDL then proceeds to arbitrarily allocate responsibility to current landowners who are	

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		insignificantly (or not at all) responsible for the contamination.	
	12.5	In addition, State Water Resources Control Board Resolution No. 92-49 sets forth policies and procedures applicable to all investigations, and cleanup and abatement activities, for all types of discharges subject to California Water Code Section 13304. Prior to requiring a person to clean up waste and abate the effects of a discharge or a threat of a discharge, under Section 13304, the Regional Water Board must "[m]ake a **reasonable effort** to identify the dischargers associated with the discharge. (Emphasis added)." (State Water Resources Control Board Resolution No. 92-49.) It cannot be said that the Board made a "reasonable effort" to identify parties responsible for McGrath Lake sediment contamination when the Board identified the alleged "responsible parties" merely on the basis of ownership interest and unverified drainage patterns without regard to the fact that they may be responsible for only a minor fraction, if any, of the lake sediment contamination.	See response to comment 7.8.
	12.6	3. **The proposed amendment's pollutant loading allocation plan was developed without adequate consideration of cost, technical achievability, and equity as required by Regional Board guidelines and policies.** "One of the most complex decisions in the analysis of impaired waters is the development of a pollutant loading allocation plan. The plan **requires the consideration of numerous factors,**	See response to comment 7.9.

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		including cost, technical achievability, and equity. An allocation plan that achieves an acceptable balance between these factors has a greater chance of being accepted by the public and stakeholders (emphasis added)." (State of California S.B. 469 TMDL Guidance, "A Process for Addressing Impaired Waters in California, June 2005, Approved by Resolution 2005-0050, p. 518.) It is not reasonable or equitable for parties responsible for an unknown fraction of contaminated lake sediments to bear the total cost of remediating those sediments. The Regional Board should not use the TMDL process as a means of shifting the financial responsibility for remediating lake sediment to a small group of landowners whose contribution to sediment contamination is de minimus relative to the contribution of unidentifiable and uncontrollable sources in the Santa Clara River Watershed.	
	12.7	**4. The proposed amendment should eliminate any regulatory provisions that could potentially force current landowners of the lake or current sub-watershed landowners to bear the responsibility for remediating contaminated lake sediment.** Having arbitrarily assigned joint responsibility for in-lake sediment to current landowners, the TMDL suggests that those load allocations should be implemented through a Memorandum of Agreement (MOA) between current landowners and the Regional Board.	See response to comment 7.10.

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	The proposed amendment states that: "If a MOA is not established with responsible parties within two years of the effective date of the TMDL, or if responsible parties do not comply with the terms of the MOA, or if the MOA and MLWP are not implemented or otherwise do not result in attainment of load allocations consistent with the provision and schedule of the TMDL, a cleanup and abatement order pursuant to Cal. Water Code section 13304, or another appropriate regulatory order, shall be issued to implement the load allocations." A TMDL may be "adopted with and reflected in a resolution or order that certifies that a nonregulatory program is being implemented by another entity, and the program will correct the impairment." (Resolution 2005-0050, Section 2(c)(ii),"Water Quality Control policy for Addressing Impaired Waters: Regulatory Structure and Options.") A TMDL adopted in accordance with Section 2(c)(ii) must comply with the requirements set forth in Resolution 2005-0050, Section 2(d). The findings required by Section 2(d) will require a fact-specific inquiry, dependent upon the type of impairment at issue, the identity, authority, and interests of those proposing the alternative program, and a variety of other factors. There appears to be no requirement that a non-regulatory program provide for regulatory action against a "responsible party." The Regional Board should revise the proposed	

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		amendment to eliminate specific regulatory actions that would force current landowners of the lake or current watershed landowners to bear the responsibility and expense for remediating lake sediment.	
	12.8	**5. The proposed amendment should identify natural attenuation as a viable remediation strategy, and adjust the implementation schedule for achieving load allocations accordingly.** Given the complexity and cost involved in remediating legacy pollutants and the difficulty of equitably and reasonably assigning responsibility for that remediation, natural attenuation should be identified as a viable and feasible remediation strategy for lake sediment. However, by requiring responsible parties to achieve lake sediment load allocations in 14 years, the Regional Board effectively eliminates natural attenuation as a measure to clean up contaminated lake sediments. The proposed amendment sets forth several in-lake approaches to sediment remediation. These include: (1) Monitored Natural Attenuation; (2) In-situ Capping; and (3) Dredging. As acknowledged in the TMDL, during certain storm events the McGrath Lake sub-watershed is inundated by stormwater runoff that emanates from beyond its borders. In addition, a storm event may result in the Santa Clara River Delta and McGrath Lake merging. Neither capping nor dredging alternatives will lead to a long-term solution, because	See response to comment 7.11.

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		inevitably contaminated sediment from beyond the sub-watershed would inundate the lake and redeposit contaminated sediment in the lake. Attenuation should be given more consideration as a viable strategy.	
	12.9	**6. Rather than arbitrarily assigning load allocations for lake sediment to landowners in the McGrath Lake sub-watershed, the proposed amendment should assign those load allocations to unidentifiable and uncontrollable sources in the Santa Clara River Watershed.** A study funded by USEPA recognizes that "the uncertainty in TMDL forecasts and in the predictions of the efficacy for control actions is often large, with the consequence that implementation actions for water quality improvements might be ineffective and therefore wasteful of limited water quality program resources." ("Adaptive Implementation of Water Quality Improvement Plans: Opportunities and Challenges," Nicholas Institute, Duke University, September 2007, p. 4.) The proposed amendment should be revised to reflect the fact that contaminated lake sediment is attributable to a wide array of disparate sources throughout the Santa Clara River Watershed. Rather then arbitrarily assigning load allocations for lake sediment to landowners in the McGrath Lake sub-watershed, the proposed amendment should assign those load allocations to unidentifiable and uncontrollable sources in the Santa Clara River Watershed. As discussed in Comment 1, the Regional Board admits that there is no evidence by which it can link legacy pollutants in	See response to 7.12.

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		contaminated lake sediment to a responsible party. Until the Regional Board obtains that evidence, legacy pollutants in the lake sediment should be treated as "unidentifiable" and "uncontrollable" sources in the Santa Clara River Watershed.	
	12.10	**7. The TMDL implementation plan should achieve Central Ditch load allocations through BMPs or other pollutant minimization actions, while addressing lake sediment contamination due to legacy pollutants under another regulatory program or authority.** The USEPA funded study referenced above concludes that an adaptive implementation approach is required where non-point sources cannot be clearly defined or where there are legacy sources of pollutants. The study also concludes that in a situation involving sediments contaminated with legacy pollutants **"an adaptive implementation approach would dictate that legacy and uncontrollable loads ... be addressed under another regulatory program or authority.** The pollutant control implementation plan would require BMPs or other pollutant minimization actions (emphasis added)." ("Adaptive Implementation of Water Quality Improvement Plans: Opportunities and Challenges," Nicholas Institute, Duke University, September 2007, p. 38.) The proposed amendment should limit its scope to achieving Central Ditch load allocations through BMPs or other pollutant minimization actions, while addressing lake sediment contamination due to legacy pollutants under another regulatory	See response to comment 7.13.

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		program or authority.	
	12.11	**8. Suggested Revisions to Proposed Amendment (See Redlined Version-Attachment A)** For reasons previously discussed, we request that the remediation of contaminated lake sediments be removed from the TMDL implementation plan and handled through the BPTCP or another regulatory program. In the event that the Regional Board determines that the remediation of contaminated lake sediment should remain a component of the TMDL implementation plan, we recommend that the language of the proposed amendment be changed as indicated in the attached redlined version. These proposed revisions are currently under consideration by Regional Board staff and were the topic of the recent meetings between the parties. Regional Board staff has stated that supporting documents could be modified to reflect any revisions made to the proposed amendment.	See response to comments 7.15.
	12.12	**Suggested Revisions to "Numeric Target" Element** Require the Regional Board to re-assess numeric targets and load allocations for consistency with the State Board adopted sediment quality objectives.	See response to comment 7.16.
	12.12	**Suggested Revisions to "Source Analysis" Element** Clarify that agriculture is only one of several sources of contaminated surface sediment flushing into McGrath Lake via the Central Ditch.	See response to comment 7.17.
	12.13	**Suggested Revisions to "Load Allocations" Element**	See response to comment 7.18.

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		Add an annual averaging period to the load allocation tables. Remove the listing of any specified source, responsible party or cooperative party from the allocation tables.	
	12.14	**Suggested Revisions to "Monitoring" Element** Distinguish between Central Ditch dischargers who are responsible for attaining Central Ditch' LAs and those sub-watershed landowners who, without accepting or acknowledging responsibility for achieving lake sediment LAs, are willing to act as "cooperative parties" in developing the McGrath Lake Work Plan (MLWP) to achieve lake sediment LAs. Clarify that responsible parties for the Central Ditch LAs will conduct Phase I monitoring for the Central Ditch during the first 10 years of the TMDL. Clarify that responsibility for Phase 2 monitoring of lake water and sediment will be determined according to the MLWP. Clarify that responsible parties for the Central Ditch LAs will be considered in compliance with the TMDL When samples analyzed using approved methods are below detection limits, even though lab detection limits may be greater than the numeric targets. Clarify that cooperative parties shall not be required to commence, participate or fund the Phase 2 monitoring program except as may be provided in the MLWP.	See response to comment 7.19.

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		Clarify that all monitoring, to the extent practicable, be required to incorporate new analytical methods with lower detection limits so that the cost efficiency of implementing new analytical methods may be considered.	
		Suggested Revisions to `Implementation Plan" Element	
	12.15	Clarify that compliance with the TMDL requires elimination of pollutant loads in toxic amounts, as opposed to the elimination of toxic pollutants. Clarify that cooperative parties and the Regional Board will implement a Memorandum of Understanding (MOA) to develop the MLWP to achieve lake sediment load allocations. Clarify that lake landowners and agricultural landowners in the sub-watershed are not "responsible parties" for the remediation of contaminated lake sediment by removing language that would make lake landowners and agricultural landowners subject to any regulatory action by the Regional Board for failing to comply with the terms of the MOA or if the MOA and MLWP are not implemented or otherwise do not result in attainment of load allocations. Clarify that agricultural dischargers will be considered in compliance with the TMDL LAs for the Central Ditch if BMPs have been implemented in accordance with a Regional Board	See response to comment 7.20.

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		approved Water Quality Management Plan and compliance with all conditions of the Conditional Waiver are maintained. Clarify the following: ➢ Pursuant to the terms of the MOA, the cooperative parties and the Regional Board will work jointly to develop the MLWP. The purpose of the MLWP is to set forth strategies to achieve lake sediment load allocations in a manner that is beneficial to sub-watershed landowners and the public in general. ➢ By entering into the MOA and/or developing the MLWP, a cooperative party does not accept or acknowledge any degree of responsibility, financial or otherwise, for the remediation of lake sediments. Further, the Regional Board shall not impute any degree of responsibility, financial or otherwise, for the remediation of lake sediments to a cooperative party based upon that cooperative party having entered into the MOA and/or developed the MLWP. ➢ Neither the signed MOA nor the MLWP shall be used in any proceeding and/or regulatory action as evidence that a cooperative party should be held responsible, financial or otherwise, for remediating lake sediments or achieving lake sediment load allocations. ➢ Clarify that the MOA shall outline the responsibilities of both the Regional Board and cooperative parties.	See response to comment 7.21. See response to comment 7.22.
	12.16	Clarify that the MLWP shall include any additional monitoring	See response to comment 7.23

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		needed to assess the effectiveness of the MLWP 's chosen implementation strategies.	
	12.17	Clarify that the MLWP shall not require cooperative parties to provide any of the funds necessary to remediate the lake sediment or achieve lake sediment load allocations.	See response to comment 7.24
	12.18	Clarify that the MLWP shall include a strategy to secure the funds necessary to remediate the lake sediment and achieve lake sediment allocations.	See response to comment 7.25
	12.19	Clarify that the MLWP shall consider and address the potential impacts of lake sediment remediation strategies on the implementation of the McGrath Beach Bacteria TMDL and ongoing restoration efforts at McGrath State Beach.	See response to comment 7.26
	12.20	Clarify that management implementation actions to achieve lake sediment LAs are not limited to Sediment Capping, Dredging/Hydraulic Dredging and Monitored Natural Attenuation.	See response to comment 7.27
	12.21	Clarify the definition of "responsible parties" and "cooperative parties."	See response to comment 7.28
	12.22	Clarify that it is within the discretion of the Executive Officer to determine whether there is a sufficient number of cooperative parties willing to enter into the MOA for the MOA to be established.	See response to comment 7.29
	12.23	Clarify that, in the event that the MOA is not established in a timely manner or the MOA and MLWP are not implemented or otherwise do not result in attainment of LAs consistent with the TMDL, the Regional Board shall initiate an investigation, with input from current landowners, to (1) identity the responsible parties, whether named in this TMDL or not, whose discharges of the legacy pollutants have caused or contributed to the impairment of the lake; (2) ascertain the whereabouts and capacities of those responsible parties and/or their successors;	See response to comment 7.30

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		(3) determine the parties to whom responsibility for remediation of sediments should be assigned; and (4) issue appropriate regulatory orders to those responsible parties.	
	12.24	Clarify that, if the Executive Officer is unable to identify the responsible parties per the investigations above, then the TMDL shall be reconsidered.	See response to comment 7.31
		Suggested Revisions to "Implementation Schedule Table 7-37.2"	
	12.25	Clarify that the Regional Board shall re-assess the numeric targets and load allocations for consistency with the State Board adopted sediment quality objective. (See redlined version Task 1).	See response to comment 7.16
	12.26	Clarify that landowners in the sub-watershed are not responsible for establishing TMDL LAs (See redlined version Task 1).	See response to comment 7.33.
	12.27	Clarify which tasks are assigned to parties responsible for achieving Central Ditch LAs, and which tasks are assigned to cooperative parties pursuant to the MOA (See redlined version Tasks 5, 6, 7).	See response to comment 7.34.
	12.28	Increase the time frame for responsible parties to attain Central Ditch LAs from 10 years to 15 years to allow adequate time for planning, construction and permitting (See redlined version Task 8).	See response to comment 7.35
	12.29	Clarify that both the Regional Board and parties identified in the	See response to comment 7.36

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		MLWP will be responsible for implementing the McGrath Lake sediment remediation actions within 10 years of the effective date of the TMDL (See redlined version Task 9).	
	12.30	Clarify that Phase 2 monitoring will begin as outlined in the MLWP and that the Regional Board and parties identified in the MLWP will be responsible for Phase 2 monitoring. (See redlined version Task 10)	See response to comment 7.37
	12.31	Clarify that the Regional Board and parties who may be identified in the MLWP are responsible for achieving lake sediment LAs, and that the deadline for achieving lake sediment LAs is to be determined based on the MLWP. (See redlined version Task 10)	See response to comment 7.38
	12.32	**9. Comments by the Ventura County Agricultural Irrigated Lands Group (VCAILG).** We support and incorporate here the written comments submitted by VCAILG and VCAILG's consultants and the individual agricultural landowners who are submitting written comments at this time. In conclusion, VRSD would like to reiterate its commitment to participate in the TMDL process as a cooperating party and good neighbor in this community. We appreciate the opportunity to submit these comments and we look forward to resolving these issues in a collaborative manner.	Comment noted.
13. U.S. Fish and Wildlife Service			

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13.1	We are concerned about the potential impacts of this project on the following federally listed species and critical habitat, which may occur or have the potential to occur within the project vicinity: the endangered *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch) and its critical habitat, California least tern (*Sterna antillarum browni*), brown pelican (*Pelecanus occidentalis*), least Bell's vireo (*Vireo bellii pusillus*), and the threatened western snowy plover (*Charadrius alexandrinus nivosus*).	Comment noted. The goal of the TMDL is to restore McGrath Lake and the aquatic and wild life habitat that it provides in order to support aquatic and wild life species that use the Lake, including the federally listed species identified by the Service.
13.2	The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.	Comment noted. See response to comment 13.1.

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13.3	We request to be involved with the development of any implementation plan concerning capping, dredging, or monitoring natural attenuation of contaminants in lake sediments. The staff report briefly describes dredging/hydraulic dredging as an option for removing contaminated sediment from McGrath Lake, and lists damage to aquatic life, short term turbid conditions, and low dissolved oxygen levels as potential impacts of dredging.	Comment noted. Participants in the MOA will consult with USFWS when developing the MLWP.
13.4	We are concerned that dredging may impact listed species by resuspending contaminants into the water column causing a short term, but potentially acute exposure of species to sediment-bound contaminants. California least terns use McGrath Lake for foraging and may be exposed to these contaminants during and after dredging activities.	Staff agrees that resuspension is a potential concern when dredging is discussed. If dredging is ultimately pursued as an implementation measure, resuspension and its effects would need to be considered and mitigated. However, it should be noted that given the shallow depths of the lake and the dynamic conditions that occur onsite, significant resuspension most likely already occurs.
13.5	We recommend that the Board expand the discussion of dredging/hydraulic dredging in the staff report to include this possible impact.	No change has been made to the staff report. Greater details on the potential impacts of the possible implementation alternatives included in the staff report are located in the SED document.
13.6	Furthermore, one of the implementation options for dealing with agriculture non-point source discharge, redirecting agricultural discharge, may impact listed species. McGrath Lake provides wetland habitat that supports one of the only successful reintroduction sites for Ventura Marsh milk-vetch, which was thought to be extinct until its rediscovery in 1997. If water sources that feed McGrath Lake are diverted to other drainages,	Comment noted. It is possible that if the alternative of redirecting the agricultural drainage is pursued, the size of the lake and the concurrent riparian corridor might be altered. Such actions may cause a reduction in water to the lake and negatively affect the

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		the lake may be reduced in size or be eliminated completely, thereby altering or eliminating habitat for this species. This potential reduction in water to the lake may also impact species that forage or loaf in the lake including the California least tern and brown pelican, and may also impact surrounding riparian habitat that supports the least Bell's vireo.	surrounding habitat. On the other hand, it should also be noted that if the redirection alternative is pursued, the size of the lake and corresponding habitat may increase. Currently, the lake is fed by both surface runoff and sub-surface flow. However, a significant volume of the lake (more volume than is discharged just by surface flow) is mechanically pumped to the ocean to counter the agriculture drainage to the lake. If agricultural drainage is no longer discharged to the lake, the pumping commitments would cease and the lake might actually increase in size.
	13.7	We appreciate the opportunity to provide comments on the proposed TMDL and look forward to working with the Board in the future to address and minimize the project's potential effects on federally listed species.	Comment noted.