

Comment Summary and Responses to Comments
Comment Deadline: November 26, 2012
Amendment to the Water Quality Control Plan for the San Diego Region
to Incorporate a Sediment TMDL for Los Peñasquitos Lagoon, San Diego County, California

List of Commenter's:

Comment Reference	Organization	Representative
1	Del Mar Union School District	Randy Wheaton
2	Poway Unified School District	Mike Tarantino
3	San Diego County Office of Education (SDCOE)	Joanne Branch
4	Solana Beach School District	Caroline Brown

Note: All four commenters provided essentially the same comments. Among them, the Solana Beach School District is not located within the watershed.

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Response to Comments:

No.	Author	Comment	Response
1.1	All	The school districts were not notified of the stakeholder development process for the Los Peñasquitos Lagoon TMDL. As a result the districts were prevented from participating in the stakeholder process and did not previously submit comments on the TMDL. For this reason, the districts request that the State Water Board assign additional weight to their comments.	The San Diego Water Board regrets the missed opportunity to hear from the school districts and appreciates the comments provided by the districts to the State Water Board. We made numerous attempts to inform interested persons of the project. For instance, the San Diego Water Board published two Public Notices in local newspapers, conducted a public workshop and CEQA scoping meeting, and posted all relevant documents and notices on Board's website. In addition, periodic updates were provided to the Board by staff in the form of Executive Officer reports that are also accessible from our home web page.
1.2	All	Stakeholder process was closed door in nature and as a result, there are significant due process issues.	The San Diego Water Board values transparency and accountability. The Board reached out to stakeholders while developing the TMDL and did not exclude any relevant party. We developed an email lyris list based on the consensus and recommendation of the stakeholder group, and further provided a web link for subscription to the lyris list at public meetings and on our website so that any interested entity or individual would have a chance to be involved in the stakeholder process. Stakeholders on the lyris list include the County of San Diego, City of San Diego, City of Carlsbad, City of Poway, City of Del Mar, Caltrans, State Parks, California Fish & Wildlife, US Environmental Protection Agency, US Army Corps of Engineers, San Diego Gas & Electric, Hanson Sand & Gravel, UC San Diego, as well as numerous industries, environmental groups, research institutes, consulting firms and individuals. The Board promptly published all relevant documents and notices on its web site making them available to the public. The Board published a Notice of Filing and a Notice of Public Hearing for the subject TMDL and Basin Plan Amendment on April 22, 2011 and February 15, 2012 in local newspapers, including the San Diego Union Tribune and the North County Times. The Board also conducted a CEQA Scoping Meeting and Public Workshop on February 15, 2011. We

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			strove for a TMDL development process that was open and transparent.
1.3	All	The adopted TMDL does not allocate responsibilities and waste load allocations among the Phase II, Industrial General Permit (IGP) and Construction General Permit (CGP) dischargers. The lack of allocation incentivizes existing large dischargers to take the majority if not all of the waste load allocation. Future CGP, IGP, and Phase II dischargers including the school districts could be left with a zero sediment discharge allowance. Compliance with such an allocation would not be feasible.	The comment misinterprets how waste load allocations and compliance are established under the TMDL Basin Plan amendment. The TMDL assigns a single waste load allocation “collectively” to all of the responsible parties in the watershed requiring all to protect the Lagoon by preventing or reducing future sediment discharges. It is common among many of California’s adopted TMDLs that a TMDL does not calculate waste load allocations for individual dischargers in the watershed for various reasons such as loadings from all or some point and non-point sources are not quantifiable at the time of TMDL development. TMDL responsibilities are discussed in each of the responses below.
1.4	All	“...failure to allocate responsibilities of Phase II, CGP, and IGP dischargers under the TMDL will force unnecessary or duplicative efforts. For example, the TMDL proposes long term monitoring requirements for all “Responsible Parties.” This implies that CGP dischargers will need to participate or conduct their own monitoring in the receiving waters covered by the TMDL. By nature, this monitoring	<p>TMDL implementation should not result in unnecessary or duplicative efforts for any responsible party. Under the TMDL, Phase I MS4s, Caltrans, and other “<i>specifically named</i>” dischargers are required to collaboratively develop and implement a watershed-based Comprehensive Load Reduction Plan or CLRP. (The Water Board may, at any time, designate any Phase II MS4, General Industrial Permit enrollee, or General Construction Permit enrollee as a “<i>specifically named</i>” responsible party based on its potential for long-term sediment loadings into the Lagoon watershed.)</p> <p>Development and implementation of the CLRP will be a central component of TMDL compliance. The purpose of the CLRP is to describe the overall approach and specific steps that will be taken by each discharger to collectively (1) meet the incremental sediment load reduction milestones specified in the TMDL; and (2) restore the functional saltmarsh vegetation acreage in the Lagoon as specified in the TMDL. The CLRP will</p>

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		<p>would be duplicative of the monitoring conducted by the permanent Responsible Parties, including the Phase I dischargers. Due to this uncertainty, the districts mentioned previously do not know whether it will have to face substantial expenditures in the future for TMDL implementation because of its construction, maintenance, and operations.”</p>	<p>also describe actions to be employed at each discharger’s individual site or facility. In addition, the CLRP will specify the compliance schedule, all required monitoring, and all required reporting in accordance with the TMDL.</p> <p>With respect to development and implementation of the CLRP, the TMDL provides an option. Any Phase II MS4, General Industrial or General Construction Permit enrollee that has <i>not</i> been “<i>specifically named</i>” by the Water Board may either: (1) elect to collaborate with the Phase I MS4s et al in the development and full implementation of the watershed-based CLRP; or (2) update and enhance its own site-specific plan which is called a Storm Water Management Plan (SWMP) under the Phase II MS4 permit or a Storm Water Pollution Prevention Plan (SWPPP) under the General Industrial and General Construction Storm Water permits.</p> <p>Site specific SWMPs or SWPPPs must be updated and enhanced to ensure that sediment discharges from the facility or site are prevented or reduced. The updates and enhancements must be implemented “on the ground” at each site, and augmented monitoring and reporting must be conducted as specified in the updated and enhanced plan. Note that CLRP requirements are implemented on a watershed scale while the SWMP and SWPPP requirements are site specific. “Unnamed dischargers” may choose one or the other.</p>
1.5	All	<p>"Further, if all Responsible Parties are not clearly identified, it will be very difficult (if not impossible) for all affected parties to cooperate in TMDL implementation, including entering into a Memorandum of Understanding and developing a Comprehensive Load Reduction Plan within the timeframes specified in the TMDL. It will likewise be very difficult for the State Water Board staff to amend the Phase II, CGP, and IGP</p>	<p>The TMDL identifies all Phase I MS4 copermittees, Phase II MS4 permittees, Caltrans, and General Construction and General Industrial permit enrollees in the watershed as responsible parties. The Water Board strongly encourages collaboration and this approach is intended to persuade the responsible parties to collaborate in the development and implementation of the watershed-based CLRP. In addition, the CLRP must be submitted to the San Diego Water Board no later than 18 months from the effective date of the TMDL. Updated and enhanced SWMPs and SWPPPs must be submitted no later than 12 months from the effective date of the TMDL. The CLRP must be implemented within 90 days of receipt of the Board’s comments, but in no event later than 6 months after submittal. Updated and enhanced SWMPs and SWPPPs must be implemented immediately upon submittal.</p> <p>Regarding the future language that the State Board will add to each of its statewide</p>

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		<p>permits in the future to include the TMDL requirements. The fact that future Phase II, CGP and IGP dischargers are not ascertainable at this time raises questions about the viability of this entire approach.”</p>	<p>general permits (Phase II MS4 and General Industrial and General Construction storm water permits), San Diego Water Board staff has separately and informally provided State Board staff with recommended draft language for each of the State Board’s general permits. This recommended draft language significantly clarifies the TMDL requirements that are applicable for dischargers regulated under each of the statewide permits.</p> <p>It must however be emphasized that this recommended draft language is separate from and <u>not</u> part of the TMDL Basin Plan amendment that the State Board will consider for formal approval at its upcoming meeting. Secondly it must be emphasized that the recommended draft language was provided for State Board staff’s informal review and consideration only, meaning that the State Board ultimately has the discretion to include all, part, or none of the recommended draft language in its statewide general permits.</p> <p>Since the TMDL requirements will be incorporated into each of several permits, TMDL responsibilities and compliance ultimately become permit responsibilities and compliance. In other words, it is the regulating permit for each category of dischargers that will ultimately specify the exact and final TMDL requirements that apply to the dischargers under that permit. Furthermore, before the TMDL requirements can be added to any permit, a full public process is required. This ensures due process for every discharger regulated under each permit.</p>
1.6	All	<p>The districts request that the TMDL documents be amended to:</p> <ol style="list-style-type: none"> 1. Clearly indicate which Phase II municipal, CGP and IGP permittees will have responsibilities under the TMDL requirements. By doing so, the permittees will be able to understand whether they must anticipate the potentially substantial expenses related to Los Peñasquitos Sediment 	<p>The protection of Los Peñasquitos Lagoon is the collective responsibility of all dischargers in the watershed. There is no need to amend the TMDL because:</p> <ol style="list-style-type: none"> 1. The TMDL makes clear that all Phase II MS4s, General Construction and General Industrial permit enrollees are required to prevent or reduce sediment discharges from their site or facility. The exact and final TMDL requirements will ultimately be specified in each of these general permits following a full public process. 2. School bus maintenance facilities will not be excluded. However to help ensure that the effort put forth by a permitted facility is commensurate with the risk posed by the facility, the TMDL and the recommended draft language for the State Board’s general permits distinguish between dischargers based on risk.

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		<p>TMDL implementation.</p> <p>2. Exclude IGP permittees such as school bus maintenance facilities that do not have the capacity for long-term sediment loading on the watershed.</p>	<p>As indicated above, any Phase II MS4 or General Industrial or General Construction Permit enrollee in the watershed may be identified and <i>"specifically named"</i> at any time by the San Diego Water Board <i>as having the potential for long-term sediment loadings into the watershed (i.e., having caused or are likely to cause or contribute to the sediment impairment in Los Peñasquitos Lagoon)</i>. For example, all sand and gravel facilities are specifically named responsible parties under the General Industrial Storm Water Permit. Under the TMDL, Phase I MS4s, Caltrans, and all <i>"specifically named"</i> dischargers are required to collaboratively develop and implement a watershed-based CLRP.</p> <p>Dischargers that are not deemed as having the potential for long-term sediment loadings are provided an option under the TMDL. "Unnamed" Phase II MS4s and General Industrial or General Construction Permit enrollees may either: (1) elect to collaborate with the Phase I MS4s et al in the development and full implementation of the watershed-based CLRP; or (2) update and enhance their own site-specific SWMP or SWPPP. We expect that bus maintenance facilities will select the latter.</p>
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