

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**2004 BASIN PLAN TRIENNIAL REVIEW
RESPONSE TO COMMENTS
REPORT**

August 26, 2004

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2004 BASIN PLAN TRIENNIAL REVIEW RESPONSE TO COMMENTS REPORT

1.0 INTRODUCTION

The purpose of this report is to provide the California Regional Water Quality Control Board, San Diego Region's (Regional Board) written responses to the oral and written comments received on the 2004 Basin Plan Triennial Review documents, including the Prioritized 2004 Basin Plan Triennial Review Issue List, Tentative Resolution No. R9-2004-0156, and Technical Report. These documents were made public on May 10, 2004, and circulated to interested parties for a 30-day review period.

The Regional Board received written comments in seven letters and one email. Additionally, one party presented an oral comment at the hearing on the Triennial Review at the June 9, 2004 meeting of the Regional Board.¹ In total, ten stakeholders submitted comments on the Triennial Review. Additionally, a pertinent comment was received from the Regional Board. The parties that submitted comments are listed below:

- Riverside County Flood Control District
- California Department of Transportation
- City of Laguna Niguel
- Project Clean Water
- Shelter Island Marina Owners/Operators
- San Diego County Department of Environmental Health
- Regional Board
- County of Orange
- US Environmental Protection Agency
- Santa Margarita Water District

The comment letters are not reproduced in this document. Individual comments are excerpted from the letters and testimony, and grouped into the following categories:

- Water Code Section 13241 Factors
- Bacterial Indicators/Bacteria Impaired Waters TMDL Project
- Beneficial Uses
- Implementation Policies/Plans
- Triennial Review Process
- Water Quality Objectives

¹ Although more than one party presented oral comments at the workshop on May 26, 2004, and the hearing on June 9, 2004, all but one of the oral comments were repeated in written comments submitted by the same parties. Thus, all but one of the oral comments were captured in the written comments.

In this document, the excerpted comments are sequentially numbered from 1 to 41. The party that submitted the comment is identified below the comment.

2.0 WATER CODE SECTION 13241 FACTORS

Comment 1: The Department also requests that the Regional Board staff investigate another aspect of the Potential Versus Existing Beneficial Uses issue, currently listed as Priority 39, and bring the result of this investigation back to the Board for designation. For reasons the Department has not been able to ascertain, the designations of beneficial uses in California's Basin Plan are inconsistent with Division 7 of the Water Code. Section 13241 (a) specifies, "past, present, and probable future beneficial uses of waters" as being among the factors that a regional board should consider in establishing water quality objectives. This has become a critical issue because the application of water quality objectives to potential uses is resulting in TMDLs designed to protect "potential beneficial uses" that are not actually "probable future uses of water." Almost any use could be considered "potential," although there are few probable future uses.

Submitted By: California Department of Transportation

Response: Beneficial uses for surface waters are designated by the Regional Board under the federal Clean Water Act (CWA) section 303 in accordance with regulations contained in Title 40 of the Code of Federal Regulations, section 131 [40 CFR 131] and in accordance with considerations in California Water Code sections 13050 (f) and 13241 (a) and (c). Pursuant to these laws and regulations the Regional Board assigns two types of beneficial uses for surface waters – existing uses and designated uses. Existing uses are those uses actually attained in the water body on or after November 28, 1975. A use also is existing if the water quality is suitable to allow the use to occur [40 CFR 131.3(e)]. Designated uses are uses that are not “existing” uses (for example, a potential use, or a use designated as existing but never attained). The Regional Board assigns potential beneficial uses to some waterbodies if existing water quality will support the use or if the Board believes the necessary level of water quality to support the use can reasonably be achieved in the future. The Regional Board’s considerations for designating potential beneficial uses are described on Page 2-6 of the Basin Plan.

To meet the purposes of the CWA as defined in sections 101(a)(2), and 303(c), state water quality standards must provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. These beneficial uses are collectively referred to as the fishable/swimmable beneficial uses. The Regional Board is required to designate coastal, enclosed bay and estuary, and inland surface waters occurring throughout the San Diego Region as either primary contact recreation, secondary contact recreation (with bacteriological criteria sufficient to support primary contact recreation), or conduct use attainability analyses demonstrating that recreational uses consistent with the CWA section 101(a)(2) goal are not attainable for certain waters. Based on these considerations, all coastal, bay and estuary, and inland surface waters in the San Diego Region are assigned fishable/swimmable beneficial uses as either existing or potential beneficial uses.

Under federal law, economics can be considered in designating potential beneficial uses through consideration of a use attainability analysis as described in the CFR [40 CFR 131.3(g)]. This type of use attainability analysis encompasses a structured scientific assessment of the factors affecting the attainment of a use. Such factors may include physical, chemical, biological, and economic factors. Specifically, the federal water quality standards regulations allow a state to de-designate, to decide not to designate, or to establish a subcategory of a potential beneficial use on economic grounds. To rely on this basis, the state must demonstrate that attaining the use is infeasible because the controls necessary to attain the use “would result in substantial and widespread economic and social impact.” The states can take this action only for potential uses. However, Federal regulations do not allow states to remove existing uses that were attained on or after on or after November 28, 1975.

In designating potential fishable/swimmable beneficial uses for surface waters, the Regional Board may consider the attainability of a beneficial use through a formal use attainability analysis as described above. The Regional Board is not required to do a formal use attainability analysis in designating fishable/swimmable beneficial uses as existing or potential. However, if the Regional Board does not designate fishable/swimmable beneficial uses for a surface waterbody as existing or potential, it must demonstrate through a formal use attainability analysis that designation of these uses is not appropriate.

Comment 2: The District notes that revisions to the Basin Plan are subject to an economic analysis as specified by section 13241 of the California Water Code. State law requires that the Regional Board consider the costs and benefits associated with the development of Basin Plans. California Water Code section 13241 states that:

"Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water."

The recent Superior Court decision on the LA Regional Board Trash TMDL also provides additional guidance to Regional Boards. In the Statement of Decision for City of Arcadia et al v. the State Water Resources Control Board and the California Regional Water Quality Control Board, Los Angeles Region (2003), the Superior Court for the State of California, County of San Diego, ruled that the State and Regional Boards "[u]nder the applicable statutory scheme Basin Plans (1) identify beneficial uses of water bodies to be protected; (2) establish water quality objectives to protect those uses; and (3) establish implementation programs for achieving the objectives.

As such, Respondents are incorrect in stating no water quality objectives are implemented. It may be true the Basin Plan was only amended to add the TMDL, but if the TMDL was originally part of the Basin Plan it necessarily would have made economic considerations under Section 13241. It is certainly reasonable to conclude that when amending the Basin Plan the same considerations should be made."

It is clear from this decision that any modification of a Basin Plan must consider economic analysis. The Federal Clean Water Act also provides guidance for consideration of economics. Federal Clean Water Act: Section 304 (b)(1)(B) specifically states that in adopting or revising effluent limitations:

"[Such regulations] shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate. "Consideration of economics is an important part of developing the Basin Plan. Whether required or not, the public demands consideration of economic factors in the establishment of all public policy, including public health and safety, education, homeland security and even defense. There is no justification to not consider economic factors in establishing requirements for the public."

Submitted By: Riverside County Flood Control District

Response: The Regional Board agrees that economic considerations are an important part of the Basin Plan amendment process in most but not all instances. For example, where substantial evidence exists that a beneficial use is occurring in a surface waterbody, adherence to state and federal law would require that the beneficial use be designated for the waterbody by the Regional Board in most cases. In addition to the economic considerations requirement of Water Code section 13241 for setting water quality objectives, the California Environmental Quality Act (CEQA) also has specific economic consideration provisions governing the Regional Boards' adoption of regulations. An example is the regulatory provisions of proposed Basin Plan amendments that establish performance standards or treatment requirements. The requirements of the CEQA provide that the Regional Board must do an environmental analysis of the reasonably foreseeable methods of compliance with performance standards or treatment requirements that are implicit with Basin Plan amendments such as TMDLs.

The Regional Board must consider economic factors in this analysis; however the Regional Board is not required to do a formal cost-benefit analysis. The Regional Board can adopt TMDLs and other types of Basin plan amendments despite significant economic consequences. In such cases the Regional Board must clearly explain why the objective is otherwise necessary, such as the sensitivity of the receiving waterbody, the toxicity of the regulated substance, or public health implications. This rationale must be transparent and discernable from the staff report, resolution or findings that accompany the adoption of the objective at issue.

Water Code section 13241 applies to the establishment of water quality objectives in Water Quality Control Plans. TMDLs are not water quality objectives. TMDLs are in essence, an interpretation or refinement of an existing water quality objective. TMDLs designed to attain water quality objectives are not intended to re-balance the policy interests defined by section 13241 that underlie the water quality objective. Similarly other types of Basin Plan amendments that deal with establishing policies to implement existing water quality objectives are also not water quality objectives. Accordingly TMDLs and other changes to the Basin Plan that do not involve establishing water quality objectives are not subject to section 13241.

We disagree with the decision of the Superior Court in the Los Angeles Region Trash TMDL case. The State has appealed the decision. Pending a decision on the appeal, the trial court decision does not establish binding precedent.

Comment 3: Request to Raise Priority of Issue 59 to High (Factors Listed in California Water Code Section 13241).

The [Riverside County Municipal Separate Storm Sewer System] Permittees support the County of Orange's position that the Basin Plan requires a review to ensure economic considerations, as specified in Section 13241, were properly considered in the adoption of the Basin Plan. It is the Permittees' expectation that a review of the Basin Plan, such as that conducted for the Basin Plans of the Los Angeles and Central Valley Regional Water Quality Control Boards, will indicate that Section 13241 was not properly incorporated into the adoption of the Basin Plan. Issue 59, "Factors Listed in California Water Code Section 13241", included the following summary (Appendix B):

"Re-evaluate all current water quality objectives using factors listed under California Water Code Section 13241. All of the factors, particularly economic considerations and the need for housing, may not have been evaluated during the development of the water quality standards. The Regional Board may not have considered the Section 13241 factors for the current situation where the standards are being used to regulate non-point sources and Municipal Separate Storm Sewer System dischargers, a change of circumstances that certainly would affect economic considerations, at a minimum." The Regional Board's response to this request is identified in the Discussion (Appendix E) to Issue 59:

"When the Regional Board establishes or re-evaluates water quality objectives, factors listed in California Water Code Section 13241 are considered, including economics [sic]. Water quality objectives are set to protect the waterbodies designated beneficial uses. In its efforts to establish water quality standards, the Regional Board must comply with state and federal antidegradation policies and consider downstream beneficial uses. Re-evaluation of all water quality objectives based on economic considerations is complete and therefore was removed from the 2004 Triennial Review." The report, "A Review of the Los Angeles Basin Plan Administrative Record," quotes from a January 4, 1994 memorandum by the SWRCB Office of the Chief Counsel:

The 1994 Chief Counsel's memorandum concludes that:

A RWQCB must balance environmental, beneficial use, and economic considerations in establishing a Basin Plan. The Porter-Cologne Act does not require that a RWQCB conduct a formal cost-benefit analysis when adopting a Basin Plan or an amendment thereto. Water quality objectives may be adopted despite significant economic consequences. In such cases, however, a RWQCB must clearly explain why the objective is otherwise necessary, such as the sensitivity of the receiving waterbody, the toxicity of the regulated substance, or public health implications. This rationale must be transparent and discernable from the staff report, resolution or findings that accompany the adoption of the objective at issue.

A RWQCB has an affirmative duty to consider economics when adopting water quality objectives and will likely not meet its obligation to consider the factors required by Porter-Cologne simply by responding to economic or other information supplied by third parties. Rather, the RWQCB should review available information on receiving water and effluent quality to determine if the proposed objective is being attained or can be attained. The RWQCB should then identify methods presently available for complying with the proposed objective and consider available information on the costs associated with the treatment methods or other methods identified to achieve compliance.

A RWQCB must consider and respond on the record to any economic or other information provided by third parties in the Basin Plan process."

It is the Permittees' position that the Basin Plan does not adequately address the requirements of the January 4, 1994 memorandum, or of Section 13241 itself. The Permittees request a copy of the Re-Evaluation referenced in the Discussion for Issue 59 quoted above. As stated in the previous section, whether required or not, the public demands consideration of economic factors in the establishment of all public policy. There is no justification to not consider economic factors.

Submitted By: Riverside County Flood Control District

Response: The Basin Plan was developed and adopted pursuant to a rigorous public process prescribed by State and federal laws and regulations governing the establishment of periodic review of water quality control plans, including the provisions of Water Code section 13241. Further, the Regional Board has complied with the provisions of the January 4, 1994 memorandum from the State Water Resources Control Board (State Board) Office of the Chief Counsel in adopting or modifying water quality objectives. The unsubstantiated speculation that "a review of the Basin Plan will indicate that section 13241 was not properly incorporated into the adoption of the Basin Plan" also fails to establish any current basis for mandating a new economic analysis of existing water quality objectives. Therefore a wholesale review of water quality objectives for conformance with the economic analysis provision of section 13241 is not warranted.

The statement in the discussion of Issue No. 60 (formerly No. 59) in Appendix E, that "re-evaluation of all water quality objectives based on economic considerations is complete" refers to the Basin Plan amendments since 1975 that modified a water quality objective. In those re-evaluations of water quality objectives, economic considerations were considered by the Regional Board pursuant to section 13241 in the Basin Plan amendment adoption process. If you wish to confirm this, you are welcome to review the Regional Board's public record files for those Basin Plan amendments. (Chapter 5 of the Basin Plan contains a complete listing of all Basin Plan amendments adopted by the Regional Board since 1975.)

3. BACTERIAL INDICATORS/BACTERIA-IMPAIRED WATERS TMDL PROJECT

Comment 4: Lastly, we would like to add our support to comments made by Nancy Palmer with the City of Laguna Niguel during the public workshop and submitted in writing through this process. As noted, several issues on the priority list should be consolidated and raised in priority to take advantage of the ongoing bacteria TMDL.

Submitted By: Project Clean Water

Response: Your support of the City of Laguna Niguel's comments is noted. Based on your comment, the Regional Board re-evaluated Issues No. 7, 12, 38, 45, 49, and 60 (formerly Issues No. 6, 11, 37, 44, 48, and 59) as they related to bacteria indicator water quality objectives and the bacteria-impaired waters TMDL projects. The portion of former Issue No. 45 that dealt with beneficial uses of waters in public access restricted areas was combined with Issue No. 11, "Beneficial Uses for a REC-1 Subcategory" (formerly Issue No. 12). The portion of former Issue No. 45 dealing with beneficial uses of Loveland and Sweetwater Reservoirs became Issue No. 47. The revised prioritized issue list can be found in Appendix B of the Technical Report. Other than that change, we found no common basis to regroup or reprioritize Issues No. 7, 38, 45, or 60.

Comment 5: The Department is requesting the Regional Board to consider recent developments concerning ocean water quality and to modify the Tentative Resolution to place more emphasis on modifying bacterial objectives in the Basin Plan in order to facilitate timely completion of Bacteria TMDL Project I and Bacteria TMDL Project II.

Submitted By: California Department of Transportation

Response: The Regional Board is actively researching the recent developments concerning ocean water quality, as appropriate, and investigating the need to update current bacterial indicator water quality objectives and related implementation plans. The issue regarding water quality objectives for bacteria indicators ranked seventh on the prioritized issues list (formerly

sixth). Resources will be available over the next three years to investigate this issue. Work on Issue No.7 and the bacteria-impaired waters TMDL projects will proceed concurrently.

Comment 6: The issue of Water Quality Objectives for Bacteria Indicators, currently listed as Priority 6, should be the first priority.

Submitted By: California Department of Transportation

Response: Issue No. 7 (formerly No. 6) "Water Quality Objectives for Bacteria Indicators" received a technical ranking score high enough to ensure that resources will be available to investigate the issue over the next three years. Please note that there have been eight Basin Plan amendments adopted since 1994. As explained in the response to comment 22, certain basic maintenance work such as that described in Issues No. 1, 3, 4, 5, and 6 is needed to ensure the Basin Plan is a current, complete, and correct. Regarding Issue No. 2 (Onsite Sewage Treatment System), the Regional Board is required to incorporate these new statewide regulations into the Basin Plan once the State Board adopts the new regulations. The work described in Issues No. 1 through 6 will be the Regional Board's highest priority over the next three years. Thus, the Regional Board does not intend to assign a higher priority to Issue No. 7.

Comment 7: In addition, the issue of Source or Criteria for Water Quality Objectives could also be listed in Attachment I to address the issue. By addressing these issues, the Regional Board would be helping to bring into focus one of the most important water quality problems along the coasts of San Diego and South Orange County. The Regional Board would also be helping to improve the scientific basis for the two bacteria-impaired TMDL projects announced at the March 27, 2003 public workshop.

Submitted By: California Department of Transportation

Response: Issue No. 5 (formerly No. 4) "Source or Criteria for Water Quality Objectives" is on the list of issues to be investigated in the next three years (Attachment No. 1 to Resolution No. R9-2004-0156).

Comment 8: Priority Item #6 proposes to "update and clarify existing water quality objectives for bacteria...". The rest of the paragraph makes clear that one of the main intents is to provide for alternative Basin Plan bacteria objectives as "implementation provisions" parallel to the "interim targets" that have been tentatively set in the Draft Technical Report for the Bacteria I TMDL. Presumably, the long-term idea is to allow the "interim targets" to become acceptable as "final TMDLs." This is a very laudable and appropriate effort, in the general sense. However, it should be noted that the scientific and technical validity of the specific approach to developing bacterial "interim targets" in the draft TMDL has been deeply questioned by the entire Bact I TMDL Stakeholder Advisory Group. This paragraph should be revised to indicate that bacteria "implementation provisions" may include, but not be limited to" incorporation of a reference

watershed, watersheds minimally impacted by anthropogenic activities, or such other approaches as may be found appropriate, useful and compatible with EPA guidelines.”

Submitted By: City of Laguna Niguel

Response: The Concise Summary for Issue No. 7 (formerly No. 6; Appendix B) has been modified as suggested in the comment.

Comment 9: Priority Item #11 proposes to “adopt a subcategory of REC-1 called ‘Wildlife Impacted Recreation’ for waterbodies designated with REC-1 beneficial use which also support an abundance of wildlife...”. This idea deserves a higher priority, so that it can be addressed within the current Triennial Review cycle. Such subcategories are generally supported by EPA guidelines. More critically, REC-1 subcategories are likely to become vital tools in the Implementation Plans that are supposed to be developed in the next few years under the Bact I and Bact II TMDLs.

Submitted By: City of Laguna Niguel

Response: Based on this comment, the Regional Board re-evaluated Issue No. 12 (formerly No. 11) "Beneficial Uses for a REC-1 Subcategory." However, we determined that no additional points could be added to the technical ranking score.

Working on basin planning issues dealing with bacteria at the same time the Bacteria-Impaired Waters TMDL projects are being developed is desirable, however, the limited Basin Plan resources available to work on the issue over the next three years may present a challenge. Nonetheless, the draft technical report for the Bacteria-Impaired Waters TMDL project for creeks and beaches includes interim targets that allow some wet weather exceedances of the water quality objectives during an interim compliance period. The length of the interim compliance period will be determined by the Regional Board with input from the Stakeholder Advisory Group during development of the implementation plan. The interim compliance period may be of sufficient length that basin planning issues identified in this Triennial Review can be completed before final TMDL targets must be achieved.

Comment 10: Priority Item #37 proposes to “revise and expand Basin Plan discussion on assimilative capacity and mixing zones, to clearly define when and where groundwater assimilative capacity and surface water mixing zones are applied.” The “surface water mixing zone” part of this item deserves a higher priority, so that it can be addressed within the current Triennial Review cycle. How mixing zones are applied has already become an issue of major contention under the draft Technical Report for the Bact I TMDL. Timely discussion, clarification and resolution of this issue is necessary and appropriate in conjunction and concurrent with the development of the TMDL.

Submitted By: City of Laguna Niguel

Response: Based on this comment, the Regional Board re-evaluated Issue No. 38 (formerly No. 37) "Assimilative Capacity and Mixing Zones." The allowance of mixing zones is discretionary and is determined on a discharge-by-discharge basis. The Regional Board may consider allowing mixing zones and dilution credits only for discharges with a physically identifiable point of discharge that are regulated through NPDES waste discharge requirements issued by the Regional Board. The State Board has already formulated policies and guidelines that the Regional Boards must follow for determining mixing zones and dilution credits in the Ocean Plan and in the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, section 1.4.2 – 1.4.2.2. Based on these considerations we determined that no additional points could be added to the technical ranking score for Issue No. 38.

Comment 11: Priority Item #58 proposes to “incorporate seasonal flow conditions into water quality objectives, setting different objectives for high and low flow conditions.” This item is closely related to the discussion under Priority Item #6 regarding wet-weather exceedances specifically with respect to bacteria objectives. It deserves a higher priority, at least for bacteria, so it can be addressed within the current Triennial Review cycle and incorporated appropriately into the Bact I Technical TMDL and/or Implementation Plans for the impaired waterbodies. Flow-based and seasonal-use subcategories for REC-1 are generally supported by EPA guidelines.

Submitted By: City of Laguna Niguel

Response: Issue No. 59 (formerly No. 58) “Water Quality Objectives for Seasonal Flow Conditions” was removed from the Technical Ranking Process and the 2004 Basin Plan Triennial Review process by Initial Question 'G' which asks, "is the issue currently underway or has it already been addressed or completed?" The answer to Initial Question 'G' is "yes" at this time because work is already underway on the issue.

Federal regulations do allow the Regional Board to incorporate seasonal considerations in designating beneficial uses and water quality objectives. The Regional Board has done this to some extent for certain water quality objectives described in Table 2-2 of the Basin Plan; however additional consideration of this factor is warranted for some beneficial use designations.

The Regional Board recognizes that seasonal flow conditions can be a consideration in designating beneficial uses and water quality objectives. As it pertains to bacteria water quality objectives, allowing exceedances due to seasonal flow conditions is included in Issue No. 7. This issue received a high priority and will be investigated over the next three years.

The Basin Plan currently contains some water quality objectives that allow for exceedances due to seasonal conditions. For example, the Basin Plan allows the water quality objectives for turbidity to be exceeded 10 percent of the time. (See Table 3-2 in Chapter 3 of the Basin Plan.) The 10 percent was derived from seasonal conditions being exceptional approximately 10 percent of the year in southern California.

The Basin Plan also contains a narrative objective for total suspended solids (TSS). This objective states that "[w]aters shall not contain suspended and settleable solid in concentrations of solids that cause nuisance or adversely affect beneficial uses." This objective is written to allow the Regional Board a great deal of discretion and interpretation of its applicability on a case-by-case basis.

Comment 12: Review of the water quality objectives related to bacteria and other pathogens is a particularly critical issue because the Regional Board is proposing to consider all bacteria-impaired waterbodies currently on the 303(d) list through the adoption of two very broad TMDLs. If the Regional Board is not willing to follow the National Research Council's recommendation to include a review of standards as the first step in TMDL development, it should emphasize review of these standards during the period from August 2004 to August 2007 as it implements the 2004 Basin Plan Triennial Review.

Submitted By: California Department of Transportation

Response: The Regional Board concurs that review of the water quality objectives for bacteria indicators (Issue No. 7) is an important issue, and has given the issue a high enough priority that it should be investigated over the next three years. The Regional Board did consider the appropriateness of the bacteria indicator water quality objectives during the initial development of the draft TMDL. This led to the development of Issue No. 7 (formerly No. 6) on the list of priority issues for the 2004 Triennial Review. Reviewing the bacteria indicator water quality objectives described in Issue No. 7, concurrently with the development of the TMDL is appropriate because the Regional Board has broad discretion in how the TMDL will be implemented. The draft TMDL proposes to allow a certain frequency of exceedances during wet periods of the single sample maximum water quality objectives for bacteria indicators. These exceedances will be permitted for an interim compliance period, the length of which will be determined when the implementation plan is drafted. Additionally, the draft TMDL does not require the bacteria indicator water quality objectives that support SHELL beneficial uses to be met during the interim compliance period.

Comment 13: The issue of Beneficial Uses for a Rec-1 sub-priority called "Wildlife Impacted Recreation" should be addressed at this time. Although this item is currently listed as Priority 11, it could be included in a revision of Chapter 3 of the Basin Plan to clarify how objectives should be interpreted and implemented.

Submitted By: California Department of Transportation

Response: Issue No. 12 (formerly No. 11) "Beneficial Uses for a REC-1 Subcategory" deals with defining and designating a new recreation beneficial use called "Wildlife Impacted Recreation" in Chapter 2 of the Basin Plan. This issue would also include an investigation into whether or not a new water quality objective should be established, or an existing objective modified to protect this new use. If a new water quality objective is established, or an existing objective is modified in Chapter 3, a Basin Plan policy of how the objective should be

interpreted and/or implemented may be appropriate. Based on this comment the Regional Board re-evaluated Issue No. 12. However, we determined that no additional points could be added to the technical ranking score.

4.0 BENEFICIAL USES

Comment 14: Priority Item #43 proposes to “evaluate the designation of potential REC-1 and REC-2 for areas that are channelized.” Similarly, Priority Item #45 proposes to “remove beneficial uses such as contact recreation (REC-1) in flood control areas and reservoirs where public access is restricted; and revise designated beneficial uses to recognize flood control and its incompatibility with beneficial uses on a case by case basis.” These items deserve a higher priority, so they can be addressed within the current Triennial Review cycle. The case-by-case applicability of REC-1 use to flood control areas will become a critically important issue that may yield vital tools in the Implementation Plans that are supposed to be developed in the next few years under the Bact I and Bact II TMDLs.

Submitted By: City of Laguna Niguel

Response: Based on this comment, the Regional Board re-evaluated Issue No. 44 (formerly No. 43), "Beneficial Use Designation in Chollas Creek." However, we determined that no additional points could be added to the technical ranking score.

The issue of "Beneficial Uses of Water in Public Access Restricted Areas" (former Issue No. 45) was re-evaluated. The portion of former Issue No. 45 that dealt with flood control areas where public access is restricted was combined with Issue No. 12 "Beneficial Uses for REC-1 Subcategory" because both issues deal with the appropriateness of applying REC-1 beneficial uses to certain water bodies. The portion of former Issue No. 43 that dealt with beneficial uses of Loveland and Sweetwater Reservoirs became Issue No. 47.

5.0 IMPLEMENTATION POLICIES/PLANS

Comment 15: Issue No. 23 was underscored. A reevaluation of the Technical Ranking Form is needed.

Submitted By: California Regional Water Quality Control Board San Diego Region

Response: Upon re-evaluation of Issue No. 22 “Section 401 Water Quality Certification Policy and Procedures” (formerly Issue No. 23) we discovered that the issue should have received five points under Category 10 factor (b) Water Body Intensively Used by the Public. The total score for this issue is now 79 points, which raised its priority ranking from 23 to 22.

Comment 16: As you are aware the California Regional Water Quality Control Board (RWQCB), Region 9, delegates authority to the County of San Diego Department of Environmental Health (DEH) the oversight and regulation of small Onsite Sewage Treatment Systems (OSTS's) in San Diego County. The County regulates the design and installation of OSTS's in accordance with provisions in the Water Quality Control Plan for the San Diego Basin (Basin Plan) and local ordinances. The current Basin Plan only specifies the use of "conventional OSTS's" (effluent tank without treatment and leach disposal system) in San Diego County and does not provide for the use of "alternative OSTS's" (effluent treatment with treated effluent disposal).

The County is requesting the RWQCB's assistance for the following:

1. The 2003 Firestorm that decimated areas of the County of San Diego and resulted in the destruction of over 2,000 structures, many of them served by conventional OSTS's. This has left many residents without the ability to rebuild as a result of the limitations of sitting conventional systems. The ability to use alternative systems may provide some fire survivors the ability to rebuild their previous structures. The County does not have the authority to grant the use of alternative systems and looks to the RWQCB for any assistance it can provide to allow their use on a case-by-case basis.
2. As a result of Assembly Bill 885, which required the State Board to develop regulations for individual subsurface disposal of sewage, the State Board has developed a draft regulation that specifies that alternative OSTS's must be installed instead of conventional systems in specific instances. As stated above, the current Basin Plan does not provide for the use of alternative systems and would need to be revised to allow for the creation of buildable lots using alternative systems. We have discussed this issue with your staff, and they have told us that they understand the need for Basin Plan revisions in regards to alternative systems and that it is a priority. The County would like to express its strong desire to have these revisions made during the current triennial review of the Basin Plan.

Being able to utilize alternative systems has important and far-reaching ramifications on the future land use policies in this County. We will be contacting your office shortly to arrange a meeting between senior County staff, you and appropriate members of your staff to discuss modifications to the Basin Plan to allow for the use of alternative systems and to develop a new Memorandum Of Understanding between RWQCB, Region 9 and DEH. The County would like to offer any assistance we can provide your staff regarding the technical aspects of alternative systems and provide input into the Basin Plan requirements for OSTS's.

Having the ability to utilize alternative systems is a top priority of this County and has the attention of the Board of Supervisors.

Submitted By: San Diego Department of Environmental Health

Response: Issue No. 2 on the revised prioritized issue list addresses the concerns expressed in this comment. Since the Triennial Review documents were released for public comment on May 10, 2004, the State Board informed the Regional Board that work is continuing on the new

statewide regulations for both conventional and alternative septic systems. The State Board's regulations are expected to be completed during the next three-year cycle, likely within the year. Once issued, the Regional Board must amend the Basin Plan to incorporate these regulations as required by the Water Code. Thus, the basin planning issue addressing regulations for individual septic systems was elevated to the second priority on the list. Work on this issue will begin once the State Board's regulations are adopted.

Comment 17: Priority Item #5 proposes to “add necessary language to the Basin Plan that provides for the establishment of compliance time schedules in the NPDES permits.” Why, exactly, is it necessary to make this addition? Compliance time schedules are already appropriately provided for under the TMDL process and in any enforcement action. If circumstances warrant setting forth a compliance schedule, the Regional Board can do that now, whether it’s described in the Basin Plan or not. Consequently, this item seems quite unnecessary, and its pursuit seems like a misuse of scarce resources.

Submitted By: City of Laguna Niguel

Response: Issue No. 6 “Compliance Time Schedule in NPDES Permits” (formerly Issue No. 5) deals with amending the Basin Plan to allow the Regional Board to incorporate time schedules in NPDES orders in cases where immediate compliance with the effluent limitations in waste discharge requirements (WDRs) may be infeasible. When immediate compliance with effluent limitations cannot be achieved because the discharger has not acted responsibly, the Regional Board may issue an enforcement order to compel compliance with the effluent limitations. An enforcement order results from a finding of violation of WDRs. Violations of WDRs in NPDES Orders subject the discharger to mandatory minimum penalties (Water Code section 13385), and to citizen law suits pursuant to section 505 of the CWA.

In some circumstances, dischargers may be unable to comply immediately with the effluent limitations in NPDES orders through no fault of their own. Dischargers may, for example, not reasonably be expected to achieve immediate compliance when the effluent limits implement new, revised, or newly interpreted water quality objectives or TMDLs adopted by the Regional Board, State Board, or USEPA. In the absence of a time schedule the discharger would fall into violation of the NPDES orders and become subject to mandatory minimum penalties and citizen suits. In these cases, including a schedule for compliance in the NPDES order is reasonable and appropriate. Provided that the discharger acts in conformance with the order-specified schedule, the discharger would have time to come into compliance without a finding of violation of WDRs. This would prevent the unintended and unreasonable consequence of subjecting the discharger to citizen suits and mandatory minimum penalties.

An order by the USEPA (In the Matter of Starkist Caribe, Inc.; NPDES Appeal No. 88-5) defines the constraints on the inclusion of compliance schedules in NPDES orders. Schedules of compliance can be included in orders for those effluent limitations that implement new (adopted after July 1, 1997), revised pre-1997, or newly-interpreted water quality objectives, only if explicit authorization for such schedules is included in the Basin Plan. The Basin Plan does not currently include explicit authorization for compliance schedules in NPDES orders. USEPA has

asked all of the Regional Boards to amend their Basin Plans to incorporate language authorizing the inclusion of compliance schedules in NPDES orders under appropriate circumstances.

Comment 18: Priority Item #7 asserts that “Existing Basin Plan text must be expanded to make clear that MS4 permits require dischargers to meet water quality standards in addition to reducing pollutants to the maximum extent practicable...”. The Resource Estimation suggests that incorporating all the various Priority #7 changes would require only minimal effort. We strongly suspect that a change to the MEP standard would not be readily accepted by the MS4 permittees and would generate significant legal challenges. Furthermore, this subject has been in dispute even between the State and U.S. EPA. This issue is not an appropriate one to deal with independently in one Region’s Basin Plan: it needs to be addressed at the State level, probably in the Stormwater Policy document that the State is supposed to be currently drafting. Requiring dischargers to meet water quality standards beyond the maximum extent practicable effectively replaces the Best Management Practice standard with a Best Available Technology standard for every MS4 pipe outfall, regardless of how expensive or energy-consumptive. For the Triennial Review document, Priority Item #7 should be changed to delete the proposal to eliminate MEP; or the Resource Estimation should be very substantially increased to acknowledge the reality that making this change would be hard-fought, expensive, time-consuming, and necessarily coordinated State-wide.

Submitted By: City of Laguna Niguel

Response: The proposed language within Issue No. 8 (formerly No. 7) "Essential Text Updates" regarding the requirements of the NPDES Orders regulating discharges from Municipal Separate Storm Sewer Systems (MS4 NPDES Orders) will update the NPDES Storm Water Program Basin Plan implementation policy starting on page 4-69 of the Basin Plan to reflect the current findings and requirements in the MS4 NPDES Orders regarding compliance with receiving water quality objectives. The proposed language will not supersede current WDRs or impose standards beyond the maximum extent practicable (MEP). The proposed Basin Plan amendment would be centered around the following principles:

1. Compliance with receiving water limits based on applicable water quality objectives is necessary to ensure that MS4 discharges will not cause or contribute to violations of water quality objectives and the creation of conditions of pollution.
2. Simply applying the technology-based standards of controlling discharges of pollutants to the maximum extent practicable (MEP) where urban runoff is causing or contributing to exceedances of water quality standards is not enough. Requiring improvements to BMPs that address those exceedances is appropriate. An iterative process of BMP development, implementation, monitoring, and assessment is necessary to assure that an Urban Runoff Management Program is sufficiently comprehensive and effective to achieve compliance with receiving water quality objectives.

Thus, Issue No. 8 should not be changed to delete the MEP language. We disagree that the resource estimate should be changed because this issue does not establish new policy or regulation.

Comment 19: As expressed in comments previously submitted by the Workgroup, there is a real and immediate need to develop management strategies for total dissolved solids that will better align surface and ground water objectives to reflect the long term needs of the community and the intermingling of these systems (priority item #10).

Submitted By: Project Clean Water

Response: The Regional Board concurs and recognizes the need for a Total Dissolved Solids Management Plan for the San Diego Region. This issue received a relatively high priority ranking, being placed at No. 11 (formerly No. 10) on the prioritized issue list.

6.0 TRIENNIAL REVIEW PROCESS

Comment 20: We recognize that Regional Water Quality Control Board staff has limited resources and funding available to support the Triennial Review process. While this severely limits staff's ability to maintain the Basin Plan as a living document, we hope that future updates and improvements will become a higher priority for the Region as a whole.

Submitted By: Project Clean Water

Response: The Regional Board concurs that limited resources are available for basin planning and that future updates and improvements should be high priorities.

Comment 21: It is therefore extremely important that each issue be accompanied by adequate data and supported by sound science, so that our resources are allocated to those issues that clearly require corrective action. We strongly support a balanced, scientific approach in the triennial review and are pleased to see a commitment from the Regional Board staff to place an emphasis on local datasets and stakeholder input throughout the review.

Submitted By: California Department of Transportation

Response: The Regional Board concurs that a sound scientific approach to the issues and stakeholder input is important to the Triennial Review process.

Comment 22: The Introduction of the Technical Report correctly notes that Clean Water Act Section 303(c)(1) requires that a State's water quality standards be reviewed every three years, and states that "the primary purpose of the Triennial Review is to review water quality standards

(i.e., water quality objectives and beneficial uses) and take public comments on issues the Regional Board should address in the future through the Basin Plan amendment process. Unfortunately, the Technical Report does not focus just on reviewing water quality standards. It includes several administrative matters related to the form and contents of the Basin Plan. The primary purpose of the Triennial Review is to review water quality standards and should focus on achieving that purpose.

Currently, three of the six priority issues recommended by staff to be investigated from August 2004 to August 2007 are administrative clarifications or updates to existing text or maps in the Basin Plan and one involves the addition of language that provides for the establishment of compliance time schedules in the NPDES permit. These are all important issues, but they are not focused on review of water quality standards (water quality objectives and beneficial uses).

The Department requests that the Regional Board revise Tentative Resolution No. R9-2004-0156 by amending Attachment 1 to remove the following issues: Electronic Format of Basin Plan, Unnamed or Unidentified Waterbodies and Table Corrections, Basin Plan Map, and Compliance Time Schedules in NPDES permits. These issues should be addressed, but not through the Triennial Review Process, which is intended to focus on water quality standards.

Submitted By: California Department of Transportation

Response: The Basin Plan is a formal document for the administration of water quality control. The entire Basin Plan has gone through a rigorous formal rule making process as required by State and federal laws and regulations. All changes to the Basin Plan, no matter how small, must go through this rigorous rule making process. Additionally, work on the non-water quality standard issues mentioned in the comment must come out of Basin Planning resources. Therefore, inclusion of these issues in the 2004 Triennial Review is entirely appropriate.

The “non-water quality standards” issues mentioned in the comment received high technical ranking scores because the issues are necessary to make the Basin Plan a complete, correct, and current document. The Regional Board needs a complete, correct and current Basin Plan to effectively and efficiently carry out its programs and regulatory functions. Other agencies, dischargers, and the public need a complete, correct, and current Basin Plan to understand the regulatory framework of the region so they can function appropriately in their respective roles.

In addition, because the Basin Plan has not been updated to incorporate new laws and regulations, and adopted Basin Plan amendments since 1994, the issues mentioned in the comment were ranked above some of the issues dealing with water quality standards. Since the last major revision in 1994, the Regional Board has focused its basin planning efforts on water quality standards and implementation issues as they have emerged, resulting in eight Basin Plan amendments in the last 10 years. During this time period, Basin Plan update issues were not given high priorities. Water quality standards are the essential parts of a Basin Plan and necessary changes to these are important, however, for the reasons mentioned above, the “non-water quality standards” issues were given high priorities during this Triennial Review.

Comment 23: The Introduction to the draft Triennial Review Technical Report should include clarifications that:

- a) The specific wording of a Priority Item in the Technical Report does not necessarily preclude an investigation of somewhat broader or more focused scope, if such broadening or focusing is determined, during the course of the investigation, to be appropriate and reasonably within the intent of the authorized Priority Item.
- b) Investigations of Priority Items will include appropriate opportunities for stakeholder input and review as items are prepared for the formal Basin Plan amendments.

Submitted By: City of Laguna Niguel

Response: The Introduction to the Technical Report has been changed as recommended in part 9(a) of your comment.

Regarding part 9(b) of your comment, the investigation and processing of all proposed Basin Plan amendments will be conducted according to relevant administrative procedures and regulations. These procedures and regulations ensure that stakeholders are afforded appropriate involvement with, and review of, proposed amendments. Language to this affect has been added to the Introduction to the Technical Report.

Comment 24: The priority rankings in the Technical Report have been skewed by two of the questions asked in the Initial Questions Form toward administrative clarifications and updates. Question A asked "Is the issue an administrative clarification or update to existing text in the Basin Plan?" If the answer was yes, the issue received a "High Rank." Question A indicated a clear preference to deal with administrative matters rather than review water quality standards.

Submitted By: California Department of Transportation

Response: Initial Question A was designed to screen out and assign a high priority to the issues necessary to make the Basin Plan a complete, correct, and current document, and to identify issues required by State and federal laws and regulations. The response to comment 22 explains why making the Basin Plan complete, correct and current is a high priority.

However, with more than half of the issues receiving initial high priority general ranks, technical ranking scores were assigned to these issues so they could be merged on the prioritized issue list with the other issues that were put through the technical ranking process. This resulted in many of the issues that received an initial high priority general ranking being moved into medium and low priority general rankings.

Comment 25: The priority rankings in the Technical Report have been skewed by two of the questions asked in the Initial Questions Form toward administrative clarifications and updates.

Question E asked "Is the issue a TMDL?" If the answer was yes, the issue was "Removed." Question E screened out water quality standards questions if they were related to a TMDL.

Removal of issues related to TMDLs from the priority list is a concern in light of Bacteria TMDL Projects I and II which, combined, address indicator bacteria listings for 38 waterbodies listed on the 2002 303(4) list as impaired due to indicator bacteria. Eighteen of these; waterbodies are included in the Bacteria-Impaired Waters TMDL Project I for Beaches and Creeks. When members of the Stakeholder Advisory Group (SAG) for the TMDL raised questions about the applicable water quality objectives they were told, "TMDLs are about meeting water quality objectives not about changing water quality objectives." Staff did acknowledge that there is considerable current research concerning appropriate water quality objectives related to bacteria. The SAG was informed that the Regional Board might, in the future consider, changes through the Triennial Review process. Now, as the results of the 2004 Basin Plan Triennial Review are about to be implemented, we are confronted by a recommended priority issue list that excludes water quality objectives issues related to TMDLs.

Review of the water quality objectives related to bacteria and other pathogens is a particularly critical issue because the Regional Board is proposing to consider all bacteria-impaired waterbodies currently on the 303(d) list through the adoption of two very broad TMDLs. If the Regional Board is not willing to follow the National Research Council's recommendation to include a review of standards as the first step in TMDL development, it should emphasize review of these standards during the period from August 2004 to August 2007 as it implements the 2004 Basin Plan Triennial Review.

Submitted By: California Department of Transportation

Response: Initial Question E removed Total Maximum Daily Load (TMDLs) projects from the Triennial Review Process. However, the question did not remove water quality standards issues related to TMDLs. The reason for removing TMDL projects from the Triennial Review process is because TMDLs already are considered high priorities and are funded separately from other basin planning issues.

The Regional Board disagrees with your comment that the prioritized issue list excludes water quality objective issues related to TMDLs. Issue No. 7 (formerly No. 6) addresses Water Quality Objectives for Bacteria Indicators and is directly related to the Bacteria-Impaired Waters TMDL Project. Issue No. 31 addresses a site-specific objective for dissolved copper in Shelter Island Yacht Basin.

Comment 26: An exceptional opportunity exists right now for Region 9 to take advantage of an effort currently being fully funded by Region 8 and EPA to examine appropriate bacteria issues and water quality objectives in inland surface freshwaters. The Santa Ana River watershed is very comparable climatically, topographically, and in the range of land uses and stakeholder interests to the Region 9 watersheds included in the Region 9 Bact I TMDL for impaired creeks. We encourage Region 9 to stay involved with Region 8 to see how their process, findings and decisions could be directly applicable to Region 9 at minimal cost. We believe that stakeholders

in Region 9 would step forward to work cooperatively with Region 9 staff on this issue, and could potentially augment the resources available for its pursuit.

We realize that staffing and funding issues limit the ability of the Regional Board to address the myriad items listed in the Technical Report. As an addition to the current listing process, we would like to suggest the Regional Board consider addressing key issues with substantial stakeholder interest, which are beyond the scope of the current Triennial Review budget, but are supported through a collaborative, cost and staff-sharing process. As an example, the County of Orange is currently working with a group of stakeholders and the Santa Ana Regional Water Quality Control Board in such an effort. There we are developing consensus on a workplan for future evaluation of water quality standards in light of new or updated scientific information and to develop recommendations for evaluation of water quality standards in conformance with relevant state and federal requirements and Water Code Section 13241 factors. This effort is being funded through an agreement between four stakeholders and the Santa Ana Regional Water Quality Control Board, and includes participation and input from U.S. EPA and a group of over twenty-five stakeholder groups representing environmental, business, local municipal and sanitation interests. We believe this partnership approach can serve as a model to address issues with similar stakeholder interest in the San Diego Region.

Submitted By: City of Laguna Niguel, County of Orange, Project Clean Water

Response: The Regional Board acknowledges partnerships can be a powerful tool and intends to learn more about, and if resources permit, participate in the Region 8 stakeholder process. If this process has value to the types of basin planning activities ongoing in Region 9, the Regional Board will consider implementing such a process with our stakeholders.

Depending on the priority of an issue, the Regional Board may be willing to form partnerships with persons willing to fund the studies needed to investigate Basin Plan issues, and to fund a consultant to work for the Regional Board to process Basin Plan amendments. Such a partnership between the Santa Margarita Water District and the Regional Board is underway on a proposed Basin Plan amendment to facilitate reuse of reclaimed water.

7.0 Water Quality Objectives

Comment 27: In accordance with an agreement recently executed with the Regional Board, the District is requesting that Regional Board resources continue to be dedicated towards completing the subject Basin Plan Amendment (BPA).

In process for over ten years and after resolution of concerns raised by the United States Marine Corps, the District desires to coordinate completion of the BPA with the Regional Board. Completing the BPA is necessary to not limit use of newly completed recycled water facilities at the District's Chiquita Water Reclamation Plant and also numerous pipeline improvements constructed to support irrigation systems within the Talega Valley development area. As the District will be contributing financially for investigation and related processing activities

concerning the proposed BPA., use of Regional Board resources for this project should be minimal. The District appreciates the Regional Board's consideration for continued support of this important project involving beneficial use of recycled water.

Submitted By: Santa Margarita Water District

Response: The Regional Board is committed to completing its work on this issue.

Comment 28: Request to raise Priority of Issue 22 to High (Water Quality Objectives for Nutrients in Surface Waters)

The Permittees reiterate their support for Issue 22. The Permittees request that this issue be given a high priority.

Many of the water quality objectives were not updated since the Basin Plan was first adopted in 1975. The updates that occurred in 1994 and 1996 did not address all of the water quality objectives. Further, Issue 22, "Water Quality Objective," includes the following summary:

"Develop water quality objectives for nutrients (nitrogen and phosphorous) which are protective of beneficial uses and reflective of natural conditions in 1) flowing waters, 2) lakes and reservoirs, 3) estuaries, and 4) wetlands. The nutrient criteria in the Basin Plan are based on national USEPA guidance and do not necessarily represent actual ambient San Diego Region nutrient levels in unimpaired streams. These levels are the products of regional geochemical processes that differ in varying degrees from similar processes elsewhere in the state and nation. Development of specific nutrient criteria will entail collection of existing data and a short-term, focused water quality sampling of rivers, streams and reservoirs to establish protective standards. During development of the nutrient water quality objectives, the appropriateness of the existing nitrate-surface water quality objective will be evaluated. USEPA Region 9 strongly supports developing nutrient criteria that fully reflect localized conditions and protect beneficial uses." The District agrees that nutrient criteria must fully reflect localized conditions. The Basin Plan Objectives of 1 mg/L for Nitrogen and 0.1 mg/L for Phosphorous were established based on a study of the levels of phosphorus needed to restore the Florida Everglades, a marsh with severe eutrophication. There is neither a primary (health-based) nor secondary (aesthetic) drinking water maximum contaminant level for phosphorus. There is a primary drinking water maximum contaminant level of 10 mg/L for nitrate.

Waterbodies have been placed on the 303(d) impaired waters list for phosphorus based on the Basin Plan Objective of 0.1 mg/L for total phosphorus. Some water quality objectives, especially nutrients, may be unachievable using conventional stormwater BAT/BCT. "Irreducible concentrations" are the lowest concentrations achievable using existing stormwater treatment BMPs. Presented in the table below are irreducible concentrations of selected contaminants commonly found in stormwater runoff.

Water Quality Parameter Irreducible Concentration

TSS: 20 – 40 mg/L

Total Phosphorus: 0.15 – 0.2 mg/L

Total Nitrogen: 1.9 mg/L

Nitrate as Nitrogen: 0.7 mg/l

Total Kjeldahl Nitrogen: 1.2 mg/L

The irreducible concentrations for total nitrogen and total phosphorus are almost twice their respective WQOs (TNWQO = 1.0; TPWQO = 0.5), indicating that the WQOs may be unachievable with current BMP technology. It must be noted that the nutrient concentrations found in stormwater runoff are extremely low compared to nutrient levels in wastewater influent; thus, adaptation of classic wastewater BMPs at total phosphorus and total nitrogen removal will prove inefficient and economically unfeasible.

Submitted By: Riverside County Flood Control District

Response: The Regional Board concurs that updating the water quality objectives for nutrients is an important issue. Based on this comment, the Regional Board re-evaluated Issue No. 24 (formerly Issue No. 22), however, no additional points could be added to the technical ranking score. Therefore the issue remained at its current priority.

The Regional Board's current biostimulatory substance water quality objective for nitrogen and phosphorus (N &P) is based upon water quality criteria for phosphorus and nitrogen contained in the USEPA's publication entitled Quality Criteria for Water (also known as the Red Book). The criteria was 0.1 mg /L phosphorus and 1.0 mg/l nitrogen to protect against eutrophication conditions in streams and flowing waters. These N & P criteria were incorporated into the Basin Plan in 1975 as a biostimulatory water quality objective to be used in the absence of other site specific numeric water quality criteria supported by scientific studies. The current biostimulatory substance objective has been criticized by some as being unattainable and lacking a proper scientific basis for use in the San Diego Region. There is a need to develop accurate, scientifically defensible N & P water quality objectives for application by water body type in the San Diego Region to replace the 28-year-old biostimulatory substance objective now in place.

Nutrients are a significant water quality problem nationwide. In California, excess nitrogen (N) and phosphorus (P) in waterbodies are the third leading cause of impairment. From a regional perspective, the list of impaired water bodies (Clean Water Act Section 303(d) list for 2002) for the San Diego Region shows approximately 10 percent of the listed waterbodies are impaired due to nutrient enrichment. Numerous problems such as *Pfisteria* outbreaks on the East Coast and a hypoxic zone in the Gulf of Mexico prompted USEPA in 1997 to develop a national strategy to address eutrophication. As part of these efforts, USEPA has developed new N & P water quality criteria under Clean Water Act section 304(a). In addition, USEPA guidance documents are available that detail methods for developing alternative site specific criteria for N & P. California currently has three options: 1) employ methods outlined in the guidance documents to develop nutrient water quality objectives; 2) directly adopt Clean Water Act section 304(a) N & P criteria into Basin Plans as water quality objectives; or 3) use other scientifically defensible methods to develop criteria.

The Regional Board is currently participating in a statewide joint USEPA Regional Technical Advisory Group (RTAG) that is overseeing N & P water quality objective development for California. This group is currently working on developing proposed regional nutrient criteria for the Southern and Central California as a priority target due to the number of nutrient TMDLs being completed in this region. Basin Plan resources will be assigned to continue participation in the RTAG effort over the next three years.

Comment 29: Priority Item #4 includes a proposal to “add language to the Basin Plan clarifying anthropogenic versus natural sources of pollutants including controllable water quality factors. The text on this issue was inadvertently omitted from Chapter 3 during the 1994 Basin Plan revision.” Has this text has already been formally developed? If so, it would be appropriate to set the language forth specifically in the Technical Report so the public can see exactly what is intended. The associated Resource Estimation suggests that all the listed Priority #4 tasks will consist of straightforward, non-controversial edits, but this may not be the case, especially if the language has not already been developed and appropriately reviewed; and/or if scientific understanding of the issues has evolved during the past ten years. In that case, the Resource Estimation should be increased proportionally.

Submitted By: City of Laguna Niguel

Response: The 1975 version of the Basin Plan contained the following language that was inadvertently omitted in the 1994 version:

"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause any degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled."

The Regional Board has not developed specific text for this part of Issue No. 5 (formerly No. 4). The proposed text will be developed during the investigation phase of this issue. We believe that the proposed changes are straightforward and that the resource estimate for Issue No. 5 is appropriate.

Comment 30: The Workgroup also advocates the development of nutrient water quality objectives that reflect actual ambient levels resulting from regional geochemical processes (priority item #22).

Submitted By: Project Clean Water

Response: Comment noted.

Comment 31: Is it the intention of the Regional Board to add all the water bodies listed in Issue 2 to Tables 2.2 and 3.2 in the Basin Plan along with the designated uses and water quality objectives respectively?

Submitted By: US Environmental Protection Agency

Response: Yes, the appropriate beneficial use and water quality objective tables will be updated for all the water bodies listed in Issue No. 3 (formerly No. 2) "Unnamed or Unidentified Waterbodies and Table Corrections."

Comment 32: Mr. Tim Moore representing the Shelter Island Yacht Basin Marina Owners/Operators presented oral comments at the June 9, 2004 Regional Board Meeting. Mr. Moore requested that an issue be considered in the Triennial Review dealing with a Site Specific Objective for Dissolved Copper in the Shelter Island Yacht Basin. Mr. Moore testified that the Shelter Island group he represented would fund a Water Effects Ratio Study of dissolved copper in the yacht basin in accordance with U.S. Environmental Protection Agency guidelines. Mr. Moore presented preliminary data indicating that the site-specific objective derived from the water effects ratio study would likely be higher than the water quality objective in the Basin Plan.

Submitted By: Shelter Island Yacht Basin Marina Owners/Operators

Response: In response to Mr. Moore's testimony, the Regional Board prepared an issue titled "Water Quality Objective for Copper at Shelter Island Yacht Basin" and assign a technical ranking score to the issue. The issue scored 62 points and was ranked 31st on the prioritized issue list.
