

The San Diego Water Board has the following responses to comments received on Tentative Resolution No. R9-2017-0038:

No.	Comment	San Diego Water Board Response
<b>Comments received from Dr. Adena Boxer-Capitano, dated February 21, 2017</b>		
1	The commenter is concerned with the postponement of the December 14, 2016, Board meeting informational item concerning the project, as well as the public participation process in place for the Tentative Resolution and the project overall.	The San Diego Water Board acknowledges the commenter’s concerns with respect to postponements and delays regarding the December 14, 2016, Board meeting informational item.
2	The commenter states that, “we received another notice on Lyris that a resolution to accept the LSM proposed plan was on the agenda for the March 15, 2017, Board meeting and written public comments needed to be submitted by February 27, 2017...two days BEFORE the public meeting where our questions and concerns are (supposedly) to be addressed.”	The Tentative Resolution does not resolve to “accept the LSM proposed plan...”. The Tentative Resolution sets out expectations for a path forward on the project but does not constitute acceptance or approval of any submitted plan, proposal, or work plan. No change to the Tentative Resolution has been made as a result of this comment.
3	The commenter provides comments and questions regarding the following major topics: <ol style="list-style-type: none"> <li>1. Cost considerations for cleanup</li> <li>2. Selection and use of specific remedial technologies</li> <li>3. Role of San Diego Water Board staff and Board members</li> <li>4. Effectiveness of specific remedial technologies</li> <li>5. Role of the LSM Volunteer Lake Quality Water Monitoring team</li> </ol>	The comments regarding these topics are not specific to the Tentative Resolution. No change to the Tentative Resolution has been made as a result of these comments.
4	The commenter provides the following comment under “Oversight and Timeline Questions”: How and by whom will the cleanup process be monitored to make sure it is being carried out according to the proposed plan and on time?	Statement 2 of the Tentative Resolution states: “The San Diego Water Board will review progress on this project not less than annually to ensure that activities to investigate potential impacts to downstream water bodies from lake releases and to restore the beneficial uses of the

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		<p>lake and San Marcos Creek upstream of the lake are effective and proceeding as expeditiously as possible.”</p> <p>No change to the Tentative Resolution has been made as a result of this comment.</p>
5	<p>The commenter provides the following comment under “Oversight and Timeline Questions”: What happens if the remedial actions being taken are not adequate?</p>	<p>The Mission of the San Diego Water Board is to protect and restore the beneficial uses of water bodies, such as Lake San Marcos, San Marcos Creek, and Batiquitos Lagoon, and uses all of its authorities and influences to meet those objectives.</p> <p>Statement 3 of the Tentative Resolution states:</p> <p>“Should voluntary efforts fall behind the corrective action schedule, fail to be effective, or fail to make meaningful progress, the San Diego Water Board will use its regulatory authority to ensure that remedial activities are carried out in a timely manner.”</p> <p>No change to the Tentative Resolution has been made as a result of this comment.</p>
6	<p>The commenter provides the following comment under “Oversight and Timeline Questions”: Can we see a printed timeline of the proposed actions that includes:</p> <ul style="list-style-type: none"> <li>i. When each remedial action in BOTH the upstream watershed and the lake are going to start and finish</li> <li>ii. The benchmarks that need to be met as a result of each action and the date each of those benchmarks are anticipated</li> <li>iii. When the public can expect to receive the results of the follow-up data that verifies each of the benchmarks are being met</li> </ul>	<p>Supporting Document No. 2 to the Tentative Resolution contains a list of activities and proposed corrective action schedule. Benchmarks for each corrective action will be described in the forthcoming Corrective Action Plans to be submitted in association with each action.</p> <p>No change to the Tentative Resolution has been made as a result of this comment.</p>

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<b>Comments received from Mr. Warren Lydecker, dated February 24, 2017</b>		
7	The commenter is concerned with the postponement of the December 14, 2016, Board meeting informational item concerning the project, as well as the public participation process in place for the Tentative Resolution and the project overall.	See response to comment no. 1.
8	For a year or more at the intersection of Twin Oaks and San Marcos Blvd. a mayor [sic] construction complex on the south-west corner is being constructed. For many months last year the area near San Marcos Creek was surcharged with soil to bury the poor creek soil and creek area. In short is the land is to [sic] valuable for environmental use?	The comments regarding these topics are not specific to the Tentative Resolution. No change to the Tentative Resolution has been made as a result of this comment. The complaint, however, has been forwarded to San Diego Water Board staff responsible for overseeing compliance with storm water permits related to construction activities.
9	When I asked Laurie Walsh why the Water Board could not Order an automatic valve at the dam to control the water release, Laurie noted the Board can only order that something should be done but not how. That means the Boards only power is after the fact. Good words will work?	Valve operation is overseen by the State Water Resources Control Board, Division of Water Rights, as well as the California Department of Water Resources. No change to the Tentative Resolution has been made as a result of this comment.
10	The work of the Monitoring Group was not used and our interests are not addressed. The use of Alum is the only solution, the nitrogen is not to be addressed, and Best Manages [sic] Practices are developmental not for review: so why be involved and spend the money? Is this only a bureaucratic work project for the industry?	The comments regarding these topics are not specific to the Tentative Resolution. No change to the Tentative Resolution has been made as a result of this comment.
<b>Comments received from Mr. Steve Figgins, Farallon Consulting, dated February 27, 2017</b>		
11	We respectfully request that item #8 on page 2, and item #5 on page 3 of Tentative Resolution No. R9-2017-0038 be removed, as Bataquitos [sic] Lagoon was not addressed in	Lake water quality is partially the result of input from the upstream watershed, for which the upstream public agencies are partially responsible and therefore are able to

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	<p>the Voluntary Agreement with the Public Agency Defense Group (PADs) and CDC. Our focus has been on Lake San Marcos and the Watershed.</p>	<p>exert some control. Finding 4 of the Tentative Resolution includes the following: “The upstream public agencies are responsible for controlling nutrient loading to the lake from the areas within their respective jurisdictions.”</p> <p>Impacted lake water is periodically released through the dam valve and, therefore, CDC, in addition to the upstream public agencies, must ensure that Corrective Action Plans submitted to the Board address water quality effects, <i>if any</i> [emphasis added], of these releases. As stated in the Tentative Resolution, impacts of lake water releases through the valve are not currently understood and should be investigated. No change to the Tentative Resolution has been made as a result of this comment.</p>
<p><b>Comments received from Mr. John Reaves, counsel for Hollandia Dairy, Inc., dated February 27, 2017</b></p>		
<p>12</p>	<p>Hollandia recommends to the RWQCB that it defer taking action on the proposed Resolution for the following reasons:</p> <p>1) CDC’s compliance with its State Water License should be determined first before assuming Lake San Marcos (“Lake”) can be maintained as is.</p> <p>2) CDC and the Public Agencies (Escondido, San Marcos, County of San Diego, Vallecitos Water District (collective, the “Parties”)) should first respond fully to serious questions raised by Hollandia on November 9, 2016. Sarah Mearon asked them to respond, yet they <i>refused</i>. The ignored issues included analysis and discussion of:</p> <p>a) lake flushing;</p> <p>b) buried sediments that cannot be recycled;</p> <p>c) current condition of the Hollandia property;</p>	<p>Regarding item 1, Tentative Resolution statements 5 and 6 convey the need for the State Water Board Division of Water Rights to make a determination as to whether conditions in the water right license protect water quality downstream of the dam and condition the license to require permanent lake management measures, if needed, to meet water quality standards in the lake. These requirements create a nexus between water quality and water supply that will ensure that issues pertaining to the water right license are evaluated in the context of the proposed corrective action schedule.</p> <p>Regarding item 2, the referenced comments are made with respect to the Remedial Investigation/Feasibility Study Report submitted to the San Diego Water Board in September 2016 and are not specific to the Tentative Resolution.</p> <p>No change to the Tentative Resolution has been made as a result of these comments.</p>

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	<p>d) litigation bias against Hollandia, including how the Parties have downplayed their own contributions; the bias has skewed the assessment and remediation of nutrients in the RI/FS;</p> <p>e) the models have not been properly calibrated;</p> <p>f) whether nutrients are Superfund “hazardous substances.”</p>	
13	<p>The commenter provides additional detailed discussion of the items discussed in comment no. 12, in addition to other items that are focused on the content of the Remedial Investigation/Feasibility Study Report submitted by the parties in September 2016.</p>	<p>The comments regarding these topics are not specific to the Tentative Resolution. No change to the Tentative Resolution has been made as a result of these comments.</p>
14	<p>Hollandia would like clarification from the authors of the RI/FS and the RWQCB as to whether they (as opposed to the Parties) contend nutrients are “hazardous substances” under CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act]. Total Nitrogen, often referred to alternatively as “Ammonia as N” and Total Phosphorus typically phosphates, are the two nutrients of concern to the RWQCB and driving the work to comply with the IO [Investigative Order].</p> <p>The above Parties in the lawsuit have adopted CDC’s position that nutrients are hazardous substances under CERCLA. Has the RWQCB ever taken, or is it taking here, a formal position on this issue?</p>	<p>The San Diego Water Board understands that there is ongoing litigation between Hollandia and the parties under CERCLA, and the parties undertaking the investigative and cleanup work for the project generally are following the CERCLA process. However, the Board is managing the project under the Site Cleanup Program under authority of California Water Code section 13267, without regard to the CERCLA status of the site.</p> <p>The comments regarding these topics are not specific to the Tentative Resolution. No change to the Tentative Resolution has been made as a result of these comments.</p>
<p><b>Comments received from Mr. Nick Buhbe, Great Ecology, on behalf of Citizens Development Corporation, dated February 27, 2017</b></p>		
15	FINDING #3 (PAGE 1)	Finding 3 has been edited to state the following for clarity:

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	<p>The final sentence of this finding suggests that all impairments of San Marcos Creek have affected recreational and habitat beneficial uses of the Lake. The language is contradicted by site specific data presented in the report entitled "Lake San Marcos Investigation, Surficial Sediment Investigation Report," dated January 2016, which was jointly submitted by CDC, Vallecitos Water District, the Cities of San Marcos and Escondido, and the County of San Diego. In that report, sediment toxicological data was presented which shows that several constituents listed for the Creek (e.g., selenium and DDTs) were present in Lake sediments, but that those sediments did not exhibit toxicity.</p> <p>We recommend that Finding 3 be split into two separate findings, stating the factual impairments for the Lake and Creek separately.</p>	<p>These water quality impairments interfere with recreational and habitat beneficial uses of the lake <u>and creek</u>.</p>
16	<p><b>FINDING #4 (PAGE 1)</b></p> <p>We disagree with the characterization that the dam traps nutrient rich sediment as an oversimplification. The dam traps sediments which become enriched through complex biogeochemical cycling within the overlying Lake water (i.e. stratification cycle). It is the depth of the Lake near the dam which is conducive to stratification, which in turn results in nutrient rich water at depth.</p> <p>We recommend this finding be re-written to better reflect eutrophic conditions at Lake San Marcos.</p> <p>For example, to conform to the classic definition of eutrophic state, we would request that the second sentence be revised to: "High levels of nutrients result in excessive biomass generation, including..."</p>	<p>The characterization that the dam traps nutrient-rich sediment has been demonstrated by the results of the remedial investigation. No change to the Tentative Resolution has been made as a result of this comment.</p>

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17	<p><b>FINDING #8 (PAGES 2 AND 3)</b></p> <p>In the first paragraph, the practice of opening the valve in anticipation of and during high-precipitation events has been and continues to be as a safety measure to limit overtopping flows. With regard to the safety inspection opening, the annual opening of the valve demonstrates that the lake is not “clogged with sediments.”</p> <p>We respectfully request that the last sentence of the first paragraph be deleted.</p> <p>In the second paragraph, the statement that waters released “is typically anoxic and may contain elevated concentrations of nutrients and suspended solids” is immaterial to the proposed 303(d) listing at Batiquitos Lagoon for sediment toxicity. Anoxic conditions would not be expected to persist between the Lake and the Lagoon regardless of low or high flow conditions, and no data has been presented to even suggest a swath of anoxic conditions stretching for miles downstream of Lake San Marcos. On the contrary, waters flowing either over the dam or out of the valve, and then down through a series of riffles in the canyon below Lake San Marcos, would very rapidly be aerated as a result of extreme hydrodynamic forces.</p> <p>Nutrients and suspended solids do not affect sediment toxicity. Site specific evidence suggests the contrary: sediments collected from the shallow portion of the Lake (i.e., the aerobic epilimnetic portion) have been shown to be free of toxicity (ibid.). We are unaware of any scientifically-based linkage between any conditions at the Lake and the proposed 303(d) listing for Batiquitos Lagoon.</p> <p>Finally, regardless of the basis of concern by the Batiquitos Lagoon Foundation and Carlsbad Watershed Network, the</p>	<p>Regarding the comment on the first paragraph, the last sentence of the paragraph has been deleted.</p> <p>Regarding the comment on the second paragraph, please refer to the response to comment no. 11. No change to the Tentative Resolution has been made as a result of this comment.</p>

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	<p>remedies proposed for Lake San Marcos and the Upper San Marcos Creek watershed will be a benefit to downstream conditions by reducing anoxia in the lake, decreasing nutrient loading, decreasing sediment loading downstream, and improving the ecology of the Lake and Creek. In short, there is no negative link between the Lake and Lagoon.</p> <p>We respectfully request that the second and third paragraphs of this finding be deleted in their entirety.</p>	
18	<p>TENTATIVE RESOLUTION #5 (PAGE 3)</p> <p>As stated above and taken in their entirety, findings of fact do not support a linkage between Lake conditions and sediment toxicity at Batiquitos Lagoon, or other conditions downstream of the Lake.</p> <p>We request that Resolution Item 5 be removed.</p>	<p>Finding 8 of the Tentative Resolution provides findings of fact that support statement 5 of the Tentative Resolution. Please also refer to the response to comment no. 11. No change to the Tentative Resolution has been made as a result of this comment.</p>
<p><b>Comments received from Mr. Matt Little, City of San Marcos Public Works Director/Deputy City Manager, dated February 27, 2017</b></p>		
19	<p>Pursuant to the Regional Board's request, the Parties submitted estimated project schedules for the remedial alternatives recommended by the RI/FS. The City of San Marcos supports the remedial alternatives recommended by the RI/FS and respectfully requests that the dates in recital 5 of the Tentative Resolution be modified to conform to the estimated project schedules submitted by the Parties.</p>	<p>The San Diego Water Board has clarified Finding 5 to refer to the initiation of full-scale implementation of the three remedial measures by the listed dates. The Board has confirmed that the dates in Finding 5 correspond to those included in the proposed corrective action schedule included as Supporting Document No. 2.</p>
20	<p>In addition, recital 8 of the Tentative Resolution discusses Citizens Development Corporation's releases of lake water through the valve in the bottom of San Marcos Dam. The City of San Marcos has no control over San Marcos Dam</p>	<p>The San Diego Water Board understands that the City of San Marcos has no control over San Marcos Dam or the releases of lake water through the dam valve. However, lake water quality is partially the result of input from the upstream</p>

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	<p>or the releases of lake water through the valve in the bottom of the dam. Therefore, the City of San Marcos is not responsible for investigation or remediation of the potential effects of any such releases. The City of San Marcos respectfully requests that the third paragraph of recital 8 be modified as follows to clarify that the City of San Marcos is not responsible for investigation of releases through the valve in the bottom of the dam:</p> <p style="padding-left: 40px;">The effects of water releases <u>through the valve from Lake San Marcos</u> on the quality and beneficial uses of downstream water bodies must be better understood to ensure that the Corrective Action Plans put forward by <u>CDC the Parties</u> address water quality impacts, if any, of water releases <u>through the valve from the lake</u>. The list of activities recommended by <u>CDC the Parties</u>, however, does not include an investigation of these potential effects.</p>	<p>watershed, for which the City of San Marcos is partially responsible and therefore exerts some control. Please also refer to the response to comment no. 11. No change to the Tentative Resolution has been made as a result of this comment.</p>