

San Diego Bacteria TMDL Meeting, 09/02/15

The meeting summary is organized around major points in the meeting agenda, which is included at the end of the meeting summary, along with a list of attendees. Agreements are **highlighted in bold**. Action items are listed at the end of the meeting summary.

1. Introduction and Purpose of Meeting

The purpose of the meeting was to:

- Review and revise as needed the schedule of project meetings and meeting topics
- Review the draft Memorandum of Understanding (MOU)

2. Review of August 27, 2015 meeting notes

Participants requested additional time to review notes of the previous meeting and **agreed on a two-week review period in the future**.

Participants also agreed to reorder the meeting agenda to postpone discussion of the Memorandum of Understanding (MOU) until later in the meeting. To enable more careful consideration of meeting topics, participants then **agreed that materials for discussion and review would be distributed a minimum of 10 calendar days in advance of meetings**. In addition, the workgroup **agreed that meeting agendas will include decision points, discussion lead, intended outcomes, and reference to background documents**.

Jimmy Smith (Board) mentioned the need for more coordination about scheduling, communication among workgroup members, and clarity about allocation of responsibilities. Participants **agreed unanimously with Michelle Mata's offer to take on this central coordinating role**. This will include her participation in the weekly (Monday) team check-in calls.

3. Special study status and implications / Overall project schedule

Ashli Desai (LWA) explained the table that describes each special study, its applicability to the TMDL, and potential schedule impacts (file: Study Schedule and Implications 9-2-15.pdf). Nancy Palmer (City Laguna Niguel) stressed the importance of allotting time to discuss not only the studies' scientific findings but also their implications for policy and management. For example, how will assessment targets be determined, how will findings be extrapolated to other locations? Jimmy Smith (Board) emphasized the importance of beginning such discussions as soon as possible, even before studies are completed, to create a common understanding and agreements that can be memorialized now. Ideally the workgroup could reach consensus about the interpretation and application of the studies' results.

Chris Minton (LWA) and Ashli Desai (LWA) said that these sorts of discussions were part of the team's overall plan for the project and that the schedule of meetings had been structured around these discussions. However, the overall approach had not been fully explained and shared with the entire workgroup. The workgroup **agreed that Michelle Mata (Board) would meet with a small group of the consultant team and the permittees to review the approach and sequence of topics and provide input to a revised schedule that also shows how the pieces/topics fit together in a logical progression**. This meeting will take place as soon as possible.

The time needed for these discussions will have an impact on the overall schedule. Jimmy Smith (Board) stated the importance of allowing time for study results, especially those from the cost benefit analysis, to be produced and assessed, and for the workgroup to hopefully reach consensus on their implications for the TMDL. Time invested at the front end in achieving consensus will pay dividends on the back end in terms a speedier process with less conflict. A permittee concern is that a less aggressive schedule will constrain their ability to develop needed implementation plans, a process that requires a long lead time, especially where capital improvement projects are involved. On the other hand, a compressed meeting schedule will reduce participants' ability to fully consider and discuss the planned set of topics. Jimmy Smith (Board) noted that the submission of the Reopener Report starts the Board's clock ticking on their review process and it would not be fair for that to happen if the Board does not have the full set of information it will need (e.g., results of the cost-benefit analysis). After further discussion of options for moving forward, and briefly viewing prepared discussion materials, the **workgroup agreed to use the September 10 meeting as a trial run of the planned approach** for discussing in more detail the implications of studies for the TMDL. The time needed for discussion and the amount of progress made will provide useful input to a revised schedule, which will be discussed in more detail at the September 10 meeting.

The workgroup then discussed the time needed for the Board to process the Basin Plan amendment once the reopener request is submitted. Board staff said the proposed schedule was insufficient while some members of the permittee team suggested steps (e.g., peer review) could take less time than expected. Jeremy Haas (Board) said that it will be important to allow enough time for thorough discussion of the implications of study results and to work out agreements among the parties. If the schedule is compressed and there is insufficient time for getting a consensus (or as close as possible), then this will almost certainly lead to more problems and delays down the road. Drew Kleis (City SD) stated that their aim is to be able to forward with the Board with a proposal that all can support and that the City is OK if this requires some additional time at the front end. In response to expressed concerns about the interim compliance targets, Jeremy Haas (Board) said these are of less concern to the Board than a good process and a good result. The alternative schedule being constructed by the small group should identify places in the Board review process where time can be saved.

The Cost Benefit Analysis is a key input to the decision process and the Board is not willing to move forward without it. Costs of implementation, and how they compare to benefits, could be more important than information about reference conditions and could dramatically influence how the reference condition is applied. Drew Kleis (City SD) said that capital projects take time and that 2031 is not that far off on the planning horizon. It can easily take 5 or 6 years to get a project approved and underway. Capital improvements are much less expensive if done on the regular capital replacement schedule, rather than as retrofits. However, that would take 40 – 50 years. Going faster is much more expensive. Jeremy Haas (Board) said that the Board wants permittees to spend their money where it will make a difference and that if it takes an unreasonable amount of money to remove the last bit of risk then that would clearly not make sense. However, that has not yet been confirmed, which is the point of the Cost Benefit Analysis.

4. Memorandum of Understanding

Participants had a number of comments on the draft MOU and its relationship to the project schedule. Participants were in general agreement with the following suggestions:

- The draft is too narrowly focused on the cost benefit analysis, to the exclusion of other special studies; suggest that the MOU merely state that a number of technical and scientific studies are being conducted
- The MOU needs more detail on the content and logistics of the entire amendment process, not just the procedural aspects of the workgroup; this could take the form of a narrative that describes the

progression through studies, presenting results, discussion, recommendations on changes to the Basin Plan, etc.

- The MOU must contain a schedule to get through internal legal review and the workgroup should ensure that the MOU contains a reasonable schedule that participants believe can be met
- Participants should agree on what the MOU needs to include before focusing on the wording of specific sections
 - For example, when work is likely to be completed, decision points, possible outcomes stemming from those decisions, time needed to process the amendment
- Permittees need a date certain for the end of the activities defined in the MOU
 - Within that overall timeframe, the MOU should define the sequence of agreed steps and decisions
 - The scheduling of these interim steps could be flexible
 - The MOU should include key milestones and suggest an amount of time allowed for decisions needed to move to the next step in the sequence
- The MOU can include a statement to the effect that the Board will accept the reopener request even if the formal date for submitting this request has passed; this may help to reassure permittees that there will be no immediate repercussions if the submittal date is pushed back
- The MOU could include language that adjusts the schedules for interim compliance to accommodate the additional time being requested at the front end for more consideration of study results; Jimmy Smith (Board) will check with other Board staff about the possibility of a “non-enforcement” letter to this effect

The Board is not likely to adopt a high flow suspension. If the State Board adopts something binding in this regard, then the Regional Board will comply. However, if the State Board adopts a recommendation, then the Regional Board will make its own decision informed by local information and priorities. The Board is willing to move the wet weather compliance point to the receiving water at the beach.

The City of San Diego will take the lead on developing language that provides more clarity on the process. All comments on the draft MOU should be sent to Jo Ann Weber (County SD).

5. Next steps

Agreed on next steps include:

- Michelle Mata will meet with a small group of the consultant and permittee team to review the planned overall approach and its relationship to the project and meeting schedule, and to develop a picture of how individual pieces fit in a logical progression. They will also identify opportunities for accelerating the Board’s process
- Send comments on the draft MOU to Jo Ann Weber (County SD)
- City of SD he will take the lead on language in the MOU to provide more clarity on the sequence of steps in the process
- Board staff will check on the possibility of a “non-enforcement” letter to accommodate a delay in submittal of the reopener request

See the Workgroup Action Items Report for a complete list of all action items and their status.

6. Next meeting date

The next workgroup meeting will be September 10, from 10:00 AM – 1:00 PM, per the agreed meeting schedule.

Attendees

Regional Board: Cynthia Gorham, Jeremy Haas, Michelle Mata, Jimmy Smith

San Diego City: Drew Kleis, Ruth Kolb

San Diego County: Jo Ann Weber

Orange County Public Works: Jian Peng

City of Laguna Niguel: Nancy Palmer

Team: Brock Bernstein, Clint Boschen, Ashli Desai, Chris Minton

Revised Agenda

San Diego Bacteria TMDL Workgroup Meeting

San Diego RWQCB

2375 Northside Dr. #100

Board Room

Meeting #5-September 2, 2015 1:00 pm to 3:30 pm

1. Introductions (1:00-1:05 pm)
2. Review of August 27, 2015 meeting notes (1:05 – 1:10 pm)
3. Live Review of Memorandum of Understanding (1:15-2:00 pm)
4. Special Study Status and Implications (1:30 – 1:50 pm)
5. Overall Project Schedule (1:50 -2:50 pm)
6. Review of Proposed Meeting Topics and Discussion (2:50 – 3:15 pm)
7. Example Topic: Potential Approaches to WQOs and TMDL Targets (3:15-3:30 pm)