

Appendix D

Response to Comments

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

2015 Triennial Review

Response To Comments

December 16, 2015

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STAFF RESPONSE TO COMMENTS ON THE OCTOBER 2015 TRIENNIAL REVIEW STAFF REPORT AND TENTATIVE RESOLUTION

We received four comment letters during the public comment period, which began on October 22, 2015, and closed on November 23, 2015. The comments from these four letters and our responses are presented here.

Comment letters received:

1. United States Environmental Protection Agency (U.S. EPA, Janet Hashimoto)
2. Wil Bruhns (private citizen)
3. Living Rivers Council (Chris Malan)
4. City of Daly City (Patrick Sweetland)

Comment Letter 1: U.S. EPA; November 16, 2015

Comment 1.1: “EPA recently published the Water Quality Standards Regulatory Revisions; Final Rule on August 21, 2015. The regulations became effective on October 20, 2015, and changes included clarifications concerning triennial reviews. The regulations state that "if a State does not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) recommendations, then the State shall provide an explanation when it submits the result of its triennial review to the Regional Administrator..." (40 CFR 131.29 (a)). Since the project to incorporate CWA section 304(a) criteria into the Basin Plan is project number 19 (with a PY running total of 15.1), it is unlikely that this project will be completed in the upcoming triennial review period. When the Regional Board submits the results of its triennial review to EPA, please include a brief explanation as to why the project is unlikely to be addressed.”

We appreciate this clarification about the regulatory revisions. Water Board staff will fully explain how CWA section 304(a) criteria have been considered in the Triennial Review when we transmit the results of the Triennial Review to U.S. EPA. As noted in the comment, a project to incorporate the CWA section 304(a) criteria into the Basin Plan was evaluated and ranked during the Triennial Review process but did not make the list of priority projects. For the reasons that follow, we do not plan on incorporating the CWA section 304(a) criteria into the Basin Plan during this next three year work planning period: 1) with the exception of revised freshwater aquatic life ammonia criteria, the new 304(a) criteria contaminants revise human health criteria included in the California Toxics Rule (CTR), which the Water Board does not have the ability to modify; 2) other stakeholders besides U.S. EPA did not rank this project as a high priority; and 3) we have limited basin planning resources to undertake the project.

Comment Letter 2: Wil Bruhns; November 16, 2015

Comment 2.1: “I strongly support the proposal for addressing climate change in the Basin Plan. I believe the proposal could be strengthened by making it more focused. I suggest the Board address climate change in a defined time horizon. I suggest planning horizons of 2050, 35 years from now, and a second planning horizon of year 2100 would also be useful given the expected ongoing rate of climate change. An alternative, or additional, way to focus the planning effort would be to base it on measured sea level rise. For example, once sea level has risen 30 cm. planning for, and implementation of, remedial measures to deal with a 50 cm. rise should begin, in order to assure the remedial measures are in place prior to the 50 cm. rise. The process should repeat when sea level rises 70 cm. to assure that projects are in place for dealing with a one meter rise.”

We appreciate the supportive comments for the climate change-related project and the suggested milestones for assessing progress. Since we have not initiated work on the project, we do not yet know what types of policy elements will emerge through this project or if they would be usefully enhanced by the commenter’s suggested time horizons or sea level rise triggers. However, we will consider these suggestions as we scope out the project.

Comment 2.2: “Another environmental stressor that will happen at the same time as climate is changing is population growth in the Bay Area. ABAG projects that the Bay Area population by 2040 will have over 2 million more folks living here. Presuming ABAG is correct, there will be increased pressure on the region’s wastewater infrastructure (a lot more sewage to move and treat), an infrastructure that is already aging and stressed. Increasing population will also need more housing, more business structures, more roads, etc. All these will further stress the landscape and have potential impacts on water quality (e.g. stormwater or stream system encroachment). Some of the infrastructure and environmental projects impacted by population growth will be the same ones impacted climate change, and therefore should be considered together with climate change.”

We appreciate the comment and suggestion for using population growth as a planning benchmark. While it is possible to state with some confidence that Bay Area population increases will take place, it is much more difficult to anticipate corresponding environmental stressors from specific levels of population growth or what portions of the Basin Plan should be changed to respond to the anticipated stressors. We also observe that the majority of beneficial uses, water quality objectives, and implementation provisions in the Basin Plan, which have been in place for more than forty years, continue to provide water quality protection in the Bay Area, despite a population increase of three million people over that time period. We also note that, while the Water Board does not control timing decisions about the replacement of infrastructure, it is requiring municipalities to consider replacing aging infrastructure with “greener” alternatives that will help address many water quality concerns associated with population growth. The Water Board is also advocating for the planning necessary to address climate change in consideration of other water quality stressors.

Comment Letter 3: Living Rivers Council; November 20, 2015

Comment 3.1: “Living Rivers Council urges you not to de-list the Napa River for nutrients..... It would be a tragedy to de-list the Napa River for nutrients while at the same time the Water Board recognizes that the San Francisco Bay has nutrient enrichment problems requiring a Triennial high priority project to develop nutrient numeric endpoints..... LRC does not want the Water Board to take a piece meal approach to where they regulate nutrient pollution and where they won’t such as: sheet flow pollution from discharges from agriculture and grazing. Currently, this is the path of the R2 board: regulate the wastewater facilities through NPDES permits and ignore the agricultural dischargers by delisting the Napa River.”

The resolution before the Water Board as part of this Triennial Review process does not include consideration of delisting the Napa River for nutrients. The San Francisco Bay Water Board approved the delisting of the Napa River with respect to nutrients on February 12, 2014. Because wastewater is the dominant source of nutrients in San Francisco Bay, wastewater inputs are more of a concern than tributary inputs. We disagree with the commenter’s statement that the delisting recommendation ignored agricultural discharges to the Napa River. The Water Board has already adopted an agricultural waiver associated with grazing operations in the Napa River watershed, aimed at controlling discharges of pollutants, including nutrients, sediment, and pathogens. In addition, as stated in the Staff Report in support of the delisting recommendation, fertilizer runoff from vineyards in the Napa River watershed and surrounding area is relatively low due to the use of sustainable farming practices like drip irrigation. (Rosenstock et al. 2013). Furthermore, staff is in the process of developing a general WDR for vineyards in the Napa and Sonoma watersheds to control nutrient loading from erosion and surface runoff of fertilizer.

Comment 3.2: “LRC recommends that a high priority project be added to the Triennial Report to amend the Basin Plan to include in-stream flow : 1) narrative 2) criteria 3) objectives.”

We considered this candidate project, proposed for the first time in the comment letter, but could not at this stage of the Triennial Review process fully rank and evaluate the project. If we had ranked this project, it would likely rank in the lower tier due in part to our resource limitations. Nonetheless, we consider in-stream flow to be an important concern and provide a description of this project in the list of projects in Appendix B of the Staff Report. We propose inclusion of this project as a candidate during the next Triennial Review so it can be fully evaluated and ranked. We encourage Living Rivers Council to participate throughout the next Triennial Review process, including the initial workshop, to ensure that its project ideas are fully considered and evaluated. As the commenter points out, stream flow is a statewide concern, and we expect to learn more about how to address flow as some ongoing efforts around the State are completed.

Comment 3.3: “The USEPA recently came out with new listing guidance that says that flow-impaired waters should be listed in Category 4C during the 303(d)/305(b) listing process, unlike the State’s position that flows only have to do with water rights not water quality. LRC recommends that the R2 proceed with a project that can implement the USEPA’s recommendation path for improving water quality and quantity.”

California uses the Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List, which requires reference to narrative or numeric U.S. EPA criteria, State or regional water quality objectives, or defensible evaluation guidelines from scientific literature or special studies, to guide 303(d) listing determinations and TMDL development. Category 4C of listing determinations includes water bodies where at least one beneficial use is impaired but the impairment is not caused by a “pollutant.” The result of listing a water body under Category 4C is that a Total Maximum Daily Load (TMDL) is not required to be adopted.

U.S. EPA’s recent guidance document, Information Concerning 2016 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions (guidance document), urges states to include water bodies with hydrologic alterations, including flow impairments, in Category 4C to facilitate watershed protection initiatives. The guidance document is not binding on the San Francisco Bay Water Board, and the Board is not currently evaluating water bodies for flow impairment, nor does it have narrative or numeric flow objectives to do so. However, this may change as narrative and numeric criteria and objectives become available or are developed in other regions. The decision regarding how to proceed with flow impairment listing determinations will be made in coordination with other regions and U.S. EPA staff to ensure that there is a consistent approach to flow impairment determinations across the regions.

Comment Letter 4: City of Daly City; November 23, 2015

Comment 4.1: “The (Triennial Review) Staff Report indicates that the top six projects, including Lake Merced DO and pH objectives, will be included in the staffing workplan in the next three years. However, the Staff Report estimates that an additional 1.8 personnel-years would be required from other Water Board Divisions or external sources to accomplish the Lake Merced project. The City has stated previously, and reaffirms here, that it together with SFPUC, stands ready to provide resources to help address the Lake Merced related Basin Planning issues, in partnership with RWB staff. ”

We appreciate the reaffirmation of the intended support to help us complete this project.

Comment 4.2: “The City is committed to provide technical and as appropriate administrative support to RWB staff beginning January 2016 to enable preparation of a complete Basin Plan amendment package addressing the Lake Merced DO, pH and related issues, for RWB consideration by the end of 2016. The City would continue to support RWB staff, as appropriate, during 2017, in following up with subsequent Basin Plan amendment approvals required by the SWB, the Office of Administrative Law (OAL) and the USEPA.”

We appreciate the acknowledgement that external resources are required to complete this project. The Triennial Review process identified six priority projects to undertake with our available staffing resources. We will do our best to manage our resources so as to complete the projects in as timely a manner as possible. At this point, we cannot commit to bringing an amendment to the Board by the end of next year.