OC Public Works
*Integrity, Accountability, Service, Trust*
**Shane L. Silsby, Director**

March 8, 2019

Mr. David Woelfel
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

**SUBJECT: 2019 Santa Ana Region Basin Plan Triennial Review**

Dear Mr. Woelfel:

The County of Orange, OC Public Works (County) has reviewed the Draft 2019 Basin Plan Triennial Review Priority List (Draft Priority List) and provides the following comments on the initial documents. Additional comments may be offered if the List is subsequently revised and when considered for approval.

**Issues Not Included on the Draft Priority List or With Inadequate Resources**

1. The County supports a number of the priorities identified in the Draft Priority List, particularly those affecting Newport Bay watershed TMDLs. The County is concerned, however, that revision of the TMDL for sediment in the Newport Bay/San Diego Creek watershed is not included on the List. The TMDL was adopted in 1998 and has not been amended since that time and is in need of significant updating, or replacement with non-TMDL approach, or rescission. While all loading targets have all been met for over 10 years, extensive coordination has taken place with Board staff on how to reconcile outstanding issues, such as unattainable habitat acreages, and potential consideration of de-listing the sediment impairment. Regional Board resources will be needed to complete this important work, recognize the successful completion of a major TMDL, and transition to a maintenance level program. A portion of a P.Y. should be allocated in both 19/20 and 20/21 for this work.

2. **Issue 1.g - Consider/develop selenium site specific objectives (SSOs) for the Newport Bay watershed**
   The Draft Priority List recognizes that a selenium site specific objective (SSO) will require approval but offers no Regional Board resources for this work. While most on the SSO development work will be completed by the County and its funding partners, Regional Board resources will be needed to successfully process a Basin Plan amendment through the regulatory process and compile the administrative record. A portion of a P.Y. should be allocated in both 19/20 and 20/21 for this work.

**General Comments on the Draft Priority List**

3. **Issue 1.b. - Review and revise the nutrient objectives for San Diego Creek (part of a nutrient TMDL implementation plan), and**
   **Issue 4. Consider development of Biostimulatory Substances Objective and Program to Implement Biological Integrity**
   The statewide effort to develop biostimulatory objectives to implement biological integrity has been going on for many years. Based on the progress report presented at the February 13, 2019 Science Advisory Panel meeting, there is still a significant amount of work to do before either new nutrient water quality objectives or numeric biological objectives could be considered in the Santa Ana Region. Therefore assigning greater than 1 PY to these collective efforts starting in 2019-20 appears to be too much and premature.

4. **Issue 1.f. - Adopt the Copper TMDL and non-TMDL metals action plans for zinc, mercury, arsenic and chromium in Newport Bay**
   The Draft Priority List allocates 0.9 P.Y. over a 3-year period primarily for adopting a copper TMDL. There is considerable disagreement as to whether a TMDL is needed and who the dischargers would be since the primary driver of copper levels in Newport Bay is boat paint. The formulation of boat paints is regulated by the California Department of Pesticide Regulation and the recent antifouling paint regulation (DPR 16-005) has the potential, with other ongoing actions, to attain California Toxics Rule copper criteria in the water column over a period of time without the need of a TMDL. Since the level of copper in the Bay will continue to reduce as a result of: 1) ongoing watershed reductions due to reformulated brake pads; 2) deployment of the new antifouling paints; and 3) ongoing dredging projects, the focus for the period of the Triennial Review should be on ensuring that appropriate monitoring is conducted to document the water quality improvement progress. This will require limited resources and could free up P.Y.s for the sediment and selenium TMDLs discussed above.

5. **Issue 2. - Consider modifications to the basin plan water contact recreation objectives/implementation strategies based on an adopted statewide policy. Consider development of region-specific reference/natural sources exclusion policy, development of a limited REC1 use and/or possible use attainability analysis (UAA) to remove REC1**
   The County was part of a 10-year effort to revise freshwater contact recreation objectives /implementation strategies, including initial prototype UAAs, that was completed by the Santa Ana Regional Board in 2013. The relationship of this new proposed priority to the prior work needs is not explained. Continuing to pursue additional UAAs based on the 2013 prototypes remains a priority for the County and should be added to the Issue 2 description.

6. **Issue 7.b. - Add to the Basin Plan and Designate Appropriate Beneficial Uses and Water Quality Objectives (if applicable): Waters tributary to Anaheim Bay and Huntington Beach Wetlands: Bolsa, Westminster, East Garden Grove Wintersburg, Huntington Beach, and Talbert Channels**
   For a number of Triennial Review periods, the County has commented on the inappropriateness of designating beneficial uses to channels in north Orange County that

were built for flood control purposes, are maintained regularly, and likely not Waters of the U.S. given that they were man-made. Given the current efforts to define Waters of the U.S. by USEPA, which may provide a clearer distinction between the MS4s and Waters of the U.S., resources should not be assigned to these efforts during this Triennial Review period.

7. **7.d. - Add to the Basin Plan and Designate Appropriate Beneficial Uses and Water Quality Objectives (if applicable): Define tidal prism extents for specific water bodies which include channels, rivers, and streams that flows into marine waters.**
   It is unclear how much benefit will be gained from this effort and therefore whether it is warrants being a priority in the Triennial Review.

8. **7.h. - Add to the Basin Plan and Designate Appropriate Beneficial Uses and Water Quality Objectives (if applicable): Consider designating SHEL and EST beneficial uses to all enclosed bays and estuaries**
   The SHEL beneficial use, impairments to that use in Newport Bay and a subsequent TMDL has prompted a watershed and statewide reassessment of the SHEL use and the initiation of a number of key studies. Until such work is completed and appropriate objectives are either affirmed or replaced it would be premature to consider further SHEL designations at the scale proposed. SCCWRP recently reported (Steve Weisberg to SCCWRP Commission, March 8, 2019) that almost half of the currently designated SHEL areas do not meet the current objectives pointing to the need for the science to catch up.

   The implications of a new EST beneficial use are not explained and its priority is not discussed in the Description of Proposed Issues.

**Specific Comments on the Description of Proposed Issues**

9. **1.d. - Revise the SHEL Newport Bay TMDL and work to develop a SHEL objective and incorporate into the TMDL**
   The Description of Proposed Issues states "the extent of human consumption of the shellfish is unknown" but fails to reference two County studies completed in response to the Fecal Coliform TMDL for Newport Bay to survey the types of human use. The County's studies found no evidence for human consumption of shellfish, and virtually all shellfish harvested being used for bait. The Description of Proposed Issues should be updated to reflect the study results.

10. **1.e. - Revise Newport-San Diego Organochlorine Compounds (OCs) TMDL**
    The subtitle for 1e should be 'Newport Bay-San Diego Creek' and not 'Newport-San Diego'.

11. **1.g. - Develop/consider side-specific objectives (SSOs) for selenium in freshwater (Se) within the Newport Bay watershed**
    (Se) should follow 'selenium' and not 'freshwater'.

If you have any questions regarding these comments, please contact Jian Peng at (714) 955-0650.

Very truly yours,

Chris Crompton, Manager
North OC Watershed Management Area

Cc: Newport TMDL Funding Partners