Response to Comments[1] on the draft FY2019-2022 Basin Plan Triennial Review Priority List and Work Plan

Received for the March 13, 2019 Triennial Review Workshop

1. Diane Fleck
Water Quality Assessment Section
USEPA
Received March 6, 2019

Comment:
The USEPA supports the projects listed in the Draft Priority List of Issues. For TMDL related issues, we strongly support adopting the Copper TMDL and non-TMLD Metals action plans for Zinc, Mercury, Arsenic, and Chromium for Newport Bay.

Response: Comment noted.

Comment:
To comply with 40 C.F.R [Code of Federal Regulations] Part 131.20, the Triennial Review must include an explanation if the State (or Regional Board) does not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304 (a).

Response:
Santa Ana Water Board staff will provide an explanation for not adopting or working to adopt the 304 (a) Criteria when the Triennial Review Administrative is submitted to USEPA.

Comment:
EPA supports identification of freshwaters that support early life stages of salmonids, and adoption or revision of pentachlorophenol (PCP) water quality objectives, as part of the Triennial Review process.

Response:
Santa Ana Water Board staff have included this issue on our Triennial Priority List and Work Plan. We anticipate reviewing this issue during this triennial review period.

[1] Comments have been shortened and or paraphrased. Original written comments are posted on the Santa Ana Water Board's web site at:
http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml

2. Anna McCarthy
Assets Manger
Lido Peninsula Company, LLC
Received March 7, 2019

Comments:
We [Lido Peninsula Company, LLC] previously provided written comments regarding concerns about the proposal to require marina owners to restrict or ban the use of legally available copper-based antifouling paints through a new TMDL. We are concerned that the implementation plan will be both unenforceable, and the practical impacts of the proposed implementation plan to the harbor and individual stakeholders is unknown. We believe this plan could have significant detrimental economic impacts on the harbor and its stakeholders.

The current written description of this issue [Copper TMDL] indicates that the Water Board will hold two public workshops during the summer of 2019. We strongly encourage the Board to hold these workshops with the goal of having a meaningful discussion regarding the feasibility and impacts of the proposed Copper TMDL.

Response:
The purpose of the triennial review is to identify necessary updates and revisions to water quality standards and other elements of the Basin Plan. The triennial review is not a regulatory action but a planning activity. The result of the triennial review is a prioritized list of issues that will be investigated further and, where appropriate, addressed through the adoption of Basin Plan amendments. The proposed priorities and schedules also reflect work that is already underway and require further staff resources to be finalized.

Additionally (similar to previous responses), the proposed Copper TMDL does not ban the use of copper antifouling paints (AFPs). The proposed Copper TMDL requires that the City of Newport Beach and other responsible parties take actions to reduce the discharge of copper into Newport Bay from boats. Santa Ana Water Board staff's proposed Implementation Plan that identifies several recommended tasks whereby such reductions could be achieved, including providing incentives to boat owners to convert from copper AFPs to nontoxic AFPs or lower leach rate copper AFPs. The proposed Implementation Plan does not dictate the method or manner of compliance but does require the City of Newport Beach, the County of Orange, and other responsible parties to develop their own proposed implementation plan(s) with strategies to achieve the Copper TMDL.

The proposed Implementation Plan provides for the responsible parties to take a lead role in developing strategies and schedules in their own Implementation Plan(s), to achieve the TMDL and Action Plans. Also, staff proposed an extended compliance schedule that allows the responsible parties time to implement their strategies and to assess their efficacy. The schedule also allows the City of Newport Beach and other responsible parties to conduct further investigation(s) to confirm findings of impairment,

and to consider whether a Water Effects Ratio should be determined to adjust the California Toxics Rule (CTR) criterion.

Santa Ana Water Board staff have engaged in numerous discussions with the City of Newport Beach. Recently, staff held two public workshops in May (9th and 10th) to present on the Copper TMDL. Currently, staff is working on revising the Basin Plan Amendment, CEQA documents and preparing responses to the latest round of comments.

Santa Ana Water Board staff have engaged in numerous discussions with the City of Newport Beach. Recently, staff held two public workshops in May (9th and 10th) to present on the Copper TMDL. Currently, staff is working on revising the Basin Plan Amendment, CEQA documents and preparing responses to the latest round of comments.

If you have further comments on the Copper TMDL, we recommend that you attend upcoming public workshops and hearings to provide comments to the Santa Ana Water Board's Coastal TMDL staff.

3. Chris Crompton
Manager, North OC Watershed Management Area
Orange County Public Works
Received March 8, 2019

Comment:
The County [County of Orange] supports several 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 [Priority List]. The TMDL was adopted in 1998 and has not been amended since that time and needs significant updating, or replacement with non-TMDL approach, or rescission. A portion of a PY should be allocated in both 19/20 and 20/21 [fiscal years] for this work.

Response:
The proposed Triennial Review Priority List and Work Plan has been modified since Mr. Crompton's comment. Review and revision, or removal (if appropriate), of the TMDL for sediment in the Newport Bay/San Diego Creek watershed, has been incorporated in the Priority List of TMDL related issues. The Santa Ana Water Board acknowledges that the TMDL numeric target for loading and in-bay basin depths are currently being achieved. The third TMDL target (regarding habitat change) was slightly exceed based on the expansion of saltmarsh onto mudflats. Based on anecdotal evidence, saltmarsh habitat has subsequently receded significantly, and collection of a new set of habitat data is scheduled for 2020. The overall goal of the TMDL – increasing the interval between needed dredging events to once every 20 to 30 years - has been achieved. A thorough review of the TMDL and consideration of alternative regulatory options is now needed. Outcomes of this process may include new regulatory actions to ensure efficient

management of sediment discharges to San Diego Creek and Newport Bay consistent with water quality standards. A total 0.6 of a PY has been allocated to investigate this issue.

Comment:
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 [Santa Ana Water 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 [fiscal years] and 20/21 for this work.

Response:
Santa Ana Water Board staff has worked with stakeholders, regulators, and the scientific community to develop preliminary recommendations for SSOs for selenium in freshwater within the Newport Bay Watershed. These recommendations will be refined, and associated documentation will be prepared to support a proposed future Basin Plan amendment establishing selenium SSOs.

At the time the preliminary Priority List and Work Plan were posted on the Santa Ana Water Board website, staff recognized that it was necessary to complete and refine a basin plan amendment to adopt the recommended selenium SSOs; however, staff was unsure if the selenium SSOs would be addressed during the 2019-2022 triennial review period. For this reason, no resources were allocated to this issue. Since receiving this comment, 0.6 of a PY has been assigned to address this issue for the three-year review; however, it is important to point out that this is only staff best estimate of required resources.

Comment:
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 [Issues 1.b. and 4] starting in 2019-20 appears to be too much and premature.

Response:
Santa Ana Water Board staff agrees that much work is still necessary to develop biostimulatory substance objectives. As part of the ongoing issue, Santa Ana Water Board staff will attend statewide taskforce and regional meetings and participate with State Water Board to develop statewide objectives for biostimulatory substances and an implementation program for biological integrity. Potentially, Santa Ana Water Board staff will outline a possible strategy/work plan for the development of numeric biological objectives for the Santa Ana Region. Although there is still a significant amount of work

before developing new nutrient water quality objectives or numeric biological objectives, staff resources are needed to investigate/research these issues.

Comment:
The Draft Priority List allocates 0.9 PY 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.

Response:
Santa Ana Water Board staff agree that the Department of Pesticide Regulation is the sole state agency with authority to regulate the sale and use of copper AFPs; however, the Santa Ana Water Board has the authority and obligation to regulate the discharge of copper from pesticides and other sources so that a water body meets applicable water quality objectives. While it is legal to buy and use copper AFPs, dissolved copper concentrations in Newport Bay continue to exceed the CTR criterion; therefore, copper TMDLs are recommended by the USEPA for both Upper and Lower Newport Bay. We are working to adopt a TMDL that will improve water quality and be reasonable for all parties to implement.

Comment:
The County was part of a 10-year effort to revise freshwater contact recreation objectives/ implementation strategies, including initial prototype UAAs [use attainability analyses], that was completed by the Santa Ana Regional Board in 2013. The relationship of this new proposed priority [Issue No. 2] 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.

Response:
The issue to consider the use of UAAs, development of a limited REC1, and or development of region-specific reference/natural sources exclusion policy is listed as Issue No. 6 on the revised proposed Priority List and Work Plan. Santa Ana Water Board staff are very open to meeting with County staff to consider these issues.

Comment:
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 [Issue 7.b.], 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.

Response:
Comment noted. Santa Ana Water Board staff will likely only consider adding waters or further defining existing waters that will assist in providing clarity in our regulating of certain waters.

Comment: It is unclear how much benefit will be gained from defining tidal prisms.

Response:
Since receiving this comment, defining tidal prism extents for specific water bodies has been removed as a priority issue for the region.

Comment:
The SHEL [shellfish harvesting] 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 [Southern California Coastal Water Research Project] 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.

Response:
Comment noted. At this time, Santa Ana Water Board staff are not considering designating any waters with the SHEL beneficial use in Table 3-1 of the Basin Plan in this Triennial Review period. This issue is not listed in the current Priority List.

Comment:
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[2] 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[3].

Response:
Comments noted. The purpose of Attachment B – Description of Proposed Issues, is to provide a short description of the Basin Plan issues; however, staff plan on continuing to investigate this issue including all studies completed on shellfish harvesting.

Comments:
The subtitle for 1.e. should be 'Newport Bay-San Diego Creek' and not 'Newport-San

[2] Newport Bay Shellfish Harvesting Assessment (2004) and Technical Memorandum Newport Bay Shellfish Beneficial Use Assessment Revalidation (2009)
[3] Studies are posted on the Santa Ana Water Board's website at:
https://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/FC_TMDL_Special_Studies.html

Diego'. (Se) should follow 'selenium' and not 'freshwater'.

Response:
Comments have been noted.

4. Timothy Moore
Risk Science
on behalf of the Basin Monitoring Program Task Force
Received March 8, 2019

Comment:
Basin Monitoring Program Task Force recommends that the Santa Ana Water Board designate the following projects are “High Priority” during the triennial review period:

1) Amend the Basin Plan to adopt the revised Waste Load Allocation Model (WLAM);

2) Revise the Basin Plan to clarify the proper application of certain water quality objectives;

3) Adopt a regional policy governing effluent limits for TDS during drought conditions; and

4) Review and approve the revised estimates of assimilative capacity in groundwater.

Response:
We appreciate your general and specific comments on these issues. We have placed these issues as priority Issue Nos. 2 and 10 on the Non-TMDL related issues. We plan on reviewing these issues substantially over the next three fiscal years (FYs), especially during FY 2019/20. We estimate that 2.5 PYs will be required to review and potentially develop BPAs.

5. Timothy Moore
Risk Science
on behalf of the Lake Elsinore/Canyon Lake TMDL Task Force
Received March 8, 2019

Comments:
During the 2015 Triennial Review, the Santa Ana Water Board determined that revising the Lake Elsinore and Canyon Lake Nutrient TMDL was a "High Priority." Consequently, over the last three years, the Lake Elsinore/Canyon Lake TMDL Task Force (Task Force) has worked closely with staff to update the TMDL and its related implementation plan. Many hundreds of hours and nearly a million dollars were invested in developing a new watershed runoff model and new water quality models for both lakes.
Now the process is nearing completion. The final TMDL Technical Report was submitted to the Santa Ana Water Board in December of 2018, and the public review

process is scheduled to begin soon. Although most of the detailed scientific work is done, the Task Force knows that considerable work is also required to finalize the Basin Plan amendment.

The Task Force requests that the Santa Ana Water Board allocate staff time and resources to finish the adoption of the Basin Plan amendment for the Lake Elsinore and Canyon Lake Nutrient TMDL. There is still a lot of work that needs to be done to finalize the amendment, including submitting the TMDL Technical Report for scientific peer review, solicit and respond to public comments, and make appropriate changes based on any comments received. After that, there will be a formal public hearing and, if the Basin Plan amendment is adopted, another round of public review and comments before a hearing to the State Board. OAL and USEPA approval is also required before it can become effective. The full regulatory review and approval process could require approximately another year to 18 months to complete.

Additionally, the Task Force requests that this TMDL amendment be designated as a "High Priority" in the 2019 Triennial Review process. The Task Force will continue to work with the Santa Ana Water Board to finalize the Basin Plan amendment.

Response:
Santa Ana Water Board staff acknowledges that there is much work needed to finalize the Lake Elsinore and Canyon Lake TMDL amendment before the public adoption hearings, and subsequent approvals. The proposed Priority List and Work Plan has this issue as Number 1. We estimate a total of 1.6 Personnel Years (PYs) of TMDL resources will be needed to adopt, implement, and review this issue over the three years.

The Santa Ana Water Board looks forward to working with the Task Force through the Basin Plan amendment process.

6. Timothy Moore
Risk Science
on behalf of the Middle Santa Ana River TMDL Task Force
Received on March 8, 2019

Comments:
The Middle Santa Ana River Task Force (MSAR Task Force) recommends that the Santa Ana Water Board designate the following initiatives has "High Priorities" for the coming triennial review period:

1) Revise the water quality objectives for pathogen indicator bacteria in the Basin Plan to be consistent with those recently approved by the State Board as amendments to the Water Quality Control Plan for Inland Surface Waters.

2) Update the Table 5-REC2 Only Antidegradation targets for freshwater waterbodies; and

3) Update the Middle Santa Ana River Watershed TMDL for Bacterial Indicators in Chapter 5 of the Basin Plan.

Response:
Thank you for your detailed comments and suggestions. We have made these issues a high priority. Regarding your three main points:

1) Revising water quality objectives for pathogen indicator bacteria in the Basin Plan has been achieved when the State Board approved the bacteria provisions on March 22, 2019. We intend to integrate the bacteria provisions into our TMDLs and permits. We anticipate adding the bacteria provisions to the online Basin Plan in the upcoming FY and as a result, made that task the number one priority in the Non-TMDL priority list.

2) Updating the Table 5-REC2 Only Antidegradation Targets for Freshwater is anticipated to be reviewed while working on the Middle Santa Ana River TMDL. We anticipate the assistance of the TMDL Task Force in completing this task. We have placed the review and possible revision of these targets as Priority Issue No. 7 and have allocation staff resources for each of the next three fiscal years.

3) As mentioned, updating the Middle Santa Ana River TMDL is a priority that will be reviewed by staff over the next three years.

7. Timothy Moore
Risk Science
on behalf of the MSAR Task Force
Received on March 12, 2013

Comment:
Since this upcoming Triennial Review is the first to occur since the UAAs were approved in 2015, it is now time to re-check the status of those waterbodies that were re-designated or de-designated. The MSAR Task Force will be willing to assist in this process.

Response:
We agree with the comment and have placed this issue on the Priority List. We anticipate checking this summer to determine if the de-designations of REC1 and or REC1 and REC2 for certain waters are still warranted. We anticipate using the assistance of the MSAR Task Force in completing this task.