

RESPONSES TO COMMENT DOCUMENT

Regional Board staff received eight sets of comments in response to the draft Basin Plan amendment (BPA) and BPA staff report posted October 10, 2016 on the Regional Board website and sent to the public. The comments in each letter and their corresponding responses are annotated with the same number. Information in the letters and emails that provide basic background information do not require responses and are not bracketed/numbered.

1. U.S. Fish and Wildlife Service email dated November 21, 2016
2. Metropolitan Water District letter dated November 29, 2016
3. Serrano Water District letter dated November 30, 2016
4. Irvine Ranch Water District letter dated November 30, 2016
5. Orange County Public Works letter dated November 30, 2016
6. Orange County Coastkeeper (OCCK) letter, including Exhibits, dated November 30, 2016 (the OCCK responses are provided in a separate document)
7. Orange County Water District letter dated December 13, 2016
8. U.S. Environmental Protection Agency, email dated February 6, 2017

RESPONSE TO COMMENTS: United States Fish and Wildlife Service November 18, 2016 and November 21, 2016 emails

Response 1: Board staff note the list of surface waters in the San Bernardino Basin and Upper Santa Ana River you recommend should be considered important for sediment transport. Board staff will continue to coordinate with the U.S. Fish and Wildlife Service staff to protect the sediment transport capacity in these waters.

Response 2: Board staff agrees that nuisance runoff has altered the hydraulic and hydrologic regime of many waterbodies and their associated habitats. Those changes are particularly evident in ephemeral waterbodies, as changes in flow generally result in instream and downstream habitat conversion. Board staff responds to potential changes such as these primarily through the issuance of Clean Water Act Section 401 Water Quality Certifications and Waste Discharge Requirements for dredge or fill projects. The requirements can incorporate specific conditions and mitigation to protect, as needed, established native habitats from removal and/or degradation. Also, while the Water Board storm water program regulates the water quality of various types of runoff to prevent pollution, the Regional Board does not have the authority to directly place control over the amount or volume of flow.

Response 3: The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) lists several habitat-related beneficial use designations including Cold Freshwater Habitat (COLD), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Rare, Threatened or Endangered Species (RARE), and others. The descriptions of these

particular beneficial uses intentionally recognize the preservation, enhancement, and successful maintenance of high quality habitats for fish and wildlife populating waterbodies identified with these beneficial uses. While the Basin Plan does not include sediment transport as a specific beneficial use, Board staff considers the need to encourage programs that allow for the transport of larger-grained sediment, and the need to protect rare, endangered and sensitive animal species that depend upon having the proper sediment to spawn. Board staff also consider the potentially adverse impacts of excessive sediment when reviewing projects that request to discharge into waters of the State of California.

Projects submitted to the Regional Board are evaluated to ensure that their discharges will protect all beneficial uses and comply with applicable water quality objectives prior to their approval. In issuing Clean Water Act Section 401 water quality Certification or Waste Discharge Requirements (WDRs), in addition to other potential impacts, Board staff considers how the project might support the habitats located throughout the waterbody and/or contribute towards developing better quality habitats, or possibly remove beneficial habitat, or contribute fine-grained sediment into the waterbody. If a project is determined to have the potential to reduce or increase sediment transfer such that it would impact beneficial uses in or downstream of the project area, project Certifications/WDRs include requirements to avoid adding or contributing towards any types of pollution that would result in degrading or eliminating aquatic habitats. If such impacts cannot be avoided, mitigation is generally required for those impacts. Similarly, NPDES permits issued by staff require measures as needed to avoid or to mitigate for these impacts as a result of the discharge.

RESPONSE TO COMMENTS: Metropolitan Water District (MWD) of Southern California November 29, 2016 letter

Response 1: Board staff reviewed the relevant state and federal laws, and Metropolitan Water District (MWD) Administrative Code §117060 that MWD references in their concerns about adding the Commercial and Sport Fishing (COMM) designation to Lake Mathews. The MWD letter notes Lake Mathews is designated with the Municipal and Domestic Supply (MUN) beneficial use in recognition that it is a source of drinking water, and MWD has instituted several measures and agreements to restrict recreational activities both on and around the Lake for the greatest level of protection to its water quality. In addition, MWD states that fishing is not legally available on Lake Mathews.

Board staff understand that as part of the Southern California water supply and conveyance system, protection of Lake Mathew water quality is paramount to providing high quality water to their customers. Board staff were not aware that proposing to add the COMM beneficial use for Lake Mathews is not consistent with MWD not allowing public access to the Lake. Also, Board staff would not want to negate the efforts MWD takes to prohibit access to the Lake (i.e., fencing, signage, regular patrolling), and to restrict recreational activities on and around the Lake. Board staff understand that

MWD is required to maintain the surrounding lands in a natural state pursuant to the Lake Mathews Multiple Species Habitat Conservation Plan which also restricts recreational activities around the Lake.

Consequently, Board staff agree that the designation of COMM for Lake Mathews is not appropriate, and would not provide any additional protection to the Lake water quality beyond that already provided with the MUN beneficial use designation. Board staff agree to remove the proposed COMM designation for Lake Mathews for the following reasons.

- The land surrounding the lake is designated as an ecological reserve, and as such, is closed to all visitor use or access.
- Lake Mathews is a terminal reservoir, and per California Health & Safety Code § 117050, fishing is not to be conducted from either the water or land.

Response 2: Board staff acknowledge MWD concerns that adding the COMM beneficial use could possibly provide a basis for requesting that Lake Mathews be opened for fishing. However, for the reasons stated in Response 1, and because of this concern, as noted previously, Board staff will not propose to designate the COMM beneficial use for Lake Mathews.

Response 3: Board staff acknowledge your comment to move the footnote “Access prohibited per agency/company with jurisdiction” from the Water Contact Recreation (REC1) beneficial use column to a location where it covers all Lake Mathews beneficial uses. However, the footnote only applies to the REC1 use and not all beneficial uses. In addition, the updated February 2016 Basin Plan beneficial Use chapter added a footnote to the REC1 beneficial use definition in Table 3-1 stating that the REC1 (and REC2) designation

“...should not be construed as encouraging or authorizing recreational activities. In some cases, such as Lake Matthews and certain reaches of the Santa Ana River and its tributaries, access to the waterbodies is prohibited by other agencies because of potentially hazardous conditions and/or because of the need to protect other uses, such as municipal supply or sensitive wildlife habitat. Where REC1 or REC2 is indicated as a beneficial use in Table 3-1, the designations are only intended to indicate that such uses may occur or that the water quality of the waterbody may be capable of supporting recreational uses unless a Use Attainability Analysis demonstrates otherwise and the Regional Board amends the Basin Plan accordingly.”

For these reasons, the footnote is properly placed.

RESPONSE TO COMMENTS: Serrano Water District (SWD) November 30, 2016 letter

Response 1: The comment is noted. On December 7, 2016, Regional Board staff explained to Serrano Water District (SWD) that the purpose of the designation of COMM for Irvine Lake is strictly recognition that commercial recreational fishing has been ongoing in the lake for several decades, as noted in the SWD comment letter, and is therefore an existing use. On December 8, 2016, Regional Board staff participated in a teleconference with Irvine Ranch Water District (IRWD) and SWD to discuss the proposed COMM designation for Irvine Lake. Board staff explained that the COMM designation currently has no associated water quality objectives and does not hinder IRWD's nor SWD's ability to manage the Lake, but simply acknowledges an existing use. IRWD stated recreational fishing has been taking place in Irvine Lake, however, the commercial fishing concessions in Irvine Lake allowing for recreational fishing was temporarily suspended in February 2016. IRWD and SWD agreed that the designation of COMM for Irvine Lake was appropriate, and requested that a footnote be added to Table 3-1, Beneficial Use Table, stating "The fishing concession was closed, at least temporarily, on February 29, 2016". Regional Board staff agrees, and proposes to add this footnote to Table 3-1 for Irvine Lake.

On Feb 21, 2017, Board staff met with IRWD and SWD staff to further discuss the proposed COMM designation for Irvine Lake. Serrano Water District clarified that there is uncertainty about the Lake reopening to public fishing due to the need for concurrence among the Lake's managers. Because Irvine Lake is currently closed to fishing, Board staff agreed that COMM is not an existing beneficial use at this time. Based on that discussion, it is appropriate to not designate Irvine Lake with the COMM use through the current proposed Basin Plan amendment. However, if that changes and the Lake is reopened, then the designation will be considered.

RESPONSE TO COMMENTS: Irvine Ranch Water District (IRWD) November 30, 2016 letter

Response 1: See the response to the Serrano Water District comment above.

Response 2: See the response to the Serrano Water District comment above.

Response 3: As noted in Response 1, the COMM beneficial use will not be added to Irvine Lake at this time. IRWD states in their letter that Irvine Lake is already designated with the beneficial uses WARM, COLD and WILD, which provide protection in accordance with the Clean Water Act Section 101(a)(2) fishable/swimmable goals, and recognize Irvine Lake's existing habitats and ecosystems. The WARM and COLD beneficial uses have specific water quality objectives associated with them to reasonably protect the Lake aquatic resources. In addition, the Lake has the MUN beneficial use that supports IRWD's management of the water for municipal supply purposes.

**RESPONSE TO COMMENTS: Orange County Public Works Department
November 30, 2016 letter**

Response 1: Comment noted.

Response 2: The USEPA 2012 Recreational Water Quality Criterion is intended to protect human health in both coastal and non-coastal waters designated for primary contact recreation use (REC1), and states that the criteria are recommendations intended as guidance to the states in developing beneficial uses and water quality objectives. The Clean Water Act (CWA) Section 101(a)(2) provides the essential backdrop to the fishable/swimmable beneficial use designations for Santa Ana Regional Board surface waters, which states that “it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.”.. The CWA and implementing federal regulations provide special protection for the “swimmable” uses that include recreation, by creating a rebuttable presumption that all waters support these uses. Otherwise, a Use Attainability Analysis (UAA) is required to be conducted to demonstrate that attaining the REC1 use is not feasible based on one or more of the six factors identified in the federal regulations (40 CFR 131.10(g)). Per the regulations, REC1 use is assigned regardless of the waterbody’s physical characteristics, if there is a reasonable chance of individuals being in the water.

In addition, 40 CFR 131.10(h) prohibits a state from removing designated uses if they are existing uses as defined in 40 CFR 131.3. These uses are to be attained by implementing effluent limits and implementing cost-effective and reasonable best management practices for nonpoint source control. In working to more appropriately interpret REC1 in the Santa Ana Region, USEPA’s position has been very protective about de-designating the REC1 use to surface water, if there is a reasonable possibility that individuals, particularly children, might wade or play in the water, and a reasonable possibility for ingestion. As such, all waters proposed to be added to the Basin Plan have the REC1 beneficial use proposed designation. To not designate REC1, a UAA is required to be developed and approved by USEPA. No UAA has been completed or proposed for any of the surface waters proposed to be added to the Basin Plan.

Response: 2a: Big Canyon Creek is shallow throughout much of its course, however, it is also accessible to public contact in several areas, including in Big Canyon Preserve and Big Canyon Country Club Golf Course, which allows for the possibility of recreation. For Big Canyon Creek to be considered a candidate for a UAA, federal regulations require that the potential for the REC1 use be reviewed against a suite of factors, including accessibility. The UAA would require USEPA approval prior to de-designation, and further would need to ensure that downstream water quality standards are met. Because there is the potential for individuals to easily wade into the Creek, it is not appropriate to de-designate the REC1 use for Big Canyon Creek (nor is it likely that any such de-designation would be approved).

Response 2b: Although some sections of Brea Creek are concrete or riprap lined and have intermittent flow, some sections of the Creek upstream of Brea Dam are naturalized with earthen banks and riparian vegetation. In addition, there is access to even the riprapped sections of the Creek, which provides the potential for individuals to wade into the Creek in several areas. As stated in Response 2a, without a USEPA approved UAA demonstrating that the Creek's REC1 use cannot be attained, the REC1 beneficial use is appropriately proposed for Brea Creek.

Response 2c: Although some portions of Fullerton Creek from Fullerton Dam to Coyote Creek are concrete-lined with sections of steep walls, limited access, and low flows, approximately one mile below the Dam is earthen and accessible to the public. In addition, the portion that flows through Craig Regional Park above Fullerton Dam has no access restrictions. Again, as stated in Response 2a, without a USEPA approved UAA demonstrating REC1 cannot be attained in Fullerton and/or Carbon Creek, the REC1 beneficial use is proposed for Fullerton Creek.

Regarding Carbon Creek, much of the Creek is earthen, although some sections near its confluence with Coyote Creek are concrete-lined. As stated in Response 2, Carbon Creek would not meet all the requirements for a de-designation through a UAA, and unless a UAA is proposed and approved by USEPA for Carbon Creek, the REC1 beneficial use is presumed to occur as there is reasonable potential for water contact recreation along portions of the Creek. There is unrestricted access in sections of the stream where individuals might enter to wade or otherwise recreate in the water.

Response 2d: Board staff proposed in the December 16, 2016 staff report that Muddy Canyon Creek, Los Trancos Creek, Buck Gully Creek, Big Canyon Creek, Carbon Creek, and Brea Creek be designated with the municipal and domestic supply (MUN) beneficial use. All the above creeks except Buck Gully and Big Canyon Creek would receive the intermittent (I) beneficial use for MUN. The State Water Resources Control Board (State Board) Sources of Drinking Water Policy (Resolution No. 88-63) specifies that, except under specifically defined conditions, all surface and ground waters of the state are to be protected as existing or potential sources of municipal and domestic water supply. All waters are considered to be suitable, or potentially suitable, for municipal or domestic water supply, with the exception of those surface and ground water where:

- The total dissolved solids concentrations of surface and ground water exceed 3,000 mg/L.
- The water source has a low sustainable yield of less than 200 gallons per day for a single well.
- There is contamination that cannot reasonably be treated for domestic use with either best management practices or best economically available treatment practices:
- Surface waters in systems designated or modified to carry either municipal, industrial, or agricultural wastewaters or stormwater runoff.

Carbon Creek and Brea Creek do not meet any of the MUN exceptions. Carbon Creek often carries flows from the Orange County Water District Anaheim recharge basins that are used to fill the La Jolla, Raymond, and Placentia groundwater recharge basins, as well as others. Therefore, Carbon Creek flows are likely much higher than allowed under the Drinking Water Policy exception for low sustainable yield. Brea Creek also does not meet any Drinking Water Policy exceptions.

Board staff considered OCPW comments recommending that Muddy Canyon, Los Trancos, Morning Canyon, Buck Gully, and Big Canyon Creeks not be designated MUN. Board staff concurs that these waters should be excepted from the MUN designation. They meet the Drinking Water Policy exception for low sustainable yield of flow. Also, placing drinking water wells adjacent to these streams would be impractical since they would be located adjacent to marine waters, and potentially affected by sea water intrusion. Further, surface flows in these creeks now consist of urban runoff, which is not reasonable to be treated for domestic use.

Response 3: Board staff note your comment regarding the removal of fecal coliform objectives and incorporation of the Enterococcus geometric mean water quality objective for bays and estuaries into the Basin Plan consistent with the Enterococcus water quality objectives for coastal waters promulgated by USEPA.

As noted in the comment as well as in the Staff Report, the State Board is currently engaged in a process to develop a statewide bacteria objectives policy that would include objectives based on the USEPA 2012 bacteria criteria, and implementation strategies to meet those objectives. The State Board is expected to consider adoption of the statewide objectives in 2017. The objectives specified in the approved policy are expected to supplant other bacteria quality objectives, including the Enterococcus objectives established by USEPA for Newport Bay in 2004.

At this time, Board staff is not recommending the deletion of the REC1 fecal coliform objective for Enclosed Bays and Estuaries. Board staff believe it is appropriate to let the State Board complete their process and to propose amendments to the Basin Plan as appropriate.

Response 4: Comment noted.

Response 5: Board staff note the County's support for the removal of the Newport Bay Fecal Coliform TMDL from the Basin Plan because fecal coliform is not the best scientifically appropriate indicator for marine waters. Board staff also note the discussion of the Newport Bay Bacteria Stakeholder Group effort. The Regional Board is committed to participate in this stakeholder process being sponsored by the County of Orange and OCCK to investigate bacteria quality issues in Newport Bay, including recommendations regarding TMDLs based on those investigations. This stakeholder process was initiated in January 2017. Regional Board staff believes that this stakeholder process is the appropriate venue for consideration of the need for and

nature of a new REC1 TMDL for Newport Bay based on Enterococcus objectives. Recommendations formulated through this stakeholder process would then be considered through the requisite Regional Board public participation process to consider amendments to the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan).

Based on recent discussions with USEPA staff, Board staff will not be moving forward with the proposed deletion of the Newport Bay Fecal Coliform at this time. USEPA staff have indicated that as long as the Bay remains on the 303(d) List of Impaired Waters as impaired for REC1 due to bacterial indicators, the TMDL must remain in place. Board staff believe that if it is determined through the stakeholder process and pursuant to the State Listing Policy that the appropriate bacterial indicator is not impairing REC1 uses, Board staff would propose 1) removal of Newport Bay from the 303(d) list as impaired for bacterial indicators, and 2) removal of the Newport Bay Fecal Coliform TMDL from the Basin Plan.

Response 6: The comment is noted. The draft Basin Plan amendment proposes to extend the compliance schedule for the Newport Bay fecal coliform TMDL for the shellfish harvesting (SHEL) beneficial use. Extension of the SHEL TMDL compliance schedule is appropriate as this will allow time for these issues to be addressed in conjunction with the Newport Bay Bacteria Stakeholder Process. Board staff intends to continue to recommend a three (3) year extension of the proposed SHEL TMDL compliance to December 31, 2022.

Response 7a: Board staff commend the efforts by the City of Newport Beach, County of Orange, State Parks, developers and others to address dry weather and storm water concerns in these watersheds. Much of the problems we cite occurred during the rapid development in the 1990s of the Newport Coast, and Board staff will modify the description accordingly. However, some of these formerly intermittent streams currently have perennial flows that flow directly into the ocean. The perennial flows have created erosional impacts such as downcutting in the Buck Gully channel.

Response 7b: 'Big Cannon' has been corrected to 'Big Canyon' in the staff report.

Response 7c: 'Huntington Harbor' has been corrected to 'Huntington Harbour' in the staff report.

Response 7d: All references to Enterococcus or Enterococci in the staff report have been capitalized.

Response 7e: The discussion of the Enterococcus averaging period on page 32 second bullet, line 9, of the staff report has been corrected from '9' consecutive and overlapping geometric means to '5'.

Response 7f: Board staff agree that the appropriate expression of the averaging period for the Enterococcus objective should be 30 days. However, at this time, Board staff is

not proposing to proceed with incorporation of the Enterococcus objective for bays and estuaries.

Response 7g: The comment is noted. Board staff believe that “The State Water Board is developing a statewide REC1 bacteria objectives policy to implement the 2012 Criteria” is a more accurate description of the proposed State Board action versus “The State Water Board is developing statewide REC1 bacteria objectives consistent with the 2012 Criteria”. The State Board currently proposes to adopt the 2012 Criteria as recommended with no changes, and intends to incorporate them into draft amendments to the statewide Water Quality Control Plans for Inland Surface Waters, Enclosed Bays and Estuaries and the Ocean Waters of California (Ocean Plan). As such, the term “implement’ is a more accurate description of the State Board’s action than “consistent with” the 2012 Criteria.

Response 7h: The statement in the staff report says “there is no impairment of the REC1 use in Newport Bay due to violations of the promulgated Enterococcus objective” with a footnote (footnote 16) referencing the County of Orange Fecal Coliform TMDL 2016 Annual Data Report. This is very similar to your recommended statement “there is no impairment of the REC1 use in Newport Bay as measured by the promulgated Enterococci objective”. The footnote is included to provide the necessary information to the statement to accurately describe the situation. Therefore we do not believe it is necessary to modify the original statement.

Response 7i: Board staff agrees with your comment that the term should be “inappropriate”, not “appropriate”, and will make the correction.

Response 7j: Your comment is noted. Board staff intended to place Big Canyon Creek under the header of “Newport Bay Drainages” in Table 3-1 on page 6 of the draft Basin Plan Amendment (Attachment 2: underline/strike-out version), but unintentionally left out the header . Board staff will make the correction by adding a separate header for Big Canyon Creek into the table.

Response 7k: You are correct that different, but consistent, units are used to express fecal indicator bacteria water quality objectives in the Basin Plan, including ‘organisms’, ‘CFU/100mL’, and ‘MPN /100 mL’. Different agencies and groups developed the various ways to express objectives using different units; these were directly incorporated into the Basin Plan. As you indicate, a footnote explaining the different units would more efficient than changing all the units. Board staff will consider placing a footnote in Chapter 4 and 5 as suggested.

Response 7L: Board staff agree that the references, citations, memos, etc., that support the proposed RARE designations should be provided. These references will be added to the Supplemental Staff Report as well as will be included in the Administrative Record.

The designation of the Rare, Threatened or Endangered Species (RARE) beneficial use is proposed to be added to certain waters that are already listed in Basin Plan Table 3-1, but do not currently include the RARE beneficial use. Board staff reviewed the California Department of Fish and Wildlife California Natural Diversity Database to determine the appropriate species for which the proposed RARE designation is appropriate. All endangered or threatened species listed under the Federal or State Endangered Species Act, and species listed by the California Department of Fish and Wildlife as Species of Special Concern were identified. Several waters had the RARE beneficial use designation added as part of the 1995 Basin Plan update, and Board staff is appropriately updating several additional waters to incorporate existing beneficial uses, including the RARE beneficial use through this proposed amendment. As a result of restoration efforts by resource agencies, intensive surveys that have been conducted, and the addition to the federal or state Threatened or Endangered Species Lists of several species since 1995, where an endangered or threatened species depends upon water either directly or to support its habitat, the RARE beneficial use designation is warranted. In addition, Board staff requested that California Department of Fish and Wildlife and United States Fish and Wildlife Service staff comment on the proposed beneficial use designations; one comment was received from USFWS, which was a request to consider some type of use designation to protect sediment transfer for downstream waters. See USFWS Response 3.

RESPONSE TO COMMENTS: Orange County Water District December 13, 2016 letter

Response 1: Regional Board staff agrees with the Orange County Water District (OCWD) request to not designate the COMM beneficial use to Anaheim Lake for the following reasons:

- Anaheim Lake is not a permanent Lake; it is drained at least once per year for maintenance purposes. It functions as a groundwater recharge basin.
- In the past, there has been sporadic fishing at Anaheim Lake via a fishing concession operated by a lessee. As OCWD notes, the lessee has not operated the fishing concession in the last five years.
- OCWD plans to make operational changes to Anaheim Lake in the future such that it is unlikely there would be any fishing at Anaheim Lake. OCWD plans to fill the lake with recycled water, which would not sustain fish populations.

Response 2: Regional Board staff note that OCWD agrees that the beneficial use designation of Spawning, Reproduction and Development (SPWN) is appropriate for the Santa Ana River, Reach 2. OCWD requested Board staff consider additional information provided from the U.S. Fish and Wildlife Service Federal Register final rule that defines the extent of the critical habitat for the Santa Ana sucker in Reach 2, and recommended the proposed SPWN designation in Reach 2 cover the same area as the USFWS critical habitat designation.

Board staff agree and propose designating SPWN for Reach 2 of the Santa Ana River with the footnote that states: “Only from the Prado Dam outlet to 0.6 mile downstream of State Route 90 (Imperial Highway)”.

RESPONSE TO COMMENTS: U.S. Environmental Protection Agency March 1, 2017 email

Response 1: Regional Board staff has determined that removal of the Newport Bay fecal coliform TMDL for recreational use should not proceed at this time. See Response 5 to Orange County Public Works Department. As noted in Response 5, Board staff believe the Newport Bay Bacteria Stakeholder Group effort is an appropriate venue for recommendations regarding the fecal coliform TMDLs.

Response 2: Comment noted. See Response 3 to the Orange County Public Works Department.