Newport Bay Fecal Coliform TMDL
Stakeholder Group Meeting

Date and Time: August 23, 2018, 10:30 a.m. – 2:30 p.m.
Location: 3535 Harbor Blvd., Suite 110, Costa Mesa, CA 92626
Southern California Coastal Water Research Project
Large Conference Room

Stakeholder Group Members Present

Amanda Carr	County of Orange
Chris Crompton	County of Orange
Garry Brown	Orange County Coastkeeper
Sean Bothwell	Coastkeeper Alliance
Colin Kelly	Orange County Coastkeeper
Thomas Lo	City of Irvine
John Kappeler	City of Newport Beach
Susan Paulsen	Exponent, Inc.
Hope Smythe	Santa Ana Regional Water Quality Control Board
Terri Reeder	Santa Ana Regional Water Quality Control Board
Barbara Barry	Santa Ana Regional Water Quality Control Board
Jason Freshwater	Santa Ana Regional Water Quality Control Board
Ray Hiemstra	Sierra Club
Devin Slaven	City of Lake Forest
Dean Kirk	The Irvine Company

Supporting Roles

Lewis Michaelson	Katz & Associates
Bree Robertoy	Katz & Associates
Steve Weisberg	Southern California Coastal Water Research Project
Karen Ashby	Larry Walker Associates
Ashli Desai	Larry Walker Associates

Meeting Introduction and Objectives – L. Michaelson

L. Michaelson, Facilitator, began the meeting by providing a brief overview of the Stakeholder Group process to date and introducing objectives and goals for the final meeting, which were to provide an update on the status of SHEL studies and process, finalize findings and recommendations of the Stakeholder Group for REC-1, and discuss next steps for the Stakeholder Group.

Update on State Board Provisions – A. Desai

California State Water Resources Control Board (State Board) adopted new recreational criteria for bacteria, with some changes to the draft provisions released in July 2017. Fecal coliform was reinserted into the California Ocean Plan, although it was not added back into the Water Quality Control Plan for Enclosed Bays and Estuaries. A resolution was also included to assess during the State Board's triennial

review the use of fecal coliform as an indicator and its associated threshold. In response to comments, the State Board added direction to its staff to evaluate all bacteria indicators using California-specific data. There has been discussion about creating stakeholder groups to work through these issues.

In addition to these changes, the State Board included a new provision to allow the reference beach approach to be more broadly used (i.e., in any basin plan amendment, not just a TMDL).

Update on Newport Beach Research – J. Kappeler

The City of Newport Beach obtained a permit to sample shellfish in Newport Bay. They have taken two rounds of samples from five sites each in upper and lower Newport Bay and are planning to take a third round of samples on August 27. The results are preliminary, but there was a reasonably large sewage spill between the two rounds of samples, so results will be available pre- and post-spill.

Update on Shellfish Pathogen Studies – S. Weisberg

Background

The Stakeholder Group expressed concern that the SHEL standard was not representative of beneficial uses. In response, a subcommittee, assisted by S. Weisberg, developed a proposed study design to assess the scientific validity of the SHEL standard. S. Weisberg presented the subcommittee's suggestions for the details of the study.

Design

Samples would be taken from the water column and tested for fecal coliform, coliphage, enterococcus and HF183, while bivalves harvested at the same time would be tested for pathogens. The subcommittee suggested testing deployed Olympia oysters and Mediterranean mussels taken from ten sites of varying fecal coliform counts during three different periods, dry weather, wet weather and post-wet weather.

Questions/Comments:

- T. Reeder: My concern about using Mediterranean mussels is that they are non-native to Newport Bay.
    - S. Weisberg: There are other native species, but they are less salinity tolerant and we don't have a source for them.
    - A. Carr: I believe Mediterranean mussels are already in Newport Bay.

Cost

The estimated cost for the entire proposed study is $1.2M. The Regional Board has already agreed to provide $200K, and the discharger community believes they can match. If it is determined that the study needs to be reduced to $400K, the subcommittee's recommendation would be to sample only one species of shellfish during dry weather and from only eight sample sites. They do not recommend measuring for fewer indicator bacteria.

If needed, the study could be phased to include additional sampling. The disadvantage of a phased approach is additional cost for remobilizing during the second phase. However, the benefit of a phased approach would be that the study design could be improved for the second phase.

Questions/Comments:

- S. Paulsen: How do you know what level of pathogens is appropriate for the standard? It may depend on the detection level of the virus test. There are a lot of unknowns (e.g., illness rate). Do we have information on the level of ingestion that results in illness?
    - The level of detection would be known. The challenge would be to determine the illness rate, because there is very little information about it. Some outcomes don't require knowing that information. In the worst-case scenario, you could conduct QRMA studies.
- S. Bothwell: Would the study be applicable State-wide? Would the State Board provide some funds? I've been pushing for this to be raised in the triennial review. They've been thinking about distinguishing between recreational harvesting and commercial. Would this apply to both?
    - A similar study would need to be conducted at a couple more sites. The State Board is interested in doing studies like this. The indicator would apply to recreational and commercial harvesting, but the level of harvesting and frequency of ingestion is different.
- One member suggested the Ocean Protection Council might be interested in contributing.

Next Steps

Stakeholders to decide how data from the study will be used and what the cost of the study will be. The timeline for the study would depend on when the study is approved and whether the approach will be phased.

Discharger Plan Discussion – A. Carr

A. Carr presented a draft regulatory pathway developed by the MS4 discharger community, which included an overview of implemented, planned and conceptual structural and programmatic BMPs as well as preferred regulatory approaches to achieving compliance. The dischargers' preferred approach is to move right to permit modifications, followed by a TMDL revision.

Questions/Comments:

- S. Bothwell: What is a trash wheel?
    - A. Carr/J. Kappeler to provide more information.
- G. Brown: The BMPs listed are mostly implemented by Public Works, not the County.
    - This is a composite picture of the status of BMP implementations by all dischargers. Funding comes from multiple sources.
- S. Bothwell: What do you plan to do to improve circulation in Newport Dunes?
    - Dischargers would consider flow circulation devices or options, but there are no specific ideas yet. It could include dredging of Newport Dunes to affect water flushed out during each tidal cycle.
- R. Hiemstra: The draft regulatory pathway document mentions a section of the Basin Plan regarding uncontrollable and controllable sources, but then it quotes only uncontrollable sources. This is only half of what is included in the Basin Plan.
- C. Kelly: My concern is that if you have a watershed management plan that denotes compliance, then you should have a robust management plan. This is a move in the right direction, but there

are some proposed adaptive management plans on page 14 that it seems could be implemented sooner. For example, Newport Dunes is an area of high recreation and concern. Plans for that area could be implemented sooner.

- R. Hiemstra: Technical feasibility is done for Newport Dunes, but the funding is not taken care of. We shouldn't have to wait for grant funding. Some of these things can be paid for by dischargers and aren't that expensive.
    - A. Carr: It would help to know what projects should have priority. We also need to know that the approved plan/activities within the plan would provide compliance.
- C. Kelly: There is a tension when a regulator asks for compliance when a plan is in place and being implemented. Environmental organizations don't take satisfaction in implementation of plans, but in the improvement of water quality. Especially when plans are not that ambitious. Something that would have a high impact and low cost should be moved up the list. When an agency says something will happen in year 1, we hear year 21, because that's when the TMDL was implemented. We were talking about these years ago. Let's try to solve the problem with some easier to implement projects.
- T. Reeder: I appreciate all the work that the County put into this. Moving forward, working with the stakeholders to reprioritize projects in your next round of funding is worthwhile.
- H. Smythe: I agree with Terri. I don't see any prioritization or schedule in this plan. We would be interested in seeing that. I understand this is a conceptual document. Are you thinking you would handle seasons differently? It's important to keep in mind the end goal of the TSO is to revise the TMDL.
    - More detail would be added to the plan. Seasons would be considered in the TMDL revision.
- G. Browns: Are the BMPs included in the document a complete list?
    - No, this is a first draft based on limited time. Santa Ana has some that aren't included.
- T. Reeder: The first step would be for the Regional Board to review the dischargers regulatory pathway approach document and provide comment. The document should include timelines and priorities.
- H. Smythe: Our priority is to get a TSO in place, because it will take about a year to get permit in place and start on TMDL revisions. We need additional information from Orange County about what steps they want to take and timing.
- A. Carr: Do we need a SHEL TSO before 2022? Once we're looking at achieving the State standard, I'm hoping that it will be realized that we can't be held to current standard.

Presentation and Discussion on Findings and Recommendations Technical Memo – K. Ashby

Larry Walker Associates developed a Findings and Recommendations Technical Memo to capture key discussions, findings and recommendations of the Stakeholder Group. The goal of the document was not to come to a formal agreement regarding actions, but to capture the results of the Stakeholder Group process. The memo was distributed to the Stakeholder Group and comments were solicited, but none had been received at the time of the meeting.

Questions/ Comments:

- S. Bothwell: Regarding desired features, second bullet: What does "as necessary" mean? I was hoping for enforceable interim milestones.

    - The “as necessary” applied to interim milestones, not to the enforceability of the milestones.
    - H. Smythe: We do want to make sure there are enforceable milestones in any form of a document.
    - Action Item: Remove “as necessary.”

Discussion on Future Pathway for Stakeholder Group and Process – A. Carr, All

A. Carr emphasized the need for a vehicle through which the Stakeholder Group could continue to collaborate and suggested using the existing Newport Bay Management Committee. The Committee is used to prepare for Newport Bay Executive Committee meetings and gathers quarterly. The first 20 minutes of the Management Committee meetings would focus on preparing for the Executive Committee meetings, but the remainder of the meeting could focus on the water quality issues relevant to the Stakeholder Group. If the Stakeholder Group chose to use these meetings for future work, they could be held at SCCWRP with S. Weisberg as the facilitator. Meetings could also be added beyond the current quarterly schedule. The next Newport Bay Management Committee meeting would be at end of October or beginning of November.

Discussion:

- T. Reeder: Would some of the same individuals be part of the committee? Some of the Newport Bay Management Committee members have not been engaged in these discussions. We need to have all levels of participation, more than what’s included in the Management Committee. Jason Freshwater, for example, needs to be at the table to discuss the technical aspects. I’m not sure about the benefit of using that forum versus maintaining continuity and using this specific Stakeholder Group. Another concern is the timing. We only have until 2022 to reach compliance for SHEL.
    - A. Carr: The same organizations participate in the Management Committee. Meetings would be topic-specific, and it would be up to organizations as to who to send to each meeting. We can convene subgroups as there are tasks to work on. I don’t think the Management Committee is the only route, but that is the level and breadth of people who need to be informed on technical issues and make decisions.
- G. Brown: I would support using the Management Committee if that’s the decision of the group. The real goal is to not lose momentum, especially while the path forward for the SHEL study is being worked out. This process has been very constructive and has accomplished several things. However, it’s costly. The remedy we had in mind requires Regional Board approval. We appreciate the participation from them. It’s their process moving forward.

Next Steps

- A. Carr, S. Weisberg, G. Brown and H. Smythe to discuss path forward for Stakeholder Group.
- T. Reeder to review technical memo and either provide comment or discuss with LWA by September 28.
- Stakeholder Group members to review and provide comment on the draft regulatory pathway document by September 28, particularly regarding areas of prioritization, controllable/uncontrollable sources and technical aspects.
- SHEL committee to discuss funding and how data from study will be used in a TSO and/or TMDL.