



A COOPERATIVE STRATEGY FOR RESOURCE MANAGEMENT & PROTECTION

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Electronic Submission: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on the Proposed Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries: Sediment Quality Provisions

Dear Ms. Townsend:

The Stakeholders Implementing Total Maximum Daily Loads (TMDLs) in the Calleguas Creek Watershed (Stakeholders) appreciate the opportunity to provide comments on the California State Water Resources Control Board (State Board) Proposed Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries: Sediment Quality Provisions (Proposed Amendments). The Stakeholders consist of agricultural, wastewater, and MS4s that are responsible parties to six effective TMDLs in the Calleguas Creek Watershed (CCW). The Stakeholders have reviewed the Proposed Amendments and respectfully submit the following comments to reflect our concerns and to propose improvements and clarifications in the Proposed Amendments as drafted.

The Stakeholders have identified 8 key areas of concern within the Proposed Amendments as described in the detailed comments below. For each area of concern, a recommendation is included.

Comment #1: Require Modifications for TMDLs with Provisions to Consider SQOs

The Proposed Amendments, as drafted, exempt waterbodies with existing TMDLs for the reduction of organochlorine pesticides and PCBs from the requirements associated with the implementation of the human health Sediment Quality Objectives (SQOs) protecting human consumers from contaminants in fish tissue. The Calleguas Creek Watershed is subject to TMDLs for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs) and Siltation which includes sediment and fish tissue targets. The TMDL was based on a presumption of a relationship between sediment quality and fish tissue concentrations using information available at the time of TMDL development. However, the TMDL recognized that additional science was being developed and included an explicit discussion about the potential need to update the TMDL based on the development of sediment quality criteria: “the development of sediment quality criteria and other water quality criteria revisions may require the reevaluation of this TMDL.” The current state of science used to develop the proposed SQOs far exceeds that of the general screening criteria used as the basis of the CCW OC TMDL development. For TMDLs that included specific discussions of the sediment quality objectives or reopeners based on the development of these objectives, TMDLs should be updated within a certain period of time to be consistent with the SQOs.

The Stakeholders respectfully request for the Proposed Amendment Provisions to include a requirement for Regional Water Quality Control Boards (RWQCBs) to update TMDLs for consistency with SQOs within 2 years for all TMDLs that have a provision that discusses updating the TMDL based on SQOs.

Recommendation:

Modify Provision III.A.1.b.4. to include requirements for RWQCBs to update TMDLs using SQOs when the TMDL includes reevaluation or other provisions that reference modifying the TMDL in response to updates to the SQOs.

Comment #2: Clarification of Procedures for Fish Species Monitoring and Selection

The Stakeholders request modifications to the Proposed Amendment to clarify the procedures and monitoring criteria for the selection of fish species for waterbodies with limited fish species or other monitoring restrictions. The Proposed Amendments make frequent references to fish species, fish size requirements, dietary guilds, and primary and secondary guild species, without additional clarification for the procedures and criteria required for groups to select fish species to monitor should these groups monitor waterbodies with limited fish, both in size and species, or waterbodies with restrictions or prohibitions on sportfishing. For example, although Provision IV.A.2.b.3.4.b specifies that “Fish shall meet sportfish angling size requirements,” the Proposed Amendments do not specify how a group should proceed if these size requirements cannot be met.

Revisions to the Proposed Amendment, including Provision IV.A.2.b.3 and Appendix A-6, should be made to reflect these needed clarifications.

Recommendation:

Include language throughout the Proposed Amendments, including but not limited to Provision IV.A.2.b.3 and Appendix A-6, clarifying procedures and criteria for selecting fish species to monitor in waterbodies under conditions with limited fish species or other restrictions on fish monitoring (eg. sportfish size, sportfishing prohibitions). The Stakeholders recommend providing clear direction that two fish species be selected for monitoring, that represent dietary guilds identified in the CSM. The selected fish species should be from the primary species list where possible, but if primary species are not available at the site, secondary species or other species that provide a clear linkage to the site, can be used.

Comment #3: Allow Historic Data to be Used for Tier 1 Assessments Without a Conceptual Site Model

Provision IV.A.2.b.5 of the Proposed Amendments specifies that, “A conceptual site model (CSM) and study design as described in Chapter IV.A.4.d.5) must be developed prior to data analysis. Sediment and tissue data shall not be used to assess sediments in accordance with this plan, unless they are consistent with the CSM.” The Stakeholders respectfully request for the State Board’s consideration for the allowance of a Tier 1 Screening Evaluation to be conducted using existing historical data without the development of a CSM. In addition, the Stakeholders request for the Proposed Amendments to be revised such that there are reduced requirements for CSM development for sites where qualifying historical sediment data are available.

Some Estuaries in California, such as Mugu Lagoon within the CCW, have been collecting data on fish tissue and sediment for many years. The Stakeholders would appreciate the opportunity to use this data to conduct the initial Tier 1 assessment prior to investing in the development of a CSM. Because the Tier 1 assessments are intended to be conservative, if the thresholds are being met based on historic data that has been collected to characterize the site, there should be minimal risk that the SQOs are not being attained. If the Tier 1 assessment thresholds are not met, then a Tier 2 assessment is required and a CSM would be developed at that time.

Recommendation:

Remove requirement to do a full CSM before Tier 1 assessment where fish tissue data exist that meet the Tier 1 data requirements or allow for a modified, lower level CSM for Tier 1 assessment of sediment data.

Comment #4: Clarify Meaning of Tier 1 Assessment Results

The Stakeholders respectfully request modification of the Proposed Amendments to clarify the language regarding the interpretation of Tier 1 Evaluation results. As currently drafted, the Proposed Amendments are not clear on how to interpret the results of the Tier 1 Evaluation. Provision IV.A.2.c.5 states, “If either tissue or sediment is applied in Tier 1 and the result

exceeds the threshold for any constituent, Tier 2 is required for those constituents.” The Stakeholders request for this statement to be clarified such that a Tier 2 Assessment only applies if only one of the two media are assessed. However, as currently drafted, this requirement is unclear and could be interpreted to mean that even if both media are assessed, if either one exceeds the threshold for any constituent, Tier 2 is required, in contradiction to both the sentence and bullets that follow (Provisions IV.A.2.c.5.a-d).

In addition to the clarification detailed above, the purpose of the Tier 1 assessment should also include a determination that sediments are not impacted and are meeting the SQOs if a complete site assessment is not warranted. Currently the language states that sediments not requiring a Tier 2 determination are “not degraded” and “not impacted”, but the determination of meeting the SQOs under Tier 2 uses the terminology “unimpacted”. The language should be consistent throughout the document so it is clear that sediments not requiring a Tier 2 assessment because they are less than or equal to the Tier 1 thresholds are considered “unimpacted” and thereby attain the SQOs.

Recommendation:

Revise the second paragraph of Provision IV.A.2.c.5.

If ~~either~~ only tissue or only sediment is ~~applied in~~ evaluated in Tier 1 and the result is above the threshold for any constituent, Tier 2 is required for ~~those~~ the constituents above Tier 1 thresholds.

Revise the first paragraph of Provision IV.A.2.c.1.

If potential chemical exposure is below this level, sediments are ~~not degraded~~ unimpacted and there is no reason to perform more detailed assessment (either Tier 2 or Tier 3).

Revise bullets a-d of Provision IV.A.2.c.5.

- a. If both tissue and sediment result ~~falls~~ are equal to or below the threshold, the chemical exposure associated with the sediment and tissue is acceptable and the sediment quality is ~~not impacted~~ unimpacted.*
- b. If tissue results fall below the threshold and sediment ~~equals or exceeds~~ is above the threshold, the chemical exposure is acceptable and the sediment quality is ~~not impacted~~ unimpacted.*
- c. If sediment results ~~fall~~ are equal to or below the threshold and tissue ~~equals or exceeds~~ is above the threshold, a Tier 2 assessment is required.*
- d. If both sediment and tissue results ~~equal or exceed~~ are above the threshold, ~~the chemical exposure to consumers is unacceptable and a~~ Tier 2 assessment is required.*

Comment #5: Remove Requirement for Regional Board Approval to Conduct Tier 3 Assessment

The second paragraph of Provision IV.A.2.e states that “Tier 3 may be performed at any time with approval from the Regional Board provided that Tier 2 is completed at the same time.” The Stakeholders believe that approval of Regional Board should not be required to conduct Tier 3 analysis.

A Tier 3 assessment is a more complex and site-specific assessment, and one that should be pursued if a group sees it fit to do so. Although it is appropriate to solicit Regional Board involvement and concurrence on study design of a Tier 3 assessment and for the Regional Board to retain its ability to accept or reject the results of a Tier 3 assessment, the Stakeholders believe that any group should be able to pursue a Tier 3 analysis if so desired and meet triggering criteria in Provision IV.A.2.e. 2.

Recommendation:

Revise the second paragraph of Provision IV.A.2.e as follows:

Tier 3 may be performed at any time ~~with approval from the Regional Board~~ provided that Tier 2 is completed at the same time. A change in any parameter or model from that used in Tier 2 must be justified based on site conditions in comparison to Tier 2 assumptions and values, and approved by the Regional Board prior to performing the analysis.

Comment #6: Clarify that higher fish consumption guidelines shall only be used in areas with designated subsistence beneficial uses

The Stakeholders respect the State Board’s use of a different OEHHA guideline, one with high frequency of fish consumption, when considering subsistence fishers and their exposure to human health risks (Provision IV.A.2.e.3). However, the Stakeholders think the use of these higher frequencies should be applicable only for waterbodies with beneficial use designations for subsistence fishing. The State Board recently adopted new beneficial use of subsistence fishing, but have not assessed the designation for most waters. Designation should be required before the higher consumption frequency OEHHA rates are used to ensure the beneficial use is present.

Recommendation:

Clarify higher OEHHA fish consumption thresholds for subsistence fishing should only be applicable if a waterbody has a designated subsistence fishing or tribal subsistence fishing beneficial use designation.

Comment #7: Modify Provisions on Implementation of Sediment Quality Objectives to Determine Exceedance of Receiving Water Limits

According to Provision IV.A.4.c.2.a (Exceedance of Receiving Water Limit to protect aquatic life), an exceedance occurs when “any station within the site is assessed as Clearly Impacted...or if the total percent area categorized as Possibly Impacted and/or Likely Impacted equals or exceeds 15 percent of the site area over the duration of a permit cycle.” According to Provision IV.A.4.c.2.b (Exceedance of Receiving Water Limit to protect human consumers of sportfish), an exceedance occurs when “the site sediments are characterized as Possibly Impacted, Likely Impacted or Clearly Impacted.”

While we support the inclusion of “any station that is Clearly Impacted”, we request that the term “Possibly Impacted” be removed from these provisions. “Possibly Impacted” does not clearly demonstrate impacts or the likelihood of impacts and therefore should not be used to establish a violation of a receiving water limit.

Additionally, we request that the “15 percent” areal criterion for Possibly Impacted and/or Likely Impacted determinations from Provision IV.A.4.c.2.a be modified to criterion that better reflects that the majority of the site is impacted. 15% is a small area and could represent local sources or impacts, making it inappropriate to determine a receiving water “exceedance” for all dischargers to a site.

Recommendations:

- *Remove “Possibly Impacted” from this provision.*
- *Modify the 15% percent areal criterion for Likely Impacted sites to be the majority of sites for the waterbody.*

Comment #8: Modify Provisions on Implementation of Sediment Quality Objectives for Evaluating Waters for Placement on the Section 303(d) List

Provision IV.A.4.e.1.a. and IV.A.4.e.1.b. include provisions for listing waterbodies that are “Clearly Impacted”, “Likely Impacted”, and “Possibly Impacted” per the SQO assessment requirements. While we support the inclusion of waterbodies with “Clearly Impacted” and “Likely Impacted” sites on the 303(d) list, we request that the term “Possibly Impacted” be removed from this provision. “Possibly Impacted” does not clearly demonstrate that waters are degraded and additional monitoring should be conducted prior to designating these waters as impaired and placing them on the 303(d) list (Category 5 of the California 303(d)/305(b) Integrated Report). Rather, these waterbodies should be placed in Category 3 of the Integrated Report. Category 3 contains waters for which there is insufficient data to make a use support decision. The designation of “Possibly Impacted” indicates that additional monitoring and information is needed to identify if impacts are occurring at the site. Therefore, it would be

appropriate to place these waterbodies into Category 3 rather than making a determination that the site is impaired and placing it on the 303(d) list.

We support the provision specifying the use of data from the most recent 303(d) listing cycle for the SQO site assessments and the requirements for data to be collected from multiple spatially representative stations and multiple surveys over the span of at least one year to make listing decisions.

Recommendations:

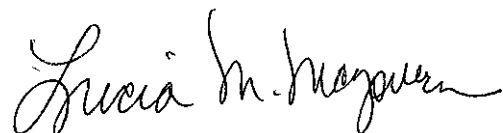
- *Place “Possibly Impacted” sites in Category 3 of the Integrated Report rather than on the 303(d) list.*
- *In Section IV.A.4.e.1.d, reference to “subchapter i above...” should be revised to “Section IV.A.4.e.1.a.i, above...” for clarity.*

Finally, the Stakeholders support the State Board’s use of Office of Environmental Health Hazard Assessment (OEHHA) Advisory Tissue Levels within the Proposed Amendments. Advisory Tissue Levels (ATLs) correspond to the range of contaminant concentrations found in fish and are used to provide consumption advices taking into account the average daily reference dose for non-carcinogens and a risk level of no more than one additional cancer case in 10,000 people consuming fish over a life-time.

ATLs are designed to encourage consumption of fish that are likely to provide significant health benefits, while discouraging consumption of fish that is likely to pose a hazard for human health. ATLs are used as part of the process to develop traditional health advisories (which focus on fish whose consumption should be avoided) as well as the newer “safe eating guidelines,” which inform consumers of fish with low contaminant levels considered safe to eat frequently. OEHHA’s advisories have also been identified as a metric in California’s Water Quality Control Policy.

Thank you for your time and consideration of these comments. If you have questions, please contact me at (805) 388-5334 or lmcgovern@cityofcamarillo.org.

Sincerely,



Lucia McGovern
Chair of Stakeholders Implementing TMDLs in Calleguas Creek Watershed