

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

RESPONSE TO WRITTEN COMMENTS RECEIVED ON DRAFT LOWER TIJUANA RIVER INDICATOR BACTERIA AND TRASH ADVANCE RESTORATION PLAN

September 30, 2024

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



Table of Contents

Introduction 3

Written Comments Received and Responses to Comments..... 3

 A. Tijuana River Watershed Management Area Water Quality Improvement Plan
 Group 4

 B. City of Imperial Beach, Office of the Mayor..... 8

 C. San Diego Coastkeeper..... 9

Introduction

This report contains the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) responses to written comments received on the Draft Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan, hereinafter referred to as draft ARP, or ARP.

The draft ARP was the subject of a 62-day public review and comment period from January 10, 2024, to March 13, 2024. In addition to accepting written comments, staff from the San Diego Water Board held two public workshops to: (1) provide an overview of the draft ARP, (2) receive oral comments from responsible parties and interested persons on the draft ARP, and (3) receive oral comments on any concerns related to environmental justice or potential impacts on water quality for disadvantaged communities and/or Native American Tribes due to the ARP's future implementation.

The San Diego Water Board received three (3) written comment letters on the draft ARP. These written comment letters have been summarized and the San Diego Water Board has provided its responses in the following section of this document. Those interested in obtaining the original written comment letters submitted on the draft ARP can do so by contacting the San Diego Water Board at sandiego@waterboards.ca.gov.

Written Comments Received and Responses to Comments

The San Diego Water Board received written comment letters from the following stakeholders:

- A. Tijuana River Watershed Management Area Water Quality Improvement Plan Group
- B. City of Imperial Beach, Office of the Mayor
- C. San Diego Coastkeeper

A. Tijuana River Watershed Management Area Water Quality Improvement Plan Group

1. Comment

Source control emphasis should be placed on significant sources, namely, transboundary flows, while minor sources should be controlled through the enforcement of existing permits and established regulations.

Response

Implementation of the ARP will require emphasis on transboundary flows and oversight of NPDES-regulated waste treatment facilities in the US designed to address such flows. The ARP recognizes, as the commenter does, that U.S. sources of indicator bacteria and trash are not significant contributors to the impairment of beneficial uses in the Lower Tijuana River, and therefore calls for relying on enforcement of existing permits to regulate them. The ARP identifies transboundary flows as the significant sources requiring controls and identifies various projects that are planned to address them.

The ARP's implementation section identifies actions to regulate both minor [de minimis] and significant sources. These actions include the enforcement of existing Waste Discharge Requirements (WDRs), enrollment in general and statewide WDRs, issuance of new WDRs, and development and implementation of a Memorandum of Understanding (MOU) between the San Diego Water Board, the United States section of the International Boundary and Water Commission (USIBWC), and the United States Environmental Protection Agency (USEPA).

2. Comment

The Source Assessment section of the ARP should differentiate between significant and minor sources, with municipal storm drain systems identified as minor sources.

The ARP identifies transboundary flows as "significant sources" that are responsible for most of the trash and bacteria loads in the Lower Tijuana River. This distinction between significant sources and other, more minor sources should be carried over into the Implementation Plan section of the ARP. The current Implementation Plan section of the ARP groups all sources and approaches to regulate them together in one table without a clear identification of how much each contributes to the ongoing bacteria and trash issues in the Tijuana River Water Management Area.

Response

The ARP's Source Assessment section clearly identifies each source's estimated percent contribution to total annual trash and indicator bacteria loading to the Lower Tijuana River. The classification of individual sources into "significant" or "minor" categories in the ARP's Implementation Plan is unnecessary, and the steps in the Implementation Plan simply reflect the significance of the source.

The ARP clearly considers US municipal storm drains to be minor sources of bacteria and trash at this time. Calculations in section 5.4 of the ARP for Phase I MS4 outfalls in HSA 911.11, show the percent contribution to total annual trash and indicator bacteria loading to the Lower Tijuana River is estimated to be 1% for E. coli; <1% for Enterococci, and <1-2% for trash.

3. **Comment**

Minor sources, including municipal storm drain systems, can meet ARP requirements through a best management practice (BMP)-based compliance approach. A BMP-based compliance approach aligns with existing and pending requirements for MS4s to control bacteria originating from sewage discharges and trash. The main BMPs proposed under a BMP-based pathway are expected to include the following: 1) trash control as required by the State Trash Amendments, which are expected to be incorporated into the Phase I MS4 Permit in the near future; and 2) actions to prevent sanitary sewer overflows from municipal sewage conveyance systems, as required by the Phase I MS4 Permit and sanitary sewer system waste discharge requirements.

A BMP-based approach also ensures that compliance evaluations for Phase I MS4s are tied solely to actions under their control and not based on monitoring in the Lower Tijuana River, where improvement in monitoring metrics will depend primarily on actions taken by federal agencies.

Response

While the draft ARP identifies several implementation actions for Phase I MS4 permittees, they all hinge upon compliance with, and enforcement of, existing permits. As noted, the San Diego Water Board's Regional Phase I MS4 permit prohibits discharges of sewage. Final compliance with the State Water Board's Trash Provisions is required by 2030, and the San Diego Water Board intends to incorporate the requirements of the Trash Provisions into the Regional Phase I MS4 permit during its next reissuance. The initial steps in planning for the implementation of the Trash Provisions are required through Order No. R9-2017-0077. The Regional Phase I MS4 permit also requires monitoring to assess effectiveness of implementation. The San Diego Water Board may enforce against responsible permittees if they are found to be out of compliance with their permit requirements. Additionally, if needed, the Board would consider amending a permittee's monitoring and reporting program to provide adequate data to determine the effect of discharges in the Lower Tijuana River.

Moreover, compliance with the Regional Phase I MS4 permit would not be solely assessed through monitoring metrics in the Lower Tijuana River, where federal action and improved source control in Mexico is critical to achieve meaningful improvements to water quality. Per the Regional Phase I MS4 Permit, responsible permittees are required to implement their approved Water Quality Improvement Plan (WQIP) and carry out MS4 outfall discharge monitoring, in addition to receiving water monitoring and potential special studies.

4. Comment

The Memorandum of Understanding (MOU) between the San Diego Water Board and federal agencies should require federal agencies to take action to address trash and other pollutants that have accumulated in the Tijuana River Valley resulting from historical transboundary flows. Because this ARP is a restoration plan, it should address both the continuing impacts of past transboundary flows, and future transboundary flows. Actions to address accumulated pollutants is an important part of an overall plan to restore water quality and beneficial uses in the Tijuana River Valley.

Response

While the San Diego Water Board is supportive of actions to remediate legacy pollution in the Tijuana River Valley, the main priority of the ARP is to address ongoing and future trash and indicator bacteria pollution. Achieving long term restoration in the Tijuana River Valley will require control over ongoing and future trash and indicator bacteria pollution, before, or in concert with, remediation of historical pollution. While the ARP does not address legacy pollution in the Tijuana River Valley, it is likely that certain remediation efforts could arise from the implementation actions identified in the ARP, including the Minimum Frequency of Assessment and Collection (MFAC) program and/or the MOU between the San Diego Water Board and federal agencies.

The San Diego Water Board will continue to advocate for, and dedicate resources towards, restoration efforts in the Tijuana River Valley. The San Diego Water Board has supported a number of restoration efforts in the Tijuana River Valley, including the proposed Nelson Sloan Quarry and Beneficial Reuse of Sediment Project, and welcomes additional proposals such as creative uses of compensatory mitigation or supplemental environmental projects whose success could be sustained prior to the necessary source control actions.

5. Comment

The use of Los Angeles-based trash load estimates for open space, vacant, undeveloped, and agricultural land uses seems inappropriately high for application in the San Diego Region. San Diego-specific trash generation rates for Priority Land Uses under the State Trash Amendments (commercial, industrial, and high density residential) are estimated at 0.48 to 0.95 pounds per acre, compared to the estimate of 16.58 pounds per acre used in the draft ARP. The ARP's trash load estimates for open space, vacant, agricultural land uses should be set no higher than 0.48 pounds per acre.

Response

Los Angeles-based trash generation rates were used in the ARP for certain land use categories for which there is no available San Diego-specific data. Some of the land use categories for which no San Diego-specific trash generation rates exist include “open space park or preserve”, “agriculture”, and “vacant and undeveloped land”. In this case, the ARP relies on a trash generation rate of 16.58 lbs/acre, as identified for similar land use categories in the Los Angeles River Trash TMDL.

The draft ARP was the subject of an external scientific peer review in 2023. The external scientific peer review found that there were several uncertainties surrounding the use of Los Angeles-based trash generation rates for similar land use categories in the San Diego region. The peer reviewers cited the high spatial variability in trash generation rates throughout California, and that trash input into the environment has increased substantially since this value was used in the 2007 Los Angeles River Trash TMDL.

In addition to the uncertainties identified in the external scientific peer review, the ARP states that trash load ranges from US-side sources are likely overestimated as they do not account for existing best management practices used to reduce trash, such as those employed by Phase I MS4 copermitees. To address these uncertainties, the draft ARP used a range of high and low trash generation rate values, averaging 16.58 lbs/acre, from the Los Angeles County Department of Public Works, Baseline Monitoring Program. Accordingly, trash generation rates for these land use categories were calculated using a range of 4.27 lbs/acre to 28.89 lbs/acre, with all U.S. sources representing <1-4% of total trash loading to the Lower Tijuana River. This assessment underscores that the majority of trash loading to the Lower Tijuana River stems from sources in Mexico.

6. Comment

Please confirm that the cost sharing language in the MOU described in table 8.1 of the draft ARP refers to financial commitments of federal government agencies only.

Response

The federal to local cost sharing language mentioned in table 8.1 of the draft ARP refers to financial commitments of federal government agencies only.

B. City of Imperial Beach, Office of the Mayor

1. Comment

The City of Imperial Beach does not support the draft ARP and opposes the use of a non-binding ARP and voluntary MOU as the primary means to achieve the applicable targets for trash and bacteria. The City of Imperial Beach urges the San Diego Water Board to make use of its regulatory authority to issue investigative orders, cleanup and abatement orders, and conventional TMDLs with waste load allocations and load allocations, as necessary.

Response

The San Diego Water Board has chosen to develop an ARP in lieu of conventional TMDLs because an ARP is more immediately beneficial and practicable to achieving water quality objectives (WQOs) at this stage. The San Diego Water Board maintains that an ARP is currently the most appropriate course of action due to the: 1) unique binational circumstances surrounding impairments in the lower Tijuana River, 2) obvious significant source of pollution, 3) collaborative willingness of the primary responsible party, 4) well developed project proposals to address the pollution, 5) time sensitivity of securing federal project funding, and 6) the flexibility for adaptive implementation, compared to a conventional TMDL. Additionally, this ARP is consistent with addressing impairments in USEPA's 2022-2032 Vision for the Clean Water Act Section 303(d) Program¹ and the State's [Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options](#) to ensure that all applicable beneficial uses are fully attained (section I.C.1).

Furthermore, an ARP is not a substitute for a conventional TMDL, and the Lower Tijuana River will remain on the Clean Water Act (CWA) 303(d) List as restoration activities are implemented and until WQOs are met.² This ARP is structurally consistent with a conventional TMDL, so the San Diego Water Board could rely substantially on the TMDL analyses in the ARP to complete development of a conventional TMDL at a later date. The San Diego Water Board will routinely evaluate the status of management actions and water quality in the Lower Tijuana River and shoreline to assess whether the ARP remains more immediately beneficial and/or practicable in achieving WQOs than pursuing a conventional TMDL.

The implementation of this ARP does not preclude the San Diego Water Board from exercising additional regulatory authority, including the issuance of WDRs, investigative orders, and cleanup and abatement orders, to address impairments and attain water quality objectives in the Lower Tijuana River.

2. Comment

The City of Imperial Beach supports the findings of the draft ARP, including its numeric target selection, data inventory and analysis, source assessment, allowable loads and allocations, and the findings regarding the sources of trash and bacteria. The City of Imperial Beach also supports the draft ARP's aggressive timelines of five and seven years, respectively, for solving the trash and bacterial contamination.

Response

Comment Noted

C. San Diego Coastkeeper

1. Comment

San Diego Coastkeeper supports the comments submitted by the City of Imperial Beach.

Response

Comment Noted

2. Comment

San Diego Coastkeeper does not support the draft ARP and opposes the use of a non-binding ARP and voluntary MOU as the primary means to achieve the applicable targets for trash and bacteria. San Diego Coastkeeper urges San Diego Water Board to make use of its regulatory authority to issue investigative orders, cleanup and abatement orders, and conventional TMDLs with waste load allocations and load allocations, as necessary.

Response

Please see the response to the City of Imperial Beach's comment B.1 above.

¹ USEPA. 2022. Memorandum from Radhika Fox Frazer, Assistant Administrator the Office of Water, to Regional Administrators EPA Region 1-10, Regarding the 2022-2032 Vision for the Clean Water Act Section 303(d) Program. U.S. EPA Washington, D.C.

² USEPA. 2023. Memorandum from Brian Frazer, Director (Acting) Office of Wetlands, Oceans, and Watersheds, to Regional Water Division Directors Regarding Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. U.S. EPA Washington, D.C.

3. Comment

San Diego Coastkeeper supports the findings of the draft ARP, including its numeric target selection, data inventory and analysis, source assessment, allowable loads and allocations, and the findings regarding the sources of trash and bacteria. San Diego Coastkeeper also supports the draft ARP's aggressive timelines of five and seven years, respectively, to address trash and bacterial contamination.

Response

Comment Noted

4. Comment

The ongoing pollution crisis in the Tijuana River and Estuary is a funding issue. More specifically, solutions will require significant funding from the federal governments of both the United States and Mexico.

Response

Comment Noted.

5. Comment

Implementation of SB 507 NOA Matrix Alternative D; L, M, O, and P (or a combination thereof); N, Q, and R (or a combination thereof); and K; Minute 328 and the USMCA Comprehensive Infrastructure Solution; and Time Schedule Order R9-2023-0189, set forth various infrastructure and maintenance plans that, if implemented, are expected to drastically reduce trash and bacteria loading in the Tijuana River, and restore the health of the Tijuana River and Estuary. These plans, orders, and bilateral agreements lack a regulatory backstop, enforceable provisions, and consequences for failure to apply ongoing pressure and motivation, and they render the voluntary ARP unnecessary and redundant.

Response

The San Diego Water Board is supportive of the implementation of the USMCA Comprehensive Infrastructure Solution and believes this ARP provides the underlying scientific basis upon which its infrastructure and maintenance projects should proceed. If the projects can achieve the loading reductions calculated in the ARP, the Board and public should have confidence that the water quality objectives could be achieved. Thus, the San Diego Water Board believes it's critical that the USMCA Comprehensive Infrastructure Solution be implemented with the findings of the ARP in mind.

The ARP also identifies implementation actions the Board can pursue to ensure regulated waste discharges support the water quality objectives, and that water quality monitoring can track the progress of meeting water quality objectives in the Lower Tijuana River. Wherever appropriate, the Implementation Plan includes relevant actions of the San Diego Water Board associated with its regulatory permitting and enforcement authority.

One of the main implementation actions of the ARP is the development of an MOU between the San Diego Water Board, USIBWC, and USEPA to identify procedures, actions, roles, and responsibilities within respective jurisdictions and funding allocations to control transboundary sources of pollution. The proposed MOU will enhance cooperation and communication between all parties and facilitate implementation of projects in the USEPA-USIBWC June 9, 2023, Record of Decision.

Furthermore, as previously noted, an ARP is not a substitute for a conventional TMDL, and the Lower Tijuana River will remain on the CWA 303(d) List as restoration activities are implemented and until water quality objectives are met.³ This ARP is structurally consistent with a conventional TMDL, and the San Diego Water Board could pursue development of conventional TMDLs at a later date.

6. Comment

Recognizing that USIBWC's recent efforts have improved compared to decades prior, USIBWC is failing to: 1) operate and maintain its own transboundary pollution reduction infrastructure, 2) adequately pressure and engage with MxIBWC to ensure projects and solutions are being properly implemented on the Mexican side of the border, and 3) effectively advocate for badly needed funding before the U.S. federal government. San Diego Coastkeeper strongly believes that an enforceable traditional TMDL would significantly assist USIBWC in achieving these goals. Therefore, we respectfully request the San Diego Water Board reject the draft ARP and adopt a full TMDL.

Response

The San Diego Water Board maintains that the development and implementation of an ARP at this time would be more effective and practicable than conventional TMDLs to address impairments in the Lower Tijuana River, due to the: 1) unique binational circumstances surrounding impairments in the lower Tijuana River; 2) obvious significant source of pollution, 3) collaborative willingness of the primary responsible party, 4) well developed project proposals to address the pollution, 5) time sensitivity of securing federal project funding, and 6) the flexibility for adaptive implementation, compared to a conventional TMDL.

³ USEPA 2023. Memorandum from Brian Frazer, Director (Acting) Office of Wetlands, Oceans, and Watersheds, to Regional Water Division Directors Regarding Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. U.S. EPA Washington, D.C.

The implementation of this ARP would not preclude the San Diego Water Board from exercising additional regulatory authority, including issuing WDRs, investigative orders and cleanup and abatement orders to IBWC or any other discharger within the Board's jurisdiction as necessary to attain water quality objectives in the Lower Tijuana River in the near term.

Finally, to reiterate, while the ARP is not a substitute for a conventional TMDL, its goals and purpose are similar, in that it determines indicator bacteria and trash loading capacities of the Lower Tijuana River and identifies the difference between current and protective loads of known pollutant sources, so the appropriate control actions are taken and water quality objectives are attained. The Lower Tijuana River will remain on the CWA 303(d) List as restoration activities are implemented and until WQOs are met.⁴ The San Diego Water Board will routinely assess the status of projects and water quality to determine whether the ARP remains the most immediately beneficial and practical approach to addressing impairments or whether it should prioritize completion of conventional TMDLs.

⁴ USEPA 2023. Memorandum from Brian Frazer, Director (Acting) Office of Wetlands, Oceans, and Watersheds, to Regional Water Division Directors Regarding Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. U.S. EPA Washington, D.C.