

2009 Triennial Review

Response To Comments



**California Regional Water Quality Control Board
San Francisco Bay Region**

July 8, 2009

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STAFF RESPONSES TO WRITTEN COMMENTS ON THE APRIL 2009 STAFF REPORT AND TENTATIVE RESOLUTION

We received four comment letters during the public comment period that closed on May 7, 2009. The comment letters and our responses are presented here in alphabetical order by commenter.

Comment letters received:

1. San Francisco Public Utility Commission (Jim Moala)
2. Union Sanitary District (David Livingston)
3. United States EPA (Janet Hashimoto)
4. Alameda County Flood Control and Water Conservation District, Zone 7 Water Agency (GF Duerig)

Comment Letter no. 1: San Francisco Public Utility Commission (SFPUC); May 7, 2009

Comment 1.1: "The SFPUC submitted comments on May 30, 2008, prior to the workshop, supporting the evaluation of the shellfish beneficial use for the Francisco Bay and adoption of federal BEACH Act recreational contact standards developed by U.S. EPA (comment letter Attachment 2). We are pleased that these topics are included in the review plan: assessment of the BEACH Act criteria is listed as issue No. 3 and evaluation of the shellfish beneficial use is issue No. 6."

Comment noted.

Comment 1.2: "...In addition, we believe three more issues should be included on this Triennial Review list with a high priority (first issue below):

- ***'Reasonable potential' analysis (RPA) procedure***

The RPA procedure is used to determine which pollutants require effluent limitations in permits. The procedure defined in the California Ocean Plan provides a more accurate determination of the likelihood that water quality objectives will be exceeded, and should be incorporated into the San Francisco Basin Plan.

While the Water Board currently follows the State Implementation Policy (SIP) procedures for assessing priority pollutants, it has the discretion to use the Ocean Plan procedure for non-priority pollutants such as ammonia. The Water Board should evaluate this option as part of the Triennial Review. In addition, we urge the Regional Water Board to support use of the Ocean Plan procedure during SIP revisions. "

For non-CTR pollutants, the Basin Plan is currently silent on how RPA must be conducted. However, it does require that all water quality based effluent limitation (WQBEL) calculations use the State Water Board's SIP. This is because the SIP applies to bays, estuaries, and inland waters, which are the same waters covered by the Basin Plan. While the SIP's RPA is more conservative than the Ocean Plan, it is appropriately more conservative because ocean waters are different, both biologically, ecologically, and physically from bay/inland waters. A less conservative RPA may miss the need for a WQBEL to ensure that a discharge does not cause or contribute to a violation of a water quality standard.

Although we do not see a benefit from this project at this time, we acknowledge that application of the Ocean Plan procedure for non-priority pollutants is a possible approach that could be used for determining RPA. Staff ranked the project as if it was on the list of projects to be considered as a Basin Plan amendment, and it received a score indicative of a low priority ranking.

Comment 1.3: "...In addition, we believe three more issues should be included on this Triennial Review list with a high priority (second issue below):

- *Use of the State Implementation Policy mixing zone approach in identifying a dilution factor and setting effluent limitations*

The San Francisco Basin Plan Triennial Review should consider acceding to the State Implementation Policy (SIP) and removing the current 10:1 cap placed on dilution factors for most pollutants.

The suggested project is unnecessary. The SIP dilution policy supercedes the Basin Plan's dilution policy. All dilution credits granted in NPDES permits since the effective date of the SIP have been based on the SIP, not the Basin Plan. There is currently no 10:1 cap on dilution factors for most pollutants.

Comment 1.4: "...In addition, we believe three more issues should be included on this Triennial Review list with a high priority (third issue below):

- *Wet weather standards*

The review plan should include an assessment of whether beneficial use designations should reflect wet weather and dry weather period variability, particularly during storm flow conditions.

The Basin Planning project recommended by the commenter is likely to require significant expenditure of resources. Staff ranked the project as if it was on the list of projects to be considered, and it received a score indicative of a low priority ranking. In the past, U.S. EPA attempted to develop wet weather bacteria standards, but they were

never completed. The proposed project could be considered again during the next Triennial Review. Perhaps by then there will be additional information available to support such a project.

Comment Letter no. 2: Union Sanitary District (USD); May 7, 2009

Comment 2.1: “The Union Sanitary District would like to provide our continuing and strong support for inclusion of the Hayward Marsh beneficial use designation in the basin Plan Triennial Review process.”

Comment noted.

Comment Letter no. 3: United States Environmental Protection Agency (US EPA); May 7, 2009

Comment 3.1: “We continue to support as high priorities the following, as listed in Attachment 1 of the draft Resolution: 1. Stream and Wetlands Systems Protection Policy; 2. Update of Significant Water Bodies and their Beneficial Uses; 3. Adoption of U.S. EPA BEACH Act Marine Recreational Contact Criteria as Objectives; 4. Designation of Beneficial Uses for Hayward Marsh; 5. Development of Bioassessment Objectives; and 7. Numeric Nutrient Criteria. “

Comment noted.

Comment 3.2: “We continue to support the remaining issues as important priorities. We continue to support three issues that were considered, but not included on the final list in Attachment 1: 11. Whole Effluent Toxicity (WET) Requirements; 14. Cadmium Water Quality Objectives; and 16. Pentachlorophenol (PCP) Water Quality Objectives. We understand the State Board intends to address the WET requirements and the cadmium objectives through amendments to the Statewide Implementation Policy (SIP). However, we continue to support as a high priority, and recommend the Board address and revise as appropriate, PCP water quality objectives in waters that support early life stages of salmonids, as part of this Triennial Review process. This request is a result of US EPA’s Endangered Species Act consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service for the California Toxics Rule. It is important that protective water quality standards for PCP are adopted as soon as possible, to protect early life stages of salmonids, which are critically important species in many Regional Board 2 waterbodies. “

Staff understands U.S. EPA’s support for these three issues as priorities. As mentioned by U.S. EPA, the State Water Board has identified the Whole Effluent Toxicity (WET) Requirements and the Cadmium water quality objectives as priority statewide planning projects. State Board staff is working on a policy to amend the toxicity control provisions

of the State Implementation Plan this year. The State Water Board is also working to adopt U.S. EPA's 304(a) revised recommended cadmium criteria in order to resolve issues raised by the U.S. Fish and Wildlife Service to the California Toxic Rule (CTR) objectives. Staff included these projects in the list of projects to be considered in this Triennial Review. They scored in the medium priority category. Once adopted by State Water Board, they are likely to score higher in the next Triennial Review.

Adoption of PCP water quality objectives also scored in the medium priority category. Due to the limited available resources, staff cannot consider inclusion of this as a priority Basin Planning issue at this time. We are interested in any additional information the U.S. EPA or other entities may have on the likelihood of PCP being a contaminant of concern in the Region's waters and will continue to evaluate such data as they become available.

Comment Letter no. 4: Zone 7 Water Agency (Zone 7); May 7, 2009

Comment 4.1: "Issue 1. Complete Stream and Wetland Systems Protection Policy ...

First, Zone 7 Water Agency recognizes the importance of functional wetlands and riparian areas in providing valuable water quality functions such as flood protection, pollutant filtration, water supply and replenishment, recreation, and habitat for a wide variety of plants and animals. As such, we agree with the need for a single, state-wide definition and policy for waters of the state to help protect these important areas. A regional definition/policy (e.g., the San Francisco and North Coast Boards) is a step in the right direction, but it should be consistent, if not identical, to the State's definition/policy.

The proposed policy should not unduly expand regulatory requirements (and thereby the administrative burden) associated with ongoing maintenance activities for certain existing flood protection facilities. In determining the new wetland definition, please consider how the new policy might interface with locally adopted flood protection and stream maintenance plans, among other plans and policies.

Also, the proposed policy should avoid any unnecessary duplication in regulatory oversight of stream and wetland areas by multiple state agencies, and should streamline the permitting process wherever possible.

This comment is a project-specific comment about the stream and wetland systems protection policy, rather than a comment on the Triennial Review. The commenter will have the opportunity to comment directly on the proposed policy when it is released for public review, which is expected to be later this year or early next year. We assume from the comment that the commenter supports inclusion of this project as a Basin Planning

priority. Staff is currently working directly with the State Water Board to ensure consistency in the state-wide definitions for waters of the State.

Comment 4.2: “Complete the Update of Significant Water Bodies and the Associated Beneficial Uses, Update Maps. Table 1, attached, includes comments on the beneficial use designations for the new water bodies proposed for inclusion in the Basin Plan. We have also included other general information about these water bodies for your reference.”

Staff appreciates the input provided by Zone 7 for the beneficial use update project and will take it into consideration during the development of this project.

Comment 4.3: “Water Recycling Policy. The Regional Water Board policy on recycled water should be consistent with the State Water Board’s policy. The issue summary in the Triennial Review Staff Report suggests it might not be reflective of the State policy.”

The issue summary was not meant to suggest a possible inconsistency with State Water Board policy. The State Water Board would be required to approve the adopted Basin Plan amendment, which would ensure consistency with its policy.

Comment 4.4: “Marine Debris. This issue needs to be further clarified before water quality objectives can be established. Specifically, the term “significant impacts to” the Bay should be defined and explored.”

The significant impacts referred to by staff in the Staff Report are the trash impacts that resulted in the Water Board recommending impairment listings for portions of San Francisco Bay at its February 2009 meeting. Staff will continue to follow State Water Board’s efforts to address trash in a statewide policy, other efforts to control trash state-wide, such as those recommended by the Ocean Protection Council, and other local efforts to address trash through the Municipal Regional Permit. These efforts will help clarify the need for a future Basin Plan amendment on marine debris. In addition, the Staff Report, page B-10, had a mistake that has been corrected. The project scored as a medium priority project, rather than a high priority project.

Comment 4.5: “Refine Alameda Creek Watershed Total Dissolved Solids (TDS) and Chloride Water Quality Objectives. Please refer to our June 5, 2008 comment letter, attached.”

Staff appreciates the concerns of Zone 7 regarding this potential Basin Planning project. All parties’ concerns about protecting sources of drinking water would need to be

addressed if this project were to be considered for inclusion in the planning workplan. At this point, it is considered a low priority.

Comment 4.6: "Climate Change and Water Resources Policy

This issue should receive a higher priority ranking. As you know, climate change will impact water availability and quality, as well as flood protection needs, in our area. A clear, consistent message on climate change needs to be reflected in all of the State and Regional Water Boards' policies and decisions. This Basin Plan project could also go so far as to help local water agencies develop and implement their own climate change policies, and opportunities for education on this issue."

Staff agrees that Climate Change is a significant issue facing the Region. We agree in general with the Commenter's sentiment. State Water Board members and staff are currently working on this issue and participate in numerous multiagency programs that address climate change including the Climate Action Team, State Water Plan, 20x2020 Plan for water conservation, Bay-Delta Plan, Air Resources Board Climate Change Scoping Plan and the Natural Resources Agency Climate Adaptation Strategies Plan. We are working to develop a clear, consistent message on climate change. As resources become available, this issue could become a planning priority.