

Appendix D

Response to Comments

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

2018 Triennial Review

Response To Comments

September 12, 2018

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STAFF RESPONSE TO COMMENTS ON THE 2018 TRIENNIAL REVIEW STAFF REPORT AND TENTATIVE RESOLUTION

We received 23 comment letters during the public comment period, which began on July 20 and closed on August 20, 2018. Twenty of the comment letters were from private citizens and expressed essentially the same comment asking the Water Board to designate Tribal Traditional and Cultural, Tribal Subsistence, and Subsistence Fishing beneficial uses in San Francisco Bay. The comments from these letters and our responses are presented here.

Comment letters received:

1. Multiple Private Citizens (20 commenters on common theme of designating uses)
2. Alameda County Water District (ACWD, Robert Shaver)
3. San Francisco Baykeeper, Clean Water Action, Environmental Justice Coalition for Water, Bayview Hunters Point Community Advocates, California Indian Environmental Alliance
4. Marin Audubon Society (Barbara Salzman, Phil Peterson)

Comment Letters 1.1-1.20: (20 private citizens – see comments for individual names)

Global Comment: “I am writing to ask the San Francisco Bay Regional Water Quality Control Board to “Designate Tribal Traditional and Culture, Tribal Subsistence Fishing, and Subsistence Fishing Beneficial Uses in the San Francisco Bay Region,” as a priority project in the 2018 Triennial Review.

While we recognize that addressing the Bay’s contaminants is complex and will take decades, a first step in protecting all Bay Area residents, and not just recreational anglers, is to designate the Bay as supporting subsistence fishing and tribal cultural uses.

Please take this important first step as part of this Triennial Review so that more protective water quality standards and implementation plans can be adapted in the years to come.”

We revised the scoring of this project to reflect the possibility of external support, and thus this project has achieved a score of 61 and, as such, qualifies as a “high priority” project. We anticipate that we will be able to devote some of the Board’s limited Basin Planning resources to the project. Additionally, monetary and non-monetary external support for the project has been pledged by a variety of community and environmental advocacy organizations (see Comment 3.2 below). This pledged external support, combined with available internal resources should allow the Water Board to move forward on elements of this project over the next three years.

Comment Letter 2: Alameda County Water District (ACWD); August 20, 2018

Comment 2.1: “Despite the low prioritization of the Modification of Groundwater Sub-basin Boundaries project in the Regional Board’s July 2018 Staff Report, ACWD wishes to reemphasize its request to update the Basin Plan to correctly identify the Niles Cone Sub-basin boundary and to ensure consistency with the California Department of Water Resources’ (DWR) Final 2016 Bulletin 118 Groundwater Basin Boundaries. However, if the Modification of Groundwater Sub-basin Boundaries remains ineligible for update during this 2018 triennial review process due to low prioritization, ACWD respectfully requests that

the Regional Board insert a footnote in all figures showing basin boundaries (such as Figure 2-10 and Figure 2-10D) in the existing Basin Plan to explain that some basin boundaries have been modified through DWR’s Basin Boundary Modification Request system and that the reader should refer to DWR’s most recent Bulletin 118 publication for up-to-date boundary information.”

We thank the commenter for the good suggestion. We will look for an opportunity to accommodate the sensible request to add footnotes in Basin Plan groundwater basin maps as recommended in the comment.

Comment 2.2: “ACWD supports the general concept of the Regional Board developing new objectives for in-stream flow on a tributary- or watershed-specific basis. However, ACWD’s support is based on the assumption that such flow objectives can benefit fisheries restoration while simultaneously protecting critical local water supply. Accordingly, ACWD respectfully requests that any in-stream flow criteria for Alameda Creek be developed in conjunction with existing scientific studies characterizing the Alameda Creek watershed and that the updated Basin Plan not contradict ACWD’s previously issued Biological Opinions and/or CDFW operating agreements.”

The project to develop flow criteria for selected streams did not rank highly enough to be included in the high priority projects that we are likely to work on over the next three years. Certainly, the goal of flow criteria would be to protect beneficial uses, including those involving fisheries and water supply. The Water Board would also make use of all relevant scientific information when developing flow objectives. It is not possible to evaluate how any future flow objectives would comport with existing biological opinions or operating agreements.

Comment Letter 3: San Francisco Baykeeper, Clean Water Action, Environmental Justice Coalition for Water, Bayview Hunters Point Community Advocates, California Indian Environmental Alliance; August 20, 2018

Comment 3.1: “First, Commenters believe that the Staff Report undervalues the amount of external resources already expended on Project 2.6. The Staff Report gives Project 2.6 a score of 1 out of a possible 5 points. As we discussed in our initial comments, several studies have been conducted showing that subsistence fishing occurs in the Bay regularly. In meetings between Commenters and Regional Board staff, staff has recognized the studies documenting subsistence uses are already available. While these studies were not prepared expressly for the Project, the studies evaluate the extent of subsistence uses in the Bay and are available to the Regional Board to use in implementing this Project. Accordingly, Commenters urge the Regional Board to increase the score for this factor to a minimum of 3.”

The category “External Resources Already Invested” refers to funding provided to assist the Water Board in coordinating technical information and stakeholder outreach for Basin Plan amendments. The implication of this category is that a project has already been initiated, and the external funding has been provided in support of this project. The Water Board has not yet worked on this project, so we do not recognize already existing information and efforts as constituting “external resources already invested.” It is often the case the information exists prior to initiation of a project, but we do not count such information as constituting an external investment in a project

(for ranking purposes) unless it was developed as part of a project we are actively working on. We will retain the score of one for this category.

Comment 3.2: “Second, Commenters believe that the Staff Report undervalues the amount of external resources likely available for Project 2.6 and that it should be accorded more points, as a result. The Staff Report gives Project 2.6 a score of 3 out of a possible 10 points in this category. Commenters are committed to using their organizational resources and garnering additional resources to gather the information Regional Board staff needs to evaluate tribal and subsistence uses in the Bay and, in fact, have already started doing so.

While Commenters do not have the financial means to hire consultants to provide outside resources for Project 2.6, the Regional Board should not discount the non-monetary resources, including experience with affected communities, that are available to help implement Project 2.6. Such recognition of non-monetary resources is also within the scope of Environmental Justice and avoids a situation where projects that impact local communities are not prioritized because they cannot compete with discharger resources. Accordingly, Commenters urge the Regional Board to increase the score for this factor to a minimum of 6.”

We are persuaded by the commenters’ demonstration that the prospects for the availability of external resources to support the project are good. The score for this category is therefore increased from three to five points. We do not believe that the score should be higher than this as there is, at present, a commitment of resources rather than an existing funding or support mechanism in place. In other words, the availability of resources is likely but not guaranteed or already in existence. The increased score for this category moves the total score for the project to 61 points, which qualifies the project as a “high priority” project, and the project remains the seventh-ranked project overall.

Comment 3.3: “Finally, Commenters believe that the Staff Report undervalues the amount that Project 2.6 will further protect beneficial uses. The Staff Report gives Project 2.6 a score of 10 out of a possible 15 points in this category. While we appreciate that the Staff Report recognizes that Project 2.6 significantly protects beneficial uses, Commenters believe that Project 2.6 should receive a score of 15 for this category. Designating beneficial uses is the first step in protecting such uses. Thus, it is a necessary prerequisite before the Regional Board can consider these uses in future planning.”

The score for the category “Water Board Mission (Protect Beneficial Uses)” is proportional to the degree to which the project would result in the protection of beneficial uses. While it is true that the first necessary step in protecting beneficial uses is to recognize them, such recognition is not sufficient for their protection. We reserve a score of 15 points in this scoring category for those projects that will result in policies or measures that directly protect beneficial uses. We are comfortable with the score of 10 points we have assigned to the project to designate uses.

Comment Letter 4: Marin Audubon Society (Barbara Salzman, Phil Peterson); August 19, 2018

Comment 4.1: “This is to convey Marin Audubon Society’s support for including the Petaluma River as a highest priority project for a TMDL as part of the amendment to the

Bay Plan being conducted over the next three years. Petaluma River's natural resources have long been neglected, even though their value is extremely high locally and for the entire estuary. Impacts to the river's water quality come from agricultural runoff and increasing industrial and urban development.

It is time the Regional Board focused on the Petaluma River's water quality to assure the health and viability of all its critical natural resources.”

We appreciate the comment. We are actively working on a TMDL project for bacteria in the Petaluma River and anticipate releasing the draft Basin Plan amendment and supporting Staff Report for public review later this year. Project materials are [available on the website](#) for the project.