

Appendix E

Response to Comments

STAFF RESPONSE TO WRITTEN COMMENTS ON THE STAFF REPORT AND PROPOSED BASIN PLAN AMENDMENT

Two comment letters were submitted during the public comment period, which closed on November 7, 2023. The comment letters were from the U.S. Environmental Protection Agency (U.S. EPA) and the Bay Area Clean Water Agencies (BACWA). The comments are summarized below in italics (paraphrased for brevity) and followed by staff's response. For the full content and context of the comment, please refer to the comment letters.

Revisions to the September 21, 2023, draft Staff Report and proposed Basin Plan amendment that was circulated for public review are shown with ~~striketrough~~ text for deletions and underline text for additions.

U.S. EPA Comments

***Comment 1:** U.S. EPA supports the proposed amendment. For clarity U.S. EPA suggested a change in section 4.7.2.2 Cyanide to make the text consistent with that in section 7.2.2.6 Mercury TMDL Implementation.*

Response: We revised the amendment and the Staff Report accordingly.

Effluent limits for shallow water dischargers that have been granted an exception to Basin Plan Prohibition 1 shall be based on the dilution credits set forth in Table 4-6. Alternatively, effluent limits for these shallow water dischargers may be based on updated dilution credits derived in accordance with the SIP¹ requirements to account for water conservation or water recycling projects. ~~reflect changes in conditions of the discharge.~~ Setting forth dilution credits in Table 4-6 does not authorize discharges into shallow waters. Each discharger must continue to satisfy all requirements for an exception to Basin Plan Prohibition 1.

***Comment 2:** U.S. EPA emphasizes the need to conduct antidegradation and anti-backsliding analyses to ensure that pollutants within mixing zones will not be lethal to aquatic organisms and human health, and that the mixing zones when established would not impact the water body as a whole.*

Response: We agree.

¹ State Implementation Policy (SIP) or the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries in California applies to discharges of toxic pollutants into the inland surface waters, enclosed bays, and estuaries of California subject to regulation under the State's Porter-Cologne Water Quality Control Act and the federal Clean Water Act. The SIP establishes a standardized approach for permitting discharges of toxic pollutants to non-ocean surface waters.

The Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bay, and Estuaries of California (SIP), other applicable policies, regulations, and guidance speak to the need to ensure that mixing zones do not create local hot spots where aquatic/benthic organisms pass through and get negatively impacted by higher discharge concentrations. As we establish mixing zones in accordance with applicable policies, regulations, and guidance, we will continue to ensure that they do not create local hot spots.

The Staff Report includes an antidegradation analysis for the proposed Basin Plan amendment and discusses the anti-backsliding analysis required for less stringent limits or conditions in modified and reissued NPDES permits. If the implementation of the proposed Basin Plan amendment results in less stringent effluent limits or conditions in NPDES permits, the Water Board will conduct the appropriate antidegradation and anti-backsliding analyses to ensure that any new requirements comply with the applicable laws and regulations (including the state's antidegradation policy in State Water Resources Control Board Resolution 68-16; the federal antidegradation policy contained in 40 C.F.R. § 131.12; and the anti-backsliding requirements in 33 U.S.C. § 1342(o) and 40 C.F.R. § 122.44(l)) and are protective of aquatic organisms.

Comment 3: *U.S. EPA stresses that mixing zones should be carefully evaluated and appropriately limited to ensure protection of aquatic life and human health, particularly for the proposed amendment that would allow to use other applicable policies, regulations, and guidance in addition to the SIP for developing dilution credits for non-priority toxic pollutants, and encourages development of implementation procedures for these non-priority toxic pollutants to ensure that the beneficial use of the waterbody as a whole is not impacted.*

Response: We agree.

The introduction to the SIP states that it establishes implementation provisions specifically for the priority pollutant criteria promulgated by U.S. EPA through the National Toxics Rule and California Toxics Rule.

Other applicable policies, regulations, and guidance contain procedures to establish mixing zones and dilution credits for non-priority pollutants are readily available. For example, U.S. EPA's Technical Support Document for Water Quality-based Toxics Control (TSD, EPA/505/2-90-001) contains similar procedures to establish mixing zones, which were used as a basis when developing the SIP mixing zone procedures. The California State Toxicity Provisions specify that when developing mixing zones and dilution credits for toxicity, one should follow the SIP procedures. Implementing other applicable policies, regulations, and guidance will continue to protect beneficial uses for each waterbody as a whole.

Basin Plan section 4.6.1.2, even with the proposed amendment, contains requirements and conditions to consider when granting dilution credits for shallow water dischargers, for example, "a demonstration compliance with both acute and chronic chemical-specific water quality objectives," "an evaluation of worst-case conditions (in terms of tidal cycle, currents, or instream flows, as appropriate)," "an evaluation of the potential for accumulation of pollutants in aquatic life or sediments to levels that would impair aquatic life or threaten human health." We will continue to implement the Basin Plan section to ensure "*the beneficial use of the waterbody as a whole is not impacted*" when establishing mixing zones and dilution credits.

Bay Area Clean Water Agencies (BACWA) Comments

Comment 1: BACWA fully supports the proposed Basin Plan amendment. For better clarity and accuracy of the Staff Report, BACWA suggested four minor edits.

Response: We revised the text in the Staff Report as follows:

Page 3: As a result, the water-recycling process and blended discharges can prevent wastewater agencies from meeting NPDES permit requirements based on cyanide dilution credits and mercury concentration triggers currently in the Basin Plan.

Page 3, 13: We corrected the citation for the “California’s Water Supply Strategy – Adapting to a Hotter, Drier Future”.

California All, et. al. California Natural Resources Agency (2022). California’s Water Supply Strategy – Adapting to a Hotter, Drier Future, August 2022.

Page 8, 12, 14: We updated the Mercury and PCBs Watershed Permit number: ~~R2-2017-0044~~ R2-2022-0038.

Page 13: Adapting to a Hotter, ~~Drier~~ Drier Future.

Comment 2: BACWA encourages the Water Board to continue working towards making the entire Basin Plan accessible for download and compliant with the Americans with Disabilities Act.

Response: We have Americans with Disabilities Act (ADA) compliant Basin Plan documents by chapters posted on our Basin Plan webpage; any minor changes related to format for this Basin Plan amendment and for future changes will be for creating a more consistent document in formatting, and to meet new ADA rules that may come out in the future.