



NCRWQCB

OCT 7 - 2015

Judy Arnold, Chair  
Marin County Board of Supervisors

October 7<sup>th</sup>, 2015

Barbara Pahre, Vice Chair  
Golden Gate Bridge,  
Highway/Transportation District

Charles Reed  
California Regional Water Quality Control Board  
North Coast Region  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403

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<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date

Jim Eddle  
Golden Gate Bridge,  
Highway/Transportation District

Debra Fudge  
Sonoma County Mayors and  
Councilmembers Association

RE: Comments regarding the Draft Russian River TMDL

Madeline Kellner  
Transportation Authority of Marin

Dear Mr. Reed;

Jake Mackenzie  
Sonoma Mayors and Councilmembers  
Association

I am writing on behalf of the Sonoma Marin Area Rail Transit District ("SMART") to submit comments on the Draft Staff Report for the Action Plan for the Russian River Pathogen Indicator Bacterial Total Maximum Daily Load ("TMDL").

Stephanie Moulton-Peters  
Marin Council of Mayors and  
Councilmembers

Gary Phillips  
Transportation Authority of Marin

SMART has no record of receiving any notice from the Regional Board regarding the TMDL. SMART was advised on 9/29/2015 by another commentator that SMART was named in Table 9.1 of the Implementation Plan. Upon a cursory review of the staff report, SMART determined that although it is named in Table 9.1 as an implementing party for homeless and illegal camping it is not named in the relevant text (section 9.2.10) of the staff report requiring any action by SMART.

David Rabbitt  
Sonoma County Board of Supervisors

Carol Russell  
Sonoma Mayors and Councilmembers  
Association

Kathrin Sears  
Marin County Board of Supervisors

*Based upon both the lack of the required notice to SMART and the apparent inconsistency between Table 9.1 and Section 9.2.10 of the staff report SMART can only presume that its inclusion in Table 9.1 is in error and accordingly requests that SMART be removed from the Implementation plan and Table 9.1. Notwithstanding, and out of an abundance of caution, SMART is submitting these initial comments for consideration.*

Shirlee Zane  
Sonoma County Board of Supervisors

Farhad Mansourian  
General Manager

SMART was created by the California State Legislature (AB 2224) in 2002 as a district of limited jurisdiction to provide for a unified and comprehensive structure for the ownership and governance of a passenger rail system in Sonoma and Marin Counties. The passenger service operates in harmony with an existing freight service. SMART's rail service is regulated by both the Federal Railroad Administration ("FRA") and the California Public Utilities Commission ("CPUC"). Relevant to the TMDL area, SMART owns a railroad right-of-way consisting of between 60 feet to 100 feet in width.

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Table 9.1 of the Staff Report purports to identify SMART as an implementing party and requires SMART to submit a BLRP. Water Code Section 13267(b)(1) requires the Regional Board to identify evidence that supports requiring any party to submit reports.

SMART could find no such evidence contained in the Staff Report. Moreover, as noted previously, SMART primarily owns a 60 to 100 foot wide strip of land containing a railroad right-of-way. While trespassing over the railroad right-of-way may have been an issue in the past, SMART has no knowledge of any illegal activity that would support the Regional Board's authority to require SMART to file a BLRP.

Putting aside the preemptive nature of the FRA requirements, both the FRA and CPUC safety rules require SMART to remove obstructions from its tracks and/or right-of-way and maintain clearance. SMART is not aware of any illegal encampments presently located on its property and will not permit any such encampments. Moreover, any illegal encampments are detrimental to railroad operations and may violate FRA and CPUC safety requirements. As such, SMART will cooperate with our law enforcement partners to ensure that no illegal encampments are allowed on the SMART right-of-way.

The Staff Report purports to require the submission of a BLRP that (1) provides secure waste disposal facilities for homeless persons; (2) provides options for shelters and other homeless services; (3) requires installation of physical barriers; and (4) requires initiation of programs that provide public restroom facilities. It is respectfully submitted that the Regional Board lacks the authority to proscribe specific actions to SMART beyond those specific and necessary powers granted to SMART by the legislature. Notwithstanding the foregoing, SMART is committed to working, within the confines of its statutory authority, with the County of Sonoma and other affected agencies to address the homeless and illegal encampments.

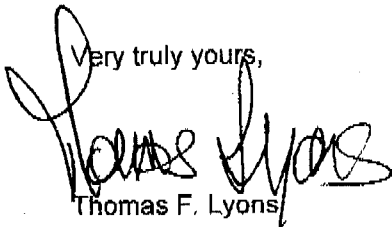
Procedural Concerns:

As previously stated SMART believes it's inclusion in Table 9.1 of the DRAFT Staff Report was in error and should be removed. If the Regional Board is unwilling to remove SMART from the Staff Report, SMART asserts its right to be given proper notice and the opportunity to adequately respond to the staff report prior to the hearing as provided by 40 C.F.R section 25.5(b).

As a final point, though SMART is not the appropriate implementing party, SMART shares the Regional Board's desire to protect water quality and is committed to working with the Regional Board, the County of Sonoma and other affected agencies to address both water quality issues and illegal encampments.

Thank you for your consideration of SMART's comments.

Very truly yours,



Thomas F. Lyons  
General Counsel