

Appendix D

Responses to Comments

received during the comment period
ending in October 2006

- I. Staff responses to written comments submitted
in response to recirculation of Basin Plan amendment
package on August 31, 2006
- II. Staff-initiated changes

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**I. STAFF RESPONSES TO WRITTEN COMMENTS SUBMITTED
IN RESPONSE TO RECIRCULATION OF THE BASIN PLAN
AMENDMENT PACKAGE ON AUGUST 31, 2006**

Comment Letter no. 1: Living Rivers Council

The Living Rivers Council submitted comments and suggestions for Water Board actions related to enforcement of the TMDL: “Enforcement recommendations should be an integral part of the San Francisco [Bay] Basin Plan.”

While Water Board members and staff are confident that our regulatory powers are sufficient to protect the waters of the state, the Living Rivers Council is correct that familiar aspects of enforcement such as penalties are not specified in the Basin Plan. However, the elements of TMDLs, Water Quality Attainment Strategies, and their associated implementation plans—which are incorporated in the Basin Plan through amendment processes like this one—are enforceable and indeed enforced through permits, waste discharge requirements, and waivers to waste discharge requirements issued by the Water Board in conformance with the Basin Plan.

Our proposed TMDL requires dischargers to demonstrate *attainment* of allocations by *complying* with implementation plan requirements, namely permits, prohibitions, and orders. Conditions of compliance are specified in these orders and permits. The Water Board pursues enforcement when a discharger violates a discharge prohibition or conditions specified in an order or permit. The Water Board’s approach to enforcement is based on the State Water Resources Control Board’s Water Quality Enforcement Policy (2002) and need not be reiterated in the Basin Plan.

Comments 1 through 7 were submitted by the Living Rivers Council as “Actions the Water Board should take.”

Comment 1: The Water Board should “advocate for county and city Conservation Regulation changes that provide for adequate stream buffers or setbacks for all new agricultural, replanting, and building projects.”

The Water Board has been a consistent advocate for effective stream setbacks as evidenced by our comments in support of revisions to the Napa County Conservation Regulations that enhance stream setbacks. We will continue to advocate for innovative and effective approaches, including setbacks, and encourage stream restoration both through our participation in the update process for the Napa County General Plan and through development of the Water Board’s Stream Protection Policy. With regard to agriculture, one example of a program that is contributing to the establishment of effective setbacks in the Napa River watershed is the Fish Friendly Farming certification

program (often referred to as Napa Green). As a condition of certification, landowners are required to establish and restore a stream setback equal to four times the natural bankfull channel width. During the past three years, 17,000 acres of vineyard and adjacent rural lands in the Napa River watershed have enrolled in the Fish Friendly Program.

Comment 2: The Water Board should “advocate for developing Napa County Conservation Regulation(s) that require the fencing off of all cattle and horse grazing from streams....Both [the county and the City of Napa] should be required to develop protection of streams with cattle exclusion zones.”

Although we concur with what we interpret as the commenter’s objective – protection of water quality and habitat – we do not concur that fencing is the only or the best approach for achieving this goal in rangelands. Therefore, we have not advocated for this requirement as a revision to the County Conservation Regulations, or to environmental permitting regulations for the City of Napa.

Water Board staff currently are working with scientists at the University of California Division of Agriculture and Natural Resources, the USDA Natural Resources Conservation Service, and local ranch managers, to develop waiver conditions for General Waste Discharge Requirements to control pathogen, nutrient, and sediment discharges associated with livestock grazing and associated land use activities (e.g., roads, stock ponds, etc.). In some cases, to achieve pathogen and/or other pollutant load allocations, fencing of stream-riparian corridors may be the best approach. In other cases, alternative watering locations and/or changes in grazing management strategies, and/or biotechnical bank stabilization and re-establishment of native riparian tree species may provide the most effective means of reducing pollutant discharges from rangelands.

Comment 3: “The Water Board should require local agencies to...report any pathogenic pollution violations they become aware of, even those involving other governmental agencies.”

We are not certain whether the commenter is advocating for a central, area-wide violation reporting mechanism, or is concerned that violations may go unreported and unaddressed? Generally speaking, the Water Board does not require all government entities to report violations to us. We can encourage them to do so and there are a number of programs in effect to assure that agencies either report violations to us or take action to abate the problem. However, local agencies that operate wastewater treatment facilities or stormwater conveyance systems are already required by permit conditions

to institute prompt and effective violation reporting mechanisms and to take prompt action to remediate any problem discharges.

Comment 4: “Eliminate waivers except under the condition that they only extend for a time period of one year.”

Perhaps the commenter is not familiar with the term “waiver” as used by the Water Board and explained in the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (“Nonpoint Source Policy,” 2004). The intended use of waivers of Waste Discharge Requirements is consistent with the policy. We quote from the section on waivers below:

Waivers of Waste Discharge Requirements

The requirements for a discharger to submit a Report of Waste Discharge (RoWD) or for a RWQCB to issue Waste Discharge Requirements (WDRs) may be waived by the RWQCB or SWRCB for a specific discharge or a specific type of discharge if the SWRCB or RWQCB determines, after a public meeting, that the waiver is consistent with any applicable State or regional water quality control plan and is in the public interest.^{xv} All waivers are conditional and may be terminated at any time. Except for waivers for discharges that the SWRCB or a RWQCB determines do not pose a significant threat to water quality, waiver conditions must include, but need not be limited to, individual, group or watershed-based monitoring. Waivers may not exceed five years in duration, but may be renewed. Prior to renewing a waiver, the SWRCB or RWQCB must determine whether the discharge in question should be subject to general or individual WDRs.

CWC section 13269(e) provides that “the regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted....” Therefore, even where the RWQCBs decide to waive the requirement to submit a RoWD for general WDRs, the RWQCBs are encouraged to have an enrollment process for coverage under the waiver of WDRs so that the RWQCBs can identify the dischargers who are required to comply with the general waiver of WDRs. Although the RWQCBs retain their prosecutorial discretion to decide how to ensure compliance with their conditional waivers, the language of section 13269(e), makes it clear that the legislature intends that the RWQCBs allocate some of their resources to ensuring that dischargers are in compliance. Following SWRCB adoption of a fee schedule, RWQCBs are authorized to collect annual administrative fees to establish and implement waivers of WDRs.

There are many different ways for the RWQCBs to ensure compliance. In the event of noncompliance, a RWQCB could rescind a waiver, or terminate its applicability to individual dischargers, and issue WDRs in its place. If the waiver leaves significant discretion with the discharger to determine how to comply with the waiver's conditions, the RWQCB could adopt a new waiver that is more directive in terms of the actions that the dischargers must take in order to comply with the waiver. In order to be enforceable, waiver conditions should be clearly specified.

Comment 5: "The Water Board...should...estimate the cost to the public of having polluted water in loss of recreational value, probably cost of human sicknesses, and a numerical value of preserving a clean animal habitat."

We agree that it would be informative to analyze costs and benefits in this way, but the Water Board has neither the resources nor the expertise to do so. CEQA and the state Water Code do not require such an analysis, but they do require us to evaluate implementation costs so that economic costs are taken into consideration during the adoption process. Please keep in mind that our agency has a public mandate. Our commitment to restoring and protecting beneficial uses of water and the intangible and tangible benefits of doing so were considered in the 1970s, when the California Water Code and federal Clean Water Act were adopted. We are not in a position to question or revisit this overall mission based on a cost benefit analysis.

Comment 6: Referencing the Constantine Winery, Mr. Stephens suggests that "repeat offenders of violations of the Clean Water Act regarding pathogens should have their permits revoked."

The State Water Resources Control Board's *Water Quality Enforcement Policy* emphasizes "fair, firm, and consistent enforcement" and contains guidance for setting enforcement priorities. The policy endorses a progressive enforcement approach and allows the Water Boards to use their enforcement resources to "1) assist cooperative dischargers in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance." The enforcement policy includes a chapter describing how compliance with Waste Discharge Requirements, Basin Plan discharge prohibitions, NPDES permits, etc. can be determined through discharger self-monitoring reports, compliance inspections, facility reporting, complaints, or file review.

The example provided relative to pathogens discharges to the Napa River associated with regulated facilities warrants clarification. We assume the winery you refer to is the

Cosentino Winery, a commercial winery in an unincorporated area of Napa Valley north of the town of Yountville and immediately north of the Mustards Grill restaurant property. There are no municipal sewers in this area. The Winery and nearby restaurant are served by on-site treatment systems to treat their sanitary wastewater. In the past, the Winery and Mustards Grill were both served by the same system. The old system was inadequate, and the two businesses decided to build separate, new systems. The commenter also states that the Cosentino Winery has a long history of Clean Water Act violations due to spraying winery effluent on vineyards. While Cosentino Winery has vineyards on its property, they are not authorized to spray winery effluent on their vineyards. Those vineyards are irrigated by drip irrigation, not spray, and were never part of the designed wastewater system.

Because they discharge sanitary wastewater to land and are not authorized to discharge directly to waters of the United States, Mustards Grill and the Consentino Winery are regulated under the State Water Code, not the federal Clean Water Act. In 2005, Mustards Grill completed construction of a new treatment system and Consentino Winery is currently constructing a new system. Both new systems include manufactured package treatment units and subsurface drip dispersal systems. All treated sanitary wastewater is dispersed below ground and by design will not contact or commingle with stormwater falling on and moving across the ground surface. These facilities are located approximately three quarters of a mile from the Napa River. The Water Board adopted updated Waste Discharge Requirements (WDRs) for Mustards Grill's new treatment system in October 2006 and will consider updated WDRs for the Consentino Winery at the November 2006 meeting.

If Mustards Grill or Cosentino Winery does not abide by the conditions set forth in their WDRs, the Water Board will pursue enforcement consistent with the State's enforcement policy.

Comment 7: The commenter states that sanitary sewer overflows during rainy weather reduce the ability of wastewater treatment plants to provide tertiary treatment, thereby increasing the likelihood that pathogens will be discharged in effluent. "Every sewer district in Napa County has this problem from one degree or another....The TMDL should establish a numerical target for lowering storm water inputs and sewer leakage out of the sewer systems to encourage better control." The commenter also makes a number of statements regarding the City of Calistoga's wastewater treatment plant's NPDES permit.

We are working aggressively with municipalities to address the problem of sanitary sewer overflows. The following text is excerpted from pages 40-41 of the Staff Report supporting the Napa River Watershed Pathogens TMDL:

Sanitary Sewer Systems:

An October 2003 Water Board resolution established a collaborative program between the Water Board and Bay Area Clean Water Agencies (BACWA) to reduce sanitary sewer overflows (SSOs). The collaborative program includes four key tasks:

- Establish SSO reporting guidelines
- Develop an electronic reporting system
- Establish guidelines for sewer system management plans (SSMP)
- Conduct a series of regional workshops to provide training on the first three tasks

Reporting guidelines, the electronic reporting system, and regional workshops were completed in 2004. The Water Board in cooperation with BACWA completed the Sewer System Management Plan (SSMP) Development Guide in July 2005. Some of the SSMP requirements direct wastewater agencies to:

- Develop an overflow emergency response plan to contain overflows and prevent wastewater from reaching surface waters
- Develop a Fats, Oils, and Grease (FOG) Control Program if needed
- Allocate adequate resources for the operation, maintenance, and repair of its collection system
- Prioritize preventive maintenance activities, such as scheduled cleaning of sewers, root control, and investigation of customer complaints
- Identify structural deficiencies and prioritize repair
- Monitor the effectiveness of each SSMP element

The Water Board notified wastewater collection agencies of the requirements for preparing SSMPs in July 2005.

On May 2, 2006, the State Water Board adopted general Waste Discharge Requirements for sanitary sewer systems (Board Order 2006-0003). All public entities that own or operate sanitary sewer systems greater than one mile in length and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California are required to apply for coverage under these WDRs by November 2, 2006. The WDRs contain provisions for SSO reduction measures, including development and implementation of SSMPs.”

By not including an *explicit* allocation for sanitary sewage leaks or overflows to the Napa River, the *implicit* allocation is zero. This is consistent with the federal Clean Water Act and existing NPDES permits, both of which prohibit sanitary sewer overflows that result in discharge of untreated or partially treated wastewater to waters of the Napa River.

Comment 8: In regard to the City of Calistoga's wastewater treatment plant, the commenter states, "The plant is overwhelmed and must operate at a lower level of efficiency producing secondly treated effluent instead of tertiary effluent."

Please note that secondary treatment is the national standard. Calistoga has upgraded its plant to provide tertiary treatment for 90 percent of its wastewater. This allows the water to be reused, especially during the dry season, which decreases water supply demand. It also eliminates the need to discharge when the Napa River flow is too low to provide adequate dilution.

Comment 9: In regard to the City of Calistoga's wastewater treatment plant, the commenter states, "If water is coming into the system during wet weather it is equally leaking out of the system during dry weather, possibly contaminating ground water and possibly finding its way into surface waters."

During wet weather, influent flows increase due to a combination of infiltration and inflow. This is the case with all sewage collection systems. For Calistoga, we do not know how much is infiltration (flow from groundwater) and how much is inflow (flow through manhole covers or misconnected storm water runoff lines, for instance). During the dry season, the reverse of inflow and infiltration cannot occur because gravity causes storm runoff to flow into a sewage collection system, which can only happen during wet weather. Reverse infiltration is probably minimal. Infiltration occurs because of hydraulic pressure from saturated groundwater forcing water into the sewer system. Wastewater in the sewers during the dry season provides little pressure to push water from the sewer into the surrounding soils. Therefore, dry weather "leakage" is far less likely than wet weather infiltration. If such "leakage" were to occur, however, any possible flows to surface water would be minimal because of the dry conditions. Furthermore, even if some flow were to reach surface water, the process of moving through the soil would be similar to or better than primary wastewater treatment. One would not expect pathogens to reach the Napa River via groundwater unless a sewer "leak" was to occur very close to the river.

Comment 10: In regard to the City of Calistoga's wastewater treatment plant, the commenter states, "The current NPDES Permit requires a failed maintenance program of identifying the sources and repairing of storm water leaks. It is apparent that the current maintenance programs are not sufficient if the equivalent of one month's volume is entering the system as noted in the application for Calistoga's NPDES permit."

The City of Calistoga's wastewater collection system includes 12.7 miles of major sanitary sewer lines and various pump stations. Consistent with the federal Clean Water

Act, its recently adopted permit (Order No. R2-2006-0066) prohibits sanitary sewer overflows:

Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

Calistoga is in the process of developing a program for preventative maintenance and capital improvements to ensure adequate capacity and reliability of its collection system. It's recently adopted permit requires specific actions to address sewer system management:

...The Discharger must properly operate and maintain its collection system.... The Discharger must report any noncompliance...and mitigate any discharge from the Discharger's collection system.... The General Waste Discharge Requirements for Collection System Agencies (Order No. 2006-0003 DWQ) has requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While the Discharger must comply with both the General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) and this Order, the General Collection System WDR more clearly and specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDR requirements for proper operation and maintenance and mitigation of spills will satisfy the corresponding federal NPDES requirements specified in this Order. Following reporting requirements in the General Collection System WDR will satisfy NPDES reporting requirements for sewage spills. Furthermore, the Discharger shall comply with the schedule for development of sewer system management plans (SSMPs) as indicated in the letter issued by the Regional Water Board on July 7, 2005, pursuant to Water Code Section 13267. Until the statewide on-line reporting system becomes operational, the Discharger shall report sanitary sewer overflows electronically according to the Regional Water Board's [sanitary sewer overflow] reporting program.

II. STAFF-INITIATED CHANGES

At the June 2006 adoption hearing, Board member Wolff suggested an addition to the proposed Basin Plan amendment, clarifying monitoring goals in the adaptive implementation section. Staff has added a fifth bullet on page 10 of the amendment proposed in November 2006:

- Collect sufficient data to evaluate the costs of pathogen source control measures and the existence of other pollutant reduction benefits (e.g., nutrients or sediment), if any