



bay restoration commission

STEWARDS OF SANTA MONICA BAY

santa monica bay restoration commission 320 west 4th street, ste 200; los angeles, california 90013
213/576-6615 phone 213/576-6646 fax www.smbrc.ca.gov

June 11, 2015

Agenda Item #3b

To: Governing Board, SMBRC

From: Tom Ford, Executive Director

Re: Commission Fiscal Year 2016 Work Plan

Action Requested of the Governing Board:

- Review and approval of the Fiscal Year 2016 Work Plan for submission to USEPA

Background

Section 320 of the federal Clean Water Act establishes the National Estuary Program (NEP), which is administered by the United States Environmental Protection Agency (USEPA). To implement the NEP, USEPA identifies national estuaries, develops a plan to restore the estuaries, and provides grants to pay for activities necessary to implement the plan. USEPA identified the Santa Monica Bay as a national estuary and approved the Santa Monica Bay Restoration Plan (BRP), with the concurrence of the State, that identifies actions and priorities to restore the Santa Monica Bay. In 2002, the California State Legislature established the Santa Monica Bay Restoration Commission (SMBRC) as a non-regulatory, locally based state government entity to advise and oversee activities and coordinate with state, local, and private entities to implement the BRP. To assist in the implementation of the BRP, the State Water Resources Control Board (SWRCB) provides administrative services to the SMBRC and USEPA provides an annual grant to the Bay Foundation (TBF) to pay for activities necessary for the development and implementation of the BRP. USEPA requires 50-50 matching contributions for its grants. The California legislature has not appropriated funds to implement the BRP; the USEPA grant to TBF provides the primary funding for implementation of the BRP. In lieu of direct funding, the SWRCB contributes by providing state staff, office space, and other administrative services to the SMBRC. In addition, TBF receives other grants and donations that assist in its activities.

Each year, the SMBRC, in collaboration with TBF and the Santa Monica Bay Restoration Authority (SMBRA), prepares and submits a work plan to USEPA that identifies the expected tasks and activities necessary to implement the BRP, the objectives to be achieved, and the entity that is expected to carry out the specific tasks. The work plan also identifies funding sources and specifies a timeline and budget for the fiscal year. USEPA uses the annual work plan to track grant expenditures and progress toward achieving the program's objectives, and to compile information on the environmental outcomes of work plan implementation.

our mission: to restore and enhance the santa monica bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the bay's benefits and values



The draft Fiscal Year 2016 (FY16) work plan (accompanying this staff report as a separate document) builds upon the work being carried out in the current fiscal year and for this reason, many of the tasks in the current work plan will be carried over from fiscal year 2015. Meanwhile, changes and additions are proposed to reflect new program priorities and new project opportunities, and in response to suggestions received from members of the Watershed Advisory Council during its annual meeting. The table attached below (Table 1) provides a summary of the FY16 work plan tasks and how they are related to the tasks in the current (FY15) work plan. The FY16 work plan also includes revisions to the FY15 work plan to provide more clarity regarding the entity that is expected to carry out the particular tasks.

Also accompanying this staff report is a summary of comments made by WAC members at the annual WAC meeting and staff responses to the comments. WAC comments incorporated in the work plan are indicated in the responses and highlighted in yellow.

Although the 2016 federal fiscal year does not start until October 1, the work plan must be adopted and submitted to USEPA in June to allow sufficient time to process TBF's annual grant application before the start of the federal fiscal year. A letter from USEPA (attached) acknowledges early receipt of this draft Work Plan in order to start the grant re-application process. As the recipient of the USEPA Clean Water Act Section 320 grant funding, TBF will prepare and submit the grant application including the final, Governing Board-adopted work plan, and receive and administer the grant funding in support of the SMBNEP.

Format Changes and History of Work Plan Description

In an effort to provide more clarity about which entity is engaged in which project or activity, the FY16 Work Plan follows the recently-released 2015 Annual Report in more accurately describing how the SMBNEP entities interact. Thus, for each project or activity, you will see a descriptor such as "SMBRC," "TBF," or "SMBRA".

In past Work Plans (and generally in the past when describing the SMBNEP), the focus was on the activities and projects themselves and not on the internal structure of the SMBNEP that served to execute on those activities and projects. Rather, the internal structure was colloquially referred to as "the Commission" or "SMBRC" without mention of the other NEP partners. Indeed, prior to the creation of the SMBRC, the SMBR Project, housed within the SWRCB and its partner, the Santa Monica Bay Restoration Foundation, were simply referred to as "The Project" or "SMBRP". This occurred in prior work plans, annual reports, correspondence by and to former SMBRC and TBF executive directors, etc. At the time, it was thought that the focus should be on the projects themselves, and not the internal structure, so there was no emphasis to distinguish among entities in the documents themselves, despite the structural and legal differences among the entities (see the Memorandum of Agreement Between the SMBRC and the SMBRF for reference).



The SMBNEP has been asked both by its USEPA project officer (the grant administrator) as well as SWRCB legal counsel to apply more specificity in its reporting documents, including the particular entity descriptors, as well as other language clarifying the SMBNEP's structure.

However, it should be noted that neither the FY16 Work Plan nor the 2015 Annual Report change the structure or assignment of projects or activities. As described above, the SWRCB provides administrative services and TBF receives grant funding from USEPA to conduct certain tasks. In addition, TBF receives grants and funding from other sources to conduct activities consistent with its mission. Revisions to the FY16 work plan do not change this structure.

The 2015 Annual Report and 2016 Work Plan reflect this effort to provide clarity and will continue to do so going forward.

Likewise with any other project of the SMBNEP—the new work plan format will clearly show which entity is performing the particular tasks.

The SMBRC Governing Board has received comments regarding the FY16 Work Plan. The comments and responses are as follows:

Ballona Wetlands Land Trust (Walter Lamb):

Comment: The proposed 2016 plan would substantially redefine the relationship between the Commission (SMBRC) and Foundation (SMBRF or TBF).

Response: The comment mischaracterizes the 2016 Work Plan. It does not reassign from the SMBRC to TBF the Ballona Wetlands Ecological Reserve tasks. As noted above, the purpose of revisions to the 2016 Work Plan is to more clearly identify the roles of the different entities that support the SMBNEP. With respect to the Ballona Wetlands project, the SMBRC voted in October 2010 to support the restoration process consistent with the Bay Restoration Plan. Like many projects to restore the Santa Monica Bay and identified in the Work Plan, the SMBRC does not have a direct role in that project. The lead agencies, including the California Department of Fish and Wildlife, the State Coastal Conservancy, and the US Army Corps of Engineers, have engaged TBF and other outside entities in gathering information to allow these lead agencies to collect information and prepare draft environmental documents. TBF has received funding from the State Coastal Conservancy and other grantors, such as the Annenberg Foundation, to assist the lead agencies in the California Environmental Quality Act process.

Further, Mr. Lamb quoted and misconstrues a statement from a legal document in the case of *Ballona Wetlands Land Trust v. Santa Monica*

our mission: to restore and enhance the santa monica bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the bay's benefits and values



Bay Restoration Commission. The SMBRC is certainly aware of tasks performed by TBF staff set forth in the Work Plan it approves, but TBF staff are not employees of the SMBRC, thus it cannot in a legal document state what “official duties” employees of TBF have.

Comment: Almost a year ago, the Foundation decided to stop providing numerous staff to the Commission, without any consultation with the Commission's Governing Board. They did this because they did not want certain records in the possession of those staff to be disclosed to the public under the state's transparency laws, to which the Commission is subject. Some of those documents, secured by the Land Trust only after we filed our lawsuit against the Commission, and only after many months of searching, are attached. They relate to the ill-advised decision to allow a private entity, with a special interest in the outcome of the Ballona CEQA analysis, to fully fund the position of Ballona Wetlands CEQA Project Manager, which is listed as an SMBRC staff position in the current 2015 Work Plan (pg 30).

Response: The comment is inaccurate; the revisions to the 2016 Work Plan are not intended to avoid disclosure of records legally required to be disclosed, but rather to more clearly identify SMBRC and TBF staff members' assignments. In prior years, all “staff” were listed as “Commission staff” and identified as such. As is clear from Mr. Lamb's comment, this has created confusion. The California State Legislature has never appropriated funding to the SMBRC, thus it never had the ability to hire staff. Rather, as the Work Plan points out, TBF employees and contractors are funded pursuant to the USEPA grant to perform certain duties for the SMBRC. However, not all TBF staff perform work for the SMBRC. Some TBF staff perform work for both the SMBRC and TBF and others work only on TBF projects and activities. The SWRCB provides staff that exclusively perform work for the SMBRC. To that end, both the SMBRC and TBF websites were changed to clarify this, whereby the SMBRC website only identifies staff assigned to the SMBRC and TBF's website identifies staff assigned to it.

Further, as noted above, TBF obtains funding from various sources to fund its activities; the SMBRC does not control TBF's funding activities. In addition, rather than being “ill-advised”, it is common practice for proponents of projects to assist in the cost of conducting the CEQA process.

Comment: Virtually every other funding arrangement secured by the Foundation has been openly communicated to the Commission, since it has long been understood that the Foundation secures funds specifically to further the work of the Commission. The funding agreements for the Ballona Wetlands CEQA Project Manager, however, were purposely never communicated to the Governing



Board. The Foundation staff serving the Commission were so eager for this information not to be disclosed, that they allowed the Commission to be sued rather than disclosing the information, which directly relates to their official responsibilities to the Commission.

Response: The comment is inaccurate and misleading. TBF is an independent Internal Revenue Code section 501(c)(3) organization that has its own Board of Directors and is funded by various sources, including grants and donations. It is not required to disclose its funding sources to the SMBRC; however it certainly provides information to the SMBRC relevant to its activities on behalf of the SMBRC, including reporting on its expenditures of USEPA grant funds. Further, TBF is not a public agency and thus is not required to comply with the Public Records Act, to which Mr. Lamb is alluding. The SMBRC, as a public agency, is required pursuant to the Public Records Act to produce documents in its possession that are not privileged upon request.

Comment: On May 20, 2015, Mr. Lamb sent an email to the Executive Committee of the SMBRC providing comments regarding the FY2016 Work Plan.

Response: On May 20, 2015, Frances McChesney, attorney at the State Water Resources Control Board's Office of Chief Counsel, provided a letter to the Executive Committee responding to Mr. Lamb's comments. That letter is attached for your information.

Amendments to the Memorandum of Agreement between SMBRC and TBF

When drafted and adopted by this Governing Board at its August 2012 meeting, the Memorandum of Agreement (MOA) contained some inaccurate and now outdated language. The MOA references the "Santa Monica Bay Restoration Foundation" which is now recognized as "The Bay Foundation". The Work Plan calls for the MOA to be amended to reflect this change.

The MOA also referred to TBF as the "fiscal agent" of the SMBRC. This was intended to demonstrate that TBF was and is the National Estuary Program grant recipient from USEPA, pursuant to Section 320 of the federal Clean Water Act. However, the language has incorrectly been interpreted to mean that TBF is managing funding that should have gone into the SMBRC's state account. This is not and never has been the case; federal law provides for federal funding to be provided to non-profit organizations to implement restoration plans for NEPs. Therefore, the Work Plan calls for amending the MOA as follows:

At page 4, section IV., the second full paragraph should be amended to read as follows:





“The Foundation receives some of its funding in the form of a U.S. EPA grant pursuant to Clean Water Act section 320 (33 U.S.C. §1330) to implement the Bay Restoration Plan and to provide administrative, management, and program services to the SMBRC. The Foundation also receives important grants and donations from other entities to support the Foundation and its activities. U.S. EPA oversees the grant, including conducting regular audits and oversight.”

A copy of the MOA, as proposed to be amended, is attached to this staff report.

Budget/Financial Impact

Adoption of this work plan is necessary for USEPA to award the SMBNEP section 320 grant funding for the 2016 fiscal year.

Attachments

- Table 1: Summary of FY16 Work Plan Tasks
- WAC comments summary
- Letter from USEPA, dated June 2, 2015, acknowledging receipt of draft FY16 Work Plan
- Memorandum from SWRCB Legal Counsel, dated May 20, 2015, to the SMBRC Executive Committee responding to public comments on the FY16 Work Plan
- Memorandum of Agreement between SMBRC and TBF with proposed amendments



Task #	FY 16 Task Description	Changes/Revisions from FY 15 to FY 16	
1	Water Resource and Quality Improvement		
1.1	Oversee Prop. 12, 50, and 84 /Grant Program	<ul style="list-style-type: none"> - Continue oversight of on-going projects. (SMBRC) - Solicit and recommend Prop. 84 funding for new projects with focus on projects identified under WMPs and EWMPs and partner with water agencies. (SMBRC) 	<p>No change from FY 15.</p> <p>New, addressing several WAC comments and GB input</p>
1.2	Facilitate development and implementation of water quality regulations in the Bay watershed	<ul style="list-style-type: none"> - Continue to participate in development of the enhanced watershed management plans and help in project development and implementation under the EWMP. Facilitate availability of Prop. 1 funding (SMBRC, TBF) - Facilitate monitoring on effectiveness of LIDs, continue to implement ongoing MWD LID project, working with TAC to facilitate regional research efforts. (SMBRC, TBF) - Engage in addressing on-site wastewater treatment system in Malibu Civic Center (SMBRC) - Continue to assist LARWQCB in boater outreach on MDR copper TMDL, including seeking funding for implementation assistance project. (SMBRC, TBF) 	<p>Similar to FY 15. Shift of focus from development to implementation of EWMP, addressing WAC comments and GB/EC input</p> <p>Similar to FY15. Add on-going MWD project, add TAC involvement in facilitating regional research, addressing WAC comments</p> <p>Similar to FY 15. Increase in communication with the City of Malibu and LARWQCB</p> <p>Similar from FY 15. Add new effort to seek funding, addressing diverse WAC comments</p>
1.3	Participate in Greater LA IRWMP	- Continue.	No change from FY 15
1.4	Implement Green Infrastructure and LID Projects in Targeted Watersheds	<ul style="list-style-type: none"> - Continue existing projects and carry out the new rain garden projects through the MWD grant and outreach through the new LADWP grants (TBF) - Facilitate parkland agencies to incorporate development and implementation of LIDs at their facilities (SMBRC) 	<p>No change from FY 15, addressing WAC comments</p> <p>Similar to FY 15. Change from implementation of parking lot retrofits to broader LIDs categories and locations.</p>
1.5	Climate Change Adaptation and Climate Ready Program	- Partnering with LARC, USC Sea Grant, Heal the Bay and coastal jurisdictions to carry out the Local Coastal Plan Sea	No change from FY 15

		Level Rise Adaptation project. (SMBRC, TBF)	
		- Conduct vulnerability assessment of BRP objectives and milestones (SMBRC, TBF)	New
		- Carryout the Santa Monica sandy beach restoration pilot project. (TBF)	New, addressing WAC comment
		- Carryout the kelp restoration/carbon sequestration pilot project. (TBF)	New
		- Install new pH/CO2 sensors in Santa Monica Bay. (SMBRC, TBF)	New, addressing WAC comment
		- Develop and seek funding for beach sediment management and habitat restoration projects. (SMBRC, TBF)	No change, addressing WAC comment
1.6	Clean Bay Restaurant Certification Program	- Further promote the program and raise awareness through social media campaigns events and increased media exposure, etc.(SMBRC, TBF)	Similar to FY 15. Continue the effort to expand the program to other cities, addressing WAC comments
2	Wetlands and Coastal Habitats Restoration		
2.1	Facilitate restoration of priority wetlands	- Ballona Wetlands: Continue the CEQA/NEPA process. (TBF)	No change, addressing WAC comments
		- Development of regional Level-3 wetland monitoring plan. (SMBRA, TBF)	Similar to FY 15. Continue to promote the project and seek additional funding.
		- Malibu Lagoon: Continue post-restoration maintenance and monitoring. (SMBRA, TBF)	No change, addressing WAC comments
		- Oxford Basin: Partner with LA County to continue carrying out the restoration project. (SMBRC)	No change, addressing WAC comments
2.2	Facilitate stream protection and restoration	- Continue to facilitate adoption of stream protection ordinance by local jurisdictions. (SMBRC)	Similar to FY 15. Plan to reinvigorate the effort with partnership with HtB and other organizations, addressing WAC comment
		- Develop historical ecology and conceptual restoration plans for Trancas and other coastal lagoons in Santa Monica Bay. (TBF)	No change from FY 15.
		- Identify and develop new projects in Ballona Creek watershed based on results of historical ecology and water budget studies. (SMBRC, TBF)	No change from FY 15

		- Carry out more fish barrier removal projects, including Arroyo Sequit. (SMBRC, TBF)	No change from FY 15
		- Promote restoration of lower Topanga Creek through restoration of the narrows and PCH bridge replacement. (SMBRC)	No change from FY 15
		- Carry out maintenance of the restored Stone Canyon Creek. (TBF)	No change from FY 15
		- Seek new funding opportunities to implement more Ballona Greenway Plan projects. (SMBRC, TBF)	Similar to FY 15. Seeking new upcoming funding opportunities, addressing WAC comments.
		- Continue to facilitate control of mudsnails, crayfish, and other invasive species. Continue to facilitate restoration of red-legged frog habitats. (SMBRC, TBF)	No change
3	Marine Habitat Protection and Restoration		
3.1	Promote marine ecosystem protection through outreach and information sharing	- Participate in the Los Angeles MPA Collaborative to facilitate management and overcome monitoring and enforcement challenges. (TBF)	No change, addressing WAC comment
		- Develop and implement new phase of the ocean vessel aerial monitoring project. (TBF)	Existing project completed. Explore to implement a new phase of the project
		- Promote programs to increase the supply of healthy local sustainable seafood. (TBF)	Complete and discontinue
		- Promote and/or participate in development of fishery management for important commercial and recreational fish species. (SMBRC, TBF)	Similar to FY 15, addressing WAC comment
		- Collaborate with PV cities to promote protection of intertidal habitats on PV through outreach and other mechanisms. (TBF)	Similar to FY 15. Seek additional resources to contribute to this effort, addressing WAC comment
3.2	Conduct research of important marine species and habitats	- Continue conduct and promote abalone study for release and restoration of abalone broodstock.(TBF)	Similar to FY 15. Explore partnership with Santa Monica Pier Aquarium and other organizations to promote abalone restoration
		- Conduct study of physical oceanographic responses to kelp restoration projects (TBF)	New

		- Continue California Halibut status research. (TBF)	Complete and discontinue
		- Assist federal partners in assessing eelgrass beds in the Bay. (SMBRC, TBF)	No change from FY 15
3.3	Restore rocky reef habitat	- Carry out the multi-year rocky reef/kelp restoration project. (TBF)	No change from FY 15
		- Continue to support the planned rocky reef restoration project by MSRP on Palos Verdes. (SMBRC)	No change from FY 15, addressing WAC comment
		Continue to investigate the feasibility of using materials removed from Rindge Dam for rocky reef and sandy beach restoration. (SMBRC)	On hold until further progress on Rindge Dam removal project.
3.4	Restore coastal dune and bluff habitat	- Participate in and promote restoration of coastal dunes and bluffs (TBF)	New
4.1	Conduct general outreach	- Continue existing outreach efforts and publications including annual report, Baywire, Urban Coast journal, general media outreach, social media outreach, and websites (SMBRC, TBF)	No change, addressing WAC comments
		- Continue existing internship and volunteer program (TBF)	No change
		- Continue participation of annual Coastal Cleanup Day through partnership with other organizations (TBF)	Similar to FY 15, without coordination role at Marina del Rey site.
4.2	Continue overseeing the Boater Education and Outreach Program	- Carry out the oil spill prevention outreach program under the CalRecycle grant, including oil absorbent exchange program and bilge pumpout installation (TBF)	No change
		- Continue existing boater education program including boating events/presentations, Changing Tide newsletter, Southern Cali. Tide Tables and Boating Guide, Clean Boating Packet, Honey Pot Day, and pumpout monitoring. (SMBRA, TBF)	No change
4.3	Oversee the PIE mini-grant program	- Continue to seek and raise funds from various local sources and initiate a new round of PIE. (TBF)	No change
4.4	Participate in the PV Shelf Institutional Controls Program	Continue to participate in activities of the Fish Contamination Education Collaborative and EPA Superfund site investigation. (SMBRC)	No change
5	Planning, Monitoring, and Program Management		
5.1	Increase funding and/or	- Continue to solicit annual member	Discontinue

	develop new financing mechanisms for BRP implementation	contribution.(TBF)	
		- Continue to develop fundraising strategies and seek other public and private funding opportunities, including Prop. 1. (SMBRC, TBF)	Similar to FY15, add Prop. 1 as a new potential funding source.
		- Continue to support the collaborative effort of local environmental and business communities for the County-wide storm water/urban runoff funding measure. (SMBRC)	No change, addressing WAC comment
5.2	Inter-agency coordination and involvement	- Continue to participate in various inter-agency committees and task forces. (SMBRC)	No change
5.3	Implement the Comprehensive Bay Monitoring Program	- Continue existing effort to evaluate progress and facilitate CMP implementation. Develop pilot fish larvae and deep reef surveys. (SMBRC, TBF)	No change
		- Evaluate the need for CMP update (SMBRC)	No change
		- Continue participation in development of habitat condition indices for rocky reef, and rocky and sandy beaches and facilitate volunteer survey of intertidal ecology (All Ashore Sandy Beach citizen monitoring project). (SMBRC, TBF)	No change
5.4	BRP Implementation Progress Tracking	Continue to track progress in implementing the BRP. (SMBRC, TBF)	No change, addressing WAC comment
5.5	State of the Bay Reporting	Develop and complete the 2015 State of the Bay Report. (SMBRC)	Refine indicator matrix and improve data collection mechanisms in preparation for the next State of the Bay report
5.6	Conduct general GB support, organizational management, and reporting activities	Continue existing activities.(SMBRC, SMBRA, TBF)	No change



bay restoration commission

STEWARDS OF SANTA MONICA BAY

santa monica bay restoration commission 320 west 4th street, ste 200; los angeles, california 90013
213/576-6615 phone 213/576-6646 fax www.smbrc.ca.gov

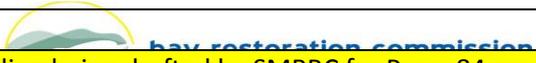
Santa Monica Bay Restoration Commission Watershed Advisory Council Meeting March 10, 2015

Summary of Comments and Responses

The annual WAC meeting was held on March 10 at the Westchester Community Center. Seventeen members of the WAC and participants from the general public attended the meeting and provided comments. Comments were also solicited through an online survey, accessible through the SMBRC website (www.smbrc.ca.gov), from March 2 to March 20. The meeting included an overview of the SMBRC's Annual Work Plan and a facilitated rotating breakout session for group discussions and input on the work plan priorities. There were five breakout sessions/stations for each of the five work plan areas: water resource and quality improvement, wetland and other coastal habitat restoration, marine habitat protection and restoration, education and outreach, and planning, monitoring, and program management. All meeting attendants were given the opportunity to participate in all five breakout sessions through rotation. Two staff persons were assigned to assist each station and took detailed notes during the meeting. The detailed notes (available on SMBRC's website at www.smbrc.ca.gov) were further checked and edited for completeness and accuracy after the meeting.

The summary below was compiled from the detailed notes of the five sessions. Staff responses to each comment were first prepared based on careful review of each comment, then revised and finalized based on input from further review and discussion conducted among staff. In the summary, WAC comments incorporated in the work plan are indicated in the responses and highlighted in yellow.



WAC Member Comments	Staff Response
1. Water Resources and Quality Improvement	
Do not allocate grants solely based on water infiltration in the ground to avoid eliminating potentially great projects.	The guideline being drafted by SMBRC for Prop. 84 grant funding encourages and prioritizes storm water filtration/LID, but does not exclude other type of pollution control devices. SMBRC will take this comment into consideration when finalizing the guideline. (Addressed in FY 16 work plan)
Study emerging contaminants (plastic micro-beads, pharmaceuticals, etc.) and support elimination through source control.	Goal #3 of the Bay Restoration Plan (BRP) lays out specific strategies/actions needed to address this issue. The 2015 State of the Bay Report will also address how to further address this issue. Staff will also solicit input (through GB presentation and special workshop etc.) from experts and partners on how to better control emerging contaminants of concern .
Continue focusing on eliminating contaminants of concern from the original source products (trash from fast food, micro-beads from soaps, etc.).	See response above. SMBRC has facilitated passage of trash TMDL in the region and statewide, has recommended funding of many trash capture projects such as trash devices installed in Los Angeles, Inglewood, Calabasas, Culver City, and unincorporated area of LA County, etc. SMBRC has also promoted and will continue to promote State-wide bans on plastic bags and polystyrene fast-food containers to achieve Objective 2.2 of the BRP.
Support legislation for storm water funding mechanisms.	SMBRC has supported legislation regarding funding in the past and will continue to do so as appropriate.
Implement additional LID projects throughout the watershed; prioritize areas that provide groundwater replenishment benefits	See response above. SMBRC will continue to encourage and prioritize projects that provide storm water infiltration/groundwater replenishment benefits, without excluding other types of pollution control projects. (Addressed in FY 16 work plan)
More multi-beneficial LID project implementation in partnership with water agencies, cities with MS4 permits, etc., likes the Metro-ICP grant and the idea of more residential rain gardens.	SMBRC has recommended funding for many LID projects in partnership with local agencies and municipalities, such as the Los Angeles City of LA Baldwin Hills to Ballona Creek storm water diversion, treatment, and reuse project, Culver City rainwater harvesting program, Manhattan Beach greenbelt park project, and Santa Monica storm drain in-line infiltration project. SMBRC and TBF plan to continue exploring more partnership opportunities for LID project implementation. (Addressed in FY 16 work plan)
Use MS4 data and EWMP process to prioritize multi-benefit projects. Help to implement EWMP projects by watershed (once EWMP process is complete)	SMBRC and TBF have participated in the EWMP development process and will look for projects from EWMP. SMBRC plans to prioritize recommendations of Prop. 84 grant funding for projects included in the EWMPs. (Addressed in FY 16 work plan)



<p>SMBRC governing board adopts a policy statement or policy change to make reclaiming and reusing water easier not harder. For example, requirement of RO for emerging contaminants made it harder for water reclamation districts to expand program to infiltrate treated wastewater into drinking water basin.</p>	<p>Agree conceptually but may need further clarification on the issue before forwarding to GB for consideration.</p>
<p>Educate cities about public landscape maintenance BMPs, specifically in regards to the use of herbicides.</p>	<p>TBF has initiated a public outreach campaign in partnership with water agencies for water and energy conservation, and will continue the campaign using electronic media. SMBRC and TBF will seek more funding and partnership opportunities for similar projects. (Addressed in FY 16 work plan)</p>
<p>Encourage all agencies to do more outreach and get all cities involved in the Clean Bay Restaurant Program (CBRP) because it can be used to comply with MS4 permit. Get the word out what SMBRC can offer to all agencies. CBRP should attend EWIMP monthly meetings to tell people about great things SMBRC can do.</p>	<p>SMBRC and TBF plan to seek more resources to boost the capacity of the CBRP program and achieve further expansion. (Addressed in FY 16 work plan)</p>
<p>Provide summary of city project successes to encourage other cities to implement similar projects.</p>	<p>SMBRC and TBF plan to use traditional and social media to highlight and promote successful projects in the watershed. (Addressed in FY 16 work plan)</p>
<p>Conduct research on successes/failures/cost-effectiveness of different multi-benefit projects</p>	<p>SMBRC has supported efforts to research the effectiveness of multi-benefit LID projects. SMBRC TAC developed a standard monitoring protocol to ensure that such monitoring will be conducted and meaningful data are collected to evaluate the effectiveness of projects funded by the Prop. 50 and 84 grant program. SMBRC TAC also helped evaluating research projects conducted by partner organization. TBF has done detailed research on the cost-effectiveness of rainwater harvesting, and rain garden projects in Culver City. Cost-effectiveness research is also an important component of the on-going MWD rain garden project. SMBRC and TBF will continue to make efforts in this area. SMBRC will also ask the TAC to further discuss the need and mechanism for regional, collaborative research next year. (Addressed in FY 16 work plan)</p>
<p>Support pre and post monitoring component for rainwater harvesting projects.</p>	<p>See comment above. SMBRC supports the inclusion of pre and post monitoring of storm water BMP implementation. However, this has always been challenging as the amount of a grant that can be allocated to monitoring is rather limited.</p>

Support implementation of copper TMDL in Marina del Rey through funding and boater education.	The SMBRC provides information regarding the implementation of the Marina del Rey Toxics TMDL as appropriate. The implementation of the TMDL is under the oversight of the Los Angeles Regional Water Quality Control Board. Due to differences of opinion within the GB, the GB did not make recommendations regarding the TMDL when considered by the the Regional Board. (Addressed in FY 16 work plan)
Do not support the Copper TMDL.	See response above.
Help make the distinction between natural TMDL base levels and human increases to TMDL exceedances.	Loading from natural sources is already incorporated into waste load allocation in all TMDLs. New information on natural sources can be considered when TMDLs are reopened for mid-course correction. The SMBRC TAC can help to evaluate the need for and recommend for further studies.
Eliminate killing of fish larvae that occur during seawater intake for desalination or once-through cooling.	Objective 1.3 of the BRP has clearly stated the same.
Focus on a plan to cease existing near shore salt water intakes and prevent new intakes.	See response above.
Explore partnership opportunities with Ballona Wetlands Land Trust (BWLTL) on projects such as rain gardens, beach restoration, volunteer monitoring and maintenance, Stone Creek, school kid education, bird watchers, facilitation of PIE grant projects, etc.	Comments noted. The Commission welcomes opportunities for partnering on projects to restore the Santa Monica Bay.
Establish public stakeholder working groups to research issues regarding dewatering around Ballona Wetlands.	Comment noted. Issues relevant to Ballona Wetlands restoration will be addressed as part of the environmental review process being conducted by the Department of Fish and Wildlife. The Los Angeles Regional Water Quality Control Board may have information regarding dewatering projects.
Recommend support of revoking permits for dewatering around Ballona, Oxford, and Channel Gateway.	See response above. LARWQCB is the lead agency in issuing permit for dewatering projects.
Flow from dewatering at Playa Vista should not be sent to Hyperion. It should be kept on site and reused, or put into the wetlands.	Comment noted. LARWQCB is the lead agency in issuing permit for dewatering projects and regulating the Hyperion treatment plant.
Form a workgroup to address dewatering issues.	LARWQCB Board is the lead responsible agency on this issue. Comments can be submitted directly to the responsible agency through the existing channels.
Form a subgroup on groundwater issues in the Ballona Creek watershed	See response above. Also, see Ballona watershed hydrology study report.
Form a public stakeholder working group to address sediment contaminants from broken	Comment noted.

sewer lines.	
2. Wetland and Coastal Habitat Restoration	
<i>Oxford Lagoon</i>	
Use property adjacent to Oxford Basin for storm water treatment.	Comment noted. The Marina del Rey EWMP has solicited public input on potential storm water treatment sites and has been evaluating the feasibility of all potential sites within the area.
Storm water treatment wetland on adjacent property to Oxford Basin	See response above
Include fish surveys in Oxford Basin monitoring plan; have adaptive management component with regards to fish in the restoration plan	The SMBRC TAC reviewed and approved the monitoring plan associated with the Oxford Basin restoration project. Typically a fish survey is not required for pre and post project monitoring. A special study may be conducted if there is a specific issue of concern.
Need more stringent biological monitoring and SMBRC direct participation in Oxford restoration.	The SMBRC recommended allocation of Prop. 84 funding for certain aspects of the Oxford Basin restoration project, and provided technical review by its TAC to the project.
Phased Oxford restoration	Comment noted. Current restoration plan is phased.
Studies/research of runoff contaminants entering Oxford Basin	LA County has done extensive monitoring and study on runoff contaminants entering the Basin. Data and information can be obtained from the County directly.
Groundwater studies/research in Oxford Basin and surrounding area	See response above.
Public committee in advisory role for discharging / dewatering issues adjacent to Oxford Basin	LARWQCB Board is the lead responsible agency on this issue. Comments can be submitted directly to the responsible agency through the existing channels.
<i>Stream Protection and Invasive Species Control</i>	
Implement stream protection ordinance. Partner with Heal the Bay.	SMBRC and TBF have been active in facilitating adoption of a stream protection ordinance and looks forward to partnering with Heal the Bay and other organizations to reinvigorate the effort. (Addressed in FY 16 work plan)
Research / studies on impacts of invasive species on streams and BMI scores	SMBRC and TBF supported efforts to obtain funding for a study by Heal the Bay on the impacts of New Zealand mudsnails on stream BMI scores. SMBRC and TBF will continue to help identify additional resources to support similar efforts.

Implementation of invasive removals in streams that are the most impacted (prioritize based on research)	SMBRC and TBF have successfully carried out many invasive removal projects in the past and will continue to help identify funding and facilitate more project implementation.
Add zebra mussels as potential invasive species and develop plan for responding if/when invasion occurs	The Dept. of Fish and Wildlife is the lead agency in invasive species control and have control measures in place for zebra mussels. SMBRC and TBF also help to detect and report new occurrence of invasive species including zebra mussel through their annual survey of the watershed.
Conduct research / studies on Arundo donax (giant reed) removal techniques	SMBRC carried out Arundo donax removal projects before in partnership with land management agencies in the Santa Monica Mountains. SMBRC and TBF continue to support research of more effective technology for Arundo removal. SMBRC and TBF will also continue to promote efforts to prevent introduction of the invasive species, including the ban on sell of Arundo by DFW.
Prioritize Arundo donax (giant reed) removal in the upper watersheds	See response above. SMBRC will continue to support Arundo removal effort in the upper watersheds by land management agencies in the Santa Monica Mountain area.
Prioritize Greenway Plan projects; especially along the upstream reaches of Ballona Creek	SMBRC was one of the sponsors of the Ballona Creek Greenway Plan and has assisted in obtaining funding for projects identified in the Plan, including the Milton Park Green Street Project in partnership with MRCA. SMBRC will continue facilitating implementation of Greenway Plan projects and identify and seek several new funding opportunities. (Addressed in FY 16 work plan)
<i>Ballona Wetlands</i>	
Prioritize the Ballona Wetlands Ecological Reserve restoration, with a focus on improving ecological condition and maximum wetland restoration benefits/services.	SMBRC and TBF will continue to make this its priority. (Addressed in FY 16 work plan)
Conduct more outreach and education on the BWER restoration process; combat the false information more stringently	TBF has been assisting and will continue to assist DFW in outreach to the public on BWER restoration related information. (Addressed in FY 16 work plan)
Need more public dissemination on the information about the process.	See response above. DFW and its partners have the most extensive resources available to the public on the Ballona Wetland Restoration Project website (http://ballonarestoration.org).

On Ballona website explain the different organizations involved in the project and their roles.	SMBRC is not in charge of website; DFW is the lead agency. TBF has been assisting DFW, and will continue to assist the DFW in updating and improve the website. For additional information go to "the Path" section of the Ballona Wetlands Restoration Project Website (http://ballonarestoration.org).
Ballona Website should include more accessible information on draft EIR before it comes out. Make the information more easily understandable by the general public.	See response above.
More frequent and objective BWER website updates.	See response above. Again, SMBRC is not in charge of the website; DFW is the lead agency.
On the Ballona website offer different perspectives on the Ballona project, be objective/ educational not persuasive.	See response above.
Let public participate on BWER Project Management Team	SMBRC is not in charge of the PMT; DFW is the lead agency.
Form public stakeholder working groups for more public involvement in BWER restoration	SMBRC is not the lead agency with regard to BWER restoration and is not responsible for or in control of public participation opportunities. DFW is the lead agency for that project. DFW's environmental review process has provided and will continue to provide opportunities for public comment.
Provide public access to BWER	SMBRC is not in charge of access; DFW is the land manager. One of the main goals of the project is to increase public access.
Research effects of illegal drains in Ballona Wetlands and include results in staff reports	Comment noted. Issues relevant to Ballona Wetlands restoration are being addressed in the environmental review process by DFW.
Release DEIR ASAP for BWER	DFW is the lead agency. The draft EIS/EIR is scheduled for release for public review in late 2015. The schedule has been updated on the Ballona Wetland Restoration Project website (http://ballonarestoration.org).
<i>Malibu Lagoon</i>	
Publicize the annual reports for the Malibu Lagoon restoration project.	Annual reports are public and will continue be available to the public. The first year report is posted on TBF website (www.santamonicabay.org). A comprehensive 2-year monitoring report is being drafted.
Provide regular updates on Malibu Lagoon restoration for agencies and the public	TBF will make annual reports available to the public (see response above). The TBF will also publicize the reports on social media and provide detailed information to DPR for its Malibu Lagoon website. (Addressed in FY 16 work plan)



Use Malibu Lagoon restoration and the Freshwater Marsh as success stories to promote wetland restoration; more outreach.	Agree and see response above. (Addressed in FY 16 work plan)
<i>Other</i>	
Conduct a pilot beach restoration project in Santa Monica (can use Coal Oil Pt as example). Partner with Audubon Society	The TBF has initiated conversation to conduct the pilot project with multiple partners including the Audubon Society. (Addressed in FY 16 work plan)
Include wind surveys in monitoring plan for beach restoration project. Partner with Audubon Society	TBF will discuss with Audubon Society and other experts to evaluate the need and feasibility of a wind survey.
Conduct more outreach / partnerships on Ballona Creek rain garden maintenance projects; update events on website pages. Partner with Ballona Creek Renaissance	TBF already has joint events with BCR and will further discuss with BCR and other community organizations for more collaboration opportunities. (Addressed in FY 16 work plan)
Prioritize fish barrier removals to increase sediment transport downstream to beaches	SMBRC and TBF have facilitated, and will continue to facilitate implementation of more fish barrier removal projects, including removal of Rindge Dam. (Addressed in FY 16 work plan)
Develop policy on beach replenishment and promote reconnection of watershed / streams to beaches	SMBRC participated in the development of a long-term sediment management initiated by Los Angeles County. TBF also supported and participated in sediment transport study off Point Dume and hydrodynamic studies on Palos Verdes Shelf. The SMBRC and TBF will continue to participate and promote watershed-based comprehensive sediment management and seek funding for further studies and pilot projects. (Addressed in FY 16 work plan)
Protect and restore tide pools on PV Peninsula	Similar suggestion was brought up in previous WAC meeting and was included in the 2015 work plan. TBF provided information and other assistance to the Junior Ranger Program but could not be more involved due to limited resources. SMBRC and TBF will seek additional resources to contribute more to this effort and are open to suggestions. (Addressed in FY 16 work plan)
Focus on tree preservation in the Marina del Rey area	Comment noted. LA County Department of Beaches and Harbors and Department of Public Works are land managers in the area.
SMBRC participation to help stop Mariners Village commercial property changes/upgrades	Comment noted.
Form a public committee in advisory role to stop Mariners Village renovations w/SMBRC support	See response above.





3. Marine Habitat Protection and Restoration	
<i>MPA</i>	
Increase Marine program MPA project exposure.	SMBRC and TBF's Marine Program has conducted outreach and will work to do more in the coming year, including using social media to highlight projects that facilitate implementation of MPAs . (Addressed in FY 16 work plan)
Promote positive aspects of MPAs	SMBRC and TBF actively contributed to the MPA stakeholder process and promoted the establishment of MPAs in Southern California including Santa Monica Bay. SMBRC and TBF also contributed to data collection and compilation efforts for evaluating the effectiveness of MPAs, such as our Lighthawk aerial survey project and rocky reef surveys. TBF has participated and will continue participating in the LA MPA Collaborative to facilitate MPA management. SMBRC and TBF will also continue to seek new resources and promote MPAs in Santa Monica Bay. (Addressed in FY 16 work plan)
Letter of Support for MPA enforcement expansion to agencies other than DFW.	SMBRC and TBF will work with partner organizations to develop a letter of support or resolution of support for Governing Board consideration.
Support MPA enforcement expansion to other agencies including local cities.	See response above.
<i>Fish</i>	
Continue Halibut work, develop catch data database, implement/ support a Halibut Fisheries Management Plan.	SMBRC and TBF will continue to seek funding for studies needed to support development of fishery management plans for halibut and other important commercial and recreational fish species. (Addressed in FY 16 work plan)
Research to determine why there are reduced fish populations in the bay	See response above. SMBRC and TBF will continue to seek funding to conduct research and support and/or collaborate with researches by other agencies/organizations. (Addressed in FY 16 work plan)
Study fish populations' migration patterns.	See response above
Monitor LA County bird list on Yahoo for # of bird's sightings up and down the coast, using it as indicator of fish population migration.	See response above
Addressing the issue of fishing in Ballona Creek through education or enforcement.	TBF partnered with Friends of Ballona Wetlands and conducted outreach and social survey about fish habitat in the Creek. TBF will continue publizing the survey results and the outreach effort.



<i>Abalone</i>	
Increase Marine program Abalone project exposure. Partner with Santa Monica Pier Aquarium	SMBRC/TBF will continue to explore partnerships with the Aquarium and other organizations to promote restoration of abalone. (Addressed in FY 16 work plan)
<i>Other</i>	
Develop GIS locating system for research projects to ensure work in areas of special biological significance is not duplicated.	Comment noted. Need additional information regarding other work in the ASBS before recommending next steps.
Address algal blooms. Already in work plan but what work is being done?	SMBRC has limited resources to initiate its own specific project at this time, but a lot of work by other entities are ongoing in the Southern California Bight. SMBRC did secure funding for installation of high-precision pH/pCO ₂ sensors in the Bay. SMBRC will discuss with its TAC for advice on how SMBRC should further contribute effort in addressing the issue. (Addressed in FY 16 work plan)
Need a new director of marine programs.	SMBRC and TBF will update their organizational structure based on their program needs.
Monitor invasive sargassum	SMBRC and TBF have limited resource to initiate its own project at this time, but will support and facilitate responsible agencies (most likely NOAA and DFW) to conduct needed monitoring
Start dialogue about desalinization.	SWRCB is in the process of developing policy and regulations addressing potential impacts of desalination. SMBRC and TBF will continue to participate and contribute to the on-going discussion on this subject.
Create artificial reefs. Partner with Doug Fey.	SMBRC does not have plans for an artificial reef project at this time. NOAA/MSRP has a plan to restore lost reef habitat on PV Shelf using rocky reef modules.
4. Public Education and Outreach	
Work with cities on outreach plans to ensure consistency of language and avoid duplicating efforts.	SMBRC and TBF will continue to coordinate with cities and the County on outreach projects.
Step up collaborative efforts with CBOs such as Ballona Creek Renaissance, Cash for Kitchens, South Bay Energy Services Center to do more outreach and education events that promote a sense of ownership.	SMBRC and TBF will continue to partner with these and other organizations to conduct and support more outreach activities. (Addressed in FY 16 work plan)
More education on the current state of certain areas such as Oxford Basin.	Comment noted. See response above.



Create more opportunities to work with public stakeholders for information sharing and addressing current or new issues	See response above.
Have a couple public meetings per year in targeted area where SMBRC is doing work to get public support and buy in on specific projects.	SMBRC or TBF will work with partner agencies/organizations either hold public meetings or through other outreach mechanisms to solicit public input and gain public support for planned projects.
Increase public outreach regarding the history of our organizations and any conflicts of interest.	Comment noted. SMBRC and TBF will continue to make effort to inform stakeholders about the history of the Santa Monica Bay National Estuary Program and all its partner entities. Detail of Santa Monica Bay National Estuary Program (SMBNEP) is available on SMBRC's website (www.smbrc.ca.gov).
5. Planning, Monitoring, and Program Management	
<i>WAC Related</i>	
Like to see WAC meeting more than one time per year.	Comment noted. SMBRC is already fully occupied with followup work recommended by WAC members at the annual meeting and does not see the need for additional meetings.
WAC with stronger advisory role in SMBRC and WAC members to have more opportunities for involvement	Comment noted. WAC members have provided many valuable suggestions which were incorporated into the BRP and annual work plans in previous years. This year will be no exception.
WAC makes presentations to SMBRC Governing Board	Comment noted. SMBRC will summarize WAC comments and present them at the Governing Board meeting. Individual WAC members can make additional comments at the GB meetings.
Form WAC subcommittees	Comment noted. SMBRC do not see the need to form any subcommittee at this time, but is open to such possibility in the future if recommended by staff or requested by the Governing Board.
Conduct a more thorough survey about how the WAC is functioning, whether it is successful at contributing to SMBRC.	Comment noted. SMBRC has received valuable comments from WAC members and incorporated them into the work plan. SMBRC will continue to use the existing process to receive input from WAC members and other stakeholders.
<i>Other</i>	



SMBRC should serve as a clearing house (google spreadsheet, google map) to house and disseminate all research and monitoring going on in the watershed.	This has been a desirable objective of the SMBNEP but it has not been able to perform this function due to the lack of funding and staff resources. SMBRC and TBF are also open to other suggestions in the future.
Clarify SMBRC structure and funding and improve communications	SMBRC and TBF will continue to make efforts to inform stakeholders about the history of the Santa Monica Bay National Estuary Program and clarify the relationship among all its partner entities.
Focus more on existing projects before adding new projects.	Agree conceptually but will continue to seek grant funding for continuation of existing programs and new projects.
Promote Citizen Monitoring group and high school students to test and monitor bacteria	SMBRC has frequently supported citizen monitoring groups and projects. SMBRC and TBF will continue to look for partners and opportunities to conduct more citizen monitoring projects.
Improve reporting on progress of BRP. Have a progress report to identify how we are doing on BRP, which provides more detail than the Annual Report.	SMBRC will continue to make efforts to assess and report on the progress of BRP objectives and milestones with adequate details on a regular basis, while highlighting specific projects. (Addressed in FY 16 work plan)
Have more frequent progress reports and a more detailed SMBNEP Annual Report	See response above.
Create an information dissemination section on our webpage to make information easier to get to.	SMBRC and TBF will continue to maintain and improve their websites to make information readily available to stakeholders and the general public.
Have a document that list projects we need funding for.	SMBRC and its partners always confront need for funding to achieve objectives and milestones laid out in the Bay Restoration Plan. TBF has also developed material to highlight specific program and project areas targeted for fundraising. (Addressed in FY 16 work plan)
Make clearer distinction between SMBNEP organizational groups and their roles in specific projects	See response to similar comments above. SMBRC and TBF will continue to make effort to inform stakeholders about the history of the Santa Monica Bay National Estuary Program and the relationship among all its partner entities.
Have an SMBRC workshop on accountability and transparency.	Comment noted.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

June 2, 2015

Mr. Tom Ford
Executive Director
Santa Monica Bay Restoration Foundation
1 LMU Drive
Pereira Annex, MS: 8160
Los Angeles, CA 90045

Dear Mr. Ford,

Thank you for the timely June 1 submission of the FY 2016 application for Clean Water Act Section 320 funds for the Santa Monica Bay National Estuary Program (NEP). As previously discussed, we accept the work plan included in the application as draft and understand it will be presented to the Santa Monica Bay Restoration Commission Governing Board at the next scheduled meeting on June 18.

EPA will review the draft workplan and provide comments so your staff can prepare a final workplan. I anticipate that our comments to request more detail related to activities and deliverables to be accomplished during the October 2015 – September 2016 work period. The information and format that has been submitted and approved in past years has been effective in conveying the many ongoing tasks, projects and programs ensued as part of the implementation of the Bay Restoration Plan originally adopted in 1995 and recently updated in November 2013. Many of your activities and programs have outputs and outcomes that are achieved on decadal scales so we appreciate the broader contexts past work plans have conveyed. It is our hope to retain these helpful characteristics of the document, but to also include in the document, information explicitly relevant to FY 2016 activities in order to better track progress and make the document more understandable to all stakeholders.

Additionally, we appreciate the difficulty in articulating time frames for projects where there are many partners and the NEP is not the lead in implementation. EPA appreciates this aspect of long term, large scale projects and continuing programs such as the National Estuary Program. We recognize that work activities can evolve subsequent to final workplan approval, and we can work with staff throughout the year to make major revisions if they are needed and

consistent with program requirements. Once the above noted improvements are made and the Governing Board has approved a final version, we will amend application package to reflect the final work plan version.

On behalf of U.S. EPA Region 9, thank you for your dedicated service to the NEP. We appreciate the important and diligent work you and your staff do every day to improve the health of Santa Monica Bay.

Sincerely,

A handwritten signature in black ink that reads "Molly Martin". The signature is written in a cursive style with a large initial "M".

Molly Martin
SMBNEP Project Officer, Watersheds Office

cc:

Guangyu Wang, Deputy Director, Santa Monica Bay Restoration Commission
Scott Valor, Director of Government Affairs, Santa Monica Bay Restoration Commission
Sam Ziegler, U.S. EPA Region 9
Luisa Valiela, U.S. EPA Region 9

State Water Resources Control Board

TO: SANTA MONICA BAY RESTORATION COMMISSION EXECUTIVE COMMITTEE

**FROM: Frances L. McChesney
Attorney IV
OFFICE OF CHIEF COUNSEL**

DATE: May 20, 2015

**SUBJECT: SANTA MONICA BAY RESTORATION COMMISSION FY2016 WORK PLAN:
SWRCB OFFICE OF CHIEF COUNSEL RESPONSE TO COMMENTS**

At its May 21, 2015 meeting, the Executive Committee of the Santa Monica Bay Restoration Commission (Commission) will consider whether to place consideration of the FY2016 Work Plan on the agenda for the June 18, 2015 Governing Board meeting. On May 20, 2015, Mr. Walter Lamb sent comments to the Executive Committee expressing concerns regarding the FY2016 Work Plan. This Memorandum provides some background regarding the role of the Commission and The Bay Foundation in the restoration of the Santa Monica Bay and responses to the comments.

Background

Section 320 of the federal Clean Water Act establishes the National Estuary Program, which is administered by the United States Environmental Protection Agency (USEPA). To implement the National Estuary Program, USEPA identifies national estuaries, develops a plan to restore the estuaries, and provides grants to entities, such as non-profit organizations, to pay for activities necessary to implement the plan. The National Estuary Program is designed to promote collaborative watershed-based partnerships in order to develop and implement a comprehensive conservation and management plan that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community. USEPA identified the Santa Monica Bay as a national estuary and approved the Santa Monica Bay Restoration Plan, with the concurrence of the State, that identifies actions and priorities to restore the Santa Monica Bay. In 2002, the California Legislature created the Commission as a non-regulatory, locally based, state government entity to advise and oversee activities and coordinate with state, local, and private entities to implement the Bay Restoration Plan.¹

¹ There are many estuaries identified by USEPA as part of the National Estuary Program (NEP) throughout the country, including three in California. Each has a somewhat different structure. For example, the Morro Bay NEP is
(footnote continued on next page)

Implementation of the comprehensive Bay Restoration Plan is a primary mission of the Commission.

To assist in the implementation of the Bay Restoration Plan, the State Water Resources Control Board (State Water Board) provides administrative services to the Commission and USEPA provides an annual grant to The Bay Foundation. The annual grant provided by USEPA as specified in Section 320 of the Clean Water Act is used to pay for activities necessary for the development and implementation of the Bay Restoration Plan. This grant is the main operational funding for the Santa Monica Bay NEP (SMBNEP). The California legislature has not appropriated funds to implement the Bay Restoration Plan or fund the Commission; the USEPA grant to The Bay Foundation provides the primary funding for implementation of the Bay Restoration Plan. In lieu of direct funding, the State Water Board contributes a match to the USEPA grant by providing state staff and state office space and other administrative services to the Commission.

Each year, as part of the grant requirement, the Commission, in collaboration with The Bay Foundation, and the Santa Monica Bay Restoration Authority, prepares and submits a work plan to USEPA that identifies the expected tasks and activities necessary to implement the Bay Restoration Plan, the objectives to be achieved, and the entity that is expected to carry out the specific tasks. The work plan also identifies funding sources and specifies a timeline and budget for the fiscal year. USEPA uses the annual work plan to track The Bay Foundation's grant expenditures and progress toward achieving the objectives of the Bay Restoration Plan and to compile information on the environmental outcomes of work plan implementation.

Response to Comments

Comment: Mr. Lamb objects to your consideration of agenda item 3.a.i. regarding the FY2016 Work Plan because you have not been provided with a copy of the draft work plan.

Response: The Executive Committee is not being asked to approve the work plan, but to consider whether to include it on the agenda for the Governing Board's consideration. The summary of proposed changes is sufficient for making a determination regarding the agenda.

Comment: Mr. Lamb opines that the "staff report provides a summary of changes which do not adequately convey the significant shift of projects and personnel from the SMBRC to the Bay Foundation."

Response: The primary purpose of the annual work plan is to identify new projects to be conducted or continuing projects that are being conducted to implement the Bay Restoration Plan and to comply with USEPA grant requirements. As Mr. Lamb and others have pointed out, previous work plans have not clearly identified the roles of the various entities with respect to

(footnote continued from previous page)

implemented entirely by a private foundation, called the Bay Foundation of Morro Bay, using grant funds from USEPA; there is no public agency like the Commission involved in that Program. The Clean Water Act does not require a public agency to implement a bay restoration plan, but the Legislature chose to include a more inclusive structure for the Santa Monica Bay NEP.

the tasks identified in the work plan. The primary purposes of the changes between the FY2015 work plan and the FY2016 work plan are to clearly identify which entity is responsible for and the funding sources of the tasks identified in the work plan. The FY2016 work plan does not shift the entity responsible for the task; rather it accurately identifies the entity responsible. For example, the Ballona Wetlands Restoration Project has been identified for several years as a project to meet the goals of the Bay Restoration Plan. The lead agency for that project is the Department of Fish and Wildlife (DFW) and The Bay Foundation has received grants from state and private entities and other funding to assist DFW in that project. Past work plans have not clearly identified the roles of the entities.

It is unclear what Mr. Lamb means by "SMBRC personnel". The Commission has no employees. As noted above, the State Water Board provides administrative services in the form of assigning state employees to assist the Commission and The Bay Foundation is provided a grant from USEPA to assist the Commission, including staff that perform some tasks on behalf of the Commission. The Bay Foundation also receives grants and funding from other sources to conduct various activities, including assisting DFW. The FY2016 work plan will more clearly identify those different activities.

Comment: Mr. Lamb comments that the "SMBRC is a state agency that has delegated its fiscal management to a private entity, which in turn claims that its fiscal activities are not the business of the state agency. This is an untenable position, and each Executive Committee member has an individual fiduciary responsibility to the state agency to understand the relationship between the agency and its private fiscal agent."

Response: Mr. Lamb is incorrect. The Commission has not delegated its fiscal management to a private entity. The statute creating the Commission established an account in the State Treasury for the Commission. The statute states that funds appropriated by the legislature for the Commission are to be deposited into the State Treasury. The Legislature has never appropriated any funds for the Commission. The Bay Foundation is not the fiscal agent of the Commission. The term "fiscal agent" has been incorrectly used in previous documents. Rather, the Bay Foundation receives a grant from USEPA as authorized by section 320 of the federal Clean Water Act to assist in the implementation of the Bay Restoration Plan. USEPA regularly audits the Bay Foundation's implementation of the grant and those audit documents are public records. The State Water Board provides in lieu funding in the form of staff and other services.

If you have any questions, please contact me at fmccchesney@waterboards.ca.gov or at (916)341-5174.

cc: Tom Ford, Executive Director
Guangyu Wang, Deputy Director
Scott Valor, Director of Government Affairs
Molly Martin, USEPA

MEMORANDUM OF AGREEMENT
BETWEEN THE SANTA MONICA BAY RESTORATION COMMISSION
AND THE ~~SANTA MONICA BAY RESTORATION~~ FOUNDATION
REGARDING THE
THE SANTA MONICA BAY NATIONAL ESTUARY PROGRAM

Formatted: Font color: Text 1

I. INTRODUCTION

The federal Clean Water Act authorizes the United States Environmental Protection Agency (U.S. EPA), upon nomination of a state or on its own initiative, to select an estuary to be part of the National Estuary Program and to develop and approve conservation and management plans for each estuary that is part of the Program. (Clean Water Act §320.) The National Estuary Program is designed to promote collaborative watershed-based partnerships in order to develop and implement a comprehensive conservation and management plan that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community.

In 1988, the State of California and U.S. EPA established the Santa Monica Bay Restoration Project (Project) as a National Estuary Program under the Clean Water Act. The Project was designated by U.S. EPA as an agency to plan for the Santa Monica Bay's restoration and to oversee implementation of the conservation and management plan. In 1995, the Project finalized the Santa Monica Bay Restoration Plan (Bay Restoration Plan; also known as the Comprehensive Conservation and Management Plan), which defined the priority problems facing Santa Monica Bay and the actions necessary to address them.

In 2000, the State of California created within the State Water Resources Control Board (State Water Board) the Project. State law required that the Secretary of the California Environmental Protection Agency, in consultation with the Secretary of the Resources Agency and the Project, to make recommendations for measures to coordinate state policies to restore Santa Monica Bay. Enactment of legislation and development of a non-regulatory, locally based state entity to facilitate coordination of state programs on behalf of Santa Monica Bay was recommended.

In 2002, the State of California renamed the Project as the Santa Monica Bay Restoration Commission (Commission). The law states:

“The Santa Monica Bay Restoration Project is hereby renamed the Santa Monica Bay Restoration Commission. The commission shall independently execute the duties described in this section, and the State Water Resources Control Board shall provide administrative services to the commission.” (Cal. Pub. Res. Code § 30988.2(a).)

The 2002 state law creating the Commission required the development of a Memorandum of Understanding (MOU) between state and federal agencies to ensure the coordination of state programs affecting Santa Monica Bay, that delineates the authority of the Commission and its governance structure with respect to the implementation of those state programs, and that prescribes the Commission's membership. (Cal. Pub. Res. Code §30988.2(b).)

The state law also created in the state treasury the Santa Monica Bay Restoration Account and authorized moneys in the account to be expended, upon appropriation by the Legislature, to support the activities of the Commission. (Cal. Pub. Res. Code § 30988.2(d)(1).) No moneys have been appropriated by the Legislature to date to support the activities of the Commission. The Clean Water Act authorizes U.S. EPA to make grants to agencies and entities, including nonprofit private entities, to pay for activities necessary for the development and implementation of the conservation and management plans. (Clean Water Act §320(g).) U.S. EPA has made grants to ~~the Santa Monica Bay Restoration~~ Foundation (Foundation) under the Clean Water Act to pay for activities to develop and implement the Bay Restoration Plan. Since its creation in 1991, the Foundation has worked in close association with the Commission to implement the Bay Restoration Plan. The Commission and the Foundation are partners in the Santa Monica Bay Estuary Program, which is one of 28 entities that comprise the National Estuary Program established pursuant to Section 320 of the Clean Water Act.

II. PURPOSE OF THIS MEMORANDUM OF AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to describe the roles and responsibilities of the Commission and Foundation in the development and implementation of the Bay Restoration Plan and to clarify the fiscal relationship between the Commission and the Foundation.

This MOA does not alter existing law, nor does it place additional roles or responsibilities on either the Commission or the Foundation than each already maintains under existing law.

III. THE SANTA MONICA BAY RESTORATION COMMISSION

The Commission is a non-regulatory, locally based state government entity established to monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of the Santa Monica Bay and its watershed. (Cal. Pub. Res. Code §30988(d).) Its membership includes federal, state and local public agency officials and employees and representatives of other stakeholder interests. The enabling statute provides that governance structure shall be set forth in the MOU. (Cal. Pub. Res. Code § 30988.2(b)(1).) The MOU was adopted in 2003 and has been periodically updated since then. The Commission is composed of the Governing Board, the Watershed Advisory Council, and a Technical Advisory Committee. The Governing Board is the key decision-making authority of

the Commission. The Commission is the policy-making deliberative body of the Santa Monica Bay Estuary Program.

Implementation of the Bay Restoration Plan, approved by the State of California and the U.S. EPA in 1995, is a primary mission of the Commission.

The Commission has the authority to do all of the following:

- (1) Request and receive federal, state, local, and private funds from any source, and expend those moneys for the restoration and enhancement of Santa Monica Bay and its watershed.
- (2) Award and administer grants for the restoration and enhancement of Santa Monica Bay and its watershed.
- (3) Enter into contracts and joint powers authority agreements, as necessary, to carry out the purposes of the commission.
- (4) Monitor, assess, and coordinate activities among federal, state, and local agencies and, where appropriate, private firms, to restore and enhance Santa Monica Bay and its watershed.

(Cal. Pub. Res. Code § 30988.2(c)(1-4).)

To date, the Commission has not directly received any state, federal, or private funding. To carry out its mission to implement the Bay Restoration Plan and to meet the requirements and goals of the National Estuary Program, the Commission relies on services provided by other entities. The State Water Board provides administrative services to the Commission in the form of staff, office space, and other administrative services, such as websites, mail, and email. (Cal. Pub. Res. Code §30988.2(a).) The Foundation provides staff, including the Executive Director of the Commission, and administrative services to the Commission that are funded by grants from U.S. EPA and other funding sources, including state grants, donations, and other sources.

The Commission, through its Governing Board, makes recommendations to other state, federal, and local agencies to provide grants to entities to carry out activities to implement the Bay Restoration Plan

The Governing Board selects projects that may be funded through state bond programs (such as Propositions 12, 50, and 84) and makes recommendations to the actual funding agencies regarding those projects. The Commission serves as an advisory body to those partner entities that issue and manage the bond funds for projects within the Santa Monica Bay Watershed.

IV. THE SANTA MONICA BAY RESTORATION FOUNDATION

The ~~Santa Monica Bay Restoration~~ Foundation (Foundation) is a non-profit U.S. Internal Revenue Code section 501(c)(3) corporation. Formed in 1991, the Foundation raises and expends funds for research, education, planning, cleanup efforts, and other priorities identified in the Bay Restoration Plan. The Foundation Board of Directors is separate from the Commission. It is diverse and comprised of community members, local government and agency representatives, and members of the Commission's Governing Board. The Foundation supports the work of the Commission, with a focus on obtaining and expending funds not otherwise available to the Commission.

The Foundation receives some of its funding in the form of a U.S. EPA grant pursuant to Clean Water Act section 320. ~~The U.S. EPA grant is administered through the Commission's Annual Work Plan that is approved by the Commission and U.S. EPA. As set forth in the Annual Work Plan, the Foundation serves as the primary fiscal agent for federal funding provided for Commission activities. (33 U.S.C. §1330) to implement the Bay Restoration Plan (also known as the Comprehensive Conservation and Management Plan). The Foundation also receives important grants and donations from other entities to support the Foundation and its activities.~~ -U.S. EPA oversees the grant, including conducting regular audits and oversight.

All funding from the U.S. EPA for purposes of the National Estuary Program is provided to the Foundation, which maintains staff and provides administrative services to implement the Bay Restoration Plan.

The Foundation and the State Water Board provide personnel and administrative services to the Commission.

The Foundation Board of Directors establishes Foundation administrative and personnel policies and oversees the disposition of funds received by the Foundation.

OTHER PARTNERS:

The Commission coordinates activities and oversees funding to implement the Bay Restoration Plan. When the Commission's Governing Board approves recommendations for project funding through state bond funds or grants, the recommendations are forwarded to state agency partners, who review and approve the requests according to their established public processes. Those state agencies manage their grant programs and oversee the use of such funds.

Formatted: Font color: Text 1

Formatted: Font: (Default) +Body (Calibri), 11 pt, Font color: Text 1

Formatted: Font color: Text 1

In consideration of the above premises, the parties hereto agree as follows:

The Commission agrees to:

1. Develop and update the Bay Restoration Plan.
2. Develop and implement projects that fulfill the goals of the Bay Restoration Plan.
3. Seek funding and recommend issuance of grants to implement the Bay Restoration Plan.

The Foundation agrees to:

1. Carry out the Annual Work Plan approved by U.S. EPA, including providing staff and services to the Commission.
2. Comply with all legal requirements of a non-profit entity, pursuant to U.S. Internal Revenue Code section 501 (c)(3).
3. Disclose fiscal documents to the Commission and the public to the extent required by law.

The Commission and Foundation recognize and further agree that the above-enumerated actions do not limit their ability to carry out other duties or activities that advance the purposes of this Memorandum of Agreement.

Chair, Santa Monica Bay Restoration Commission
Governing Board

Date

President, ~~The Santa Monica Bay Restoration~~ Foundation
Board of Directors

Date