

November 7, 2019

Subject: EPA comments regarding Santa Monica Bay National Estuary Program Draft MOU

Dear Guangyu and Claire:

Thank you for the opportunity to provide comments on the proposed amendments to the Santa Monica Bay Restoration Commission (SMBRC) memorandum of understanding and the associated staff report. We appreciate the State Water Resources Control Board's (State Board's) commitment to supporting the Santa Monica Bay National Estuary Program (SMBNEP) and are committed to working with you to best position the NEP for future success.

EPA gives substantial deference to each NEP as to how it wants to organize itself institutionally. California has concluded that the SMBRC will carry out the functions of a National Estuary Program (NEP). EPA understands that the SMBRC may be carrying out other duties under state law, but for purposes of the federal NEP (as defined in § 320 of the Clean Water Act) EPA treats the SMBRC as the NEP, including functioning as the Management Conference for any ongoing or special purpose activity required of a Management Conference.

Our comments and questions regarding the MOU and the associated staff report are included below for your consideration. Please contact me directly if you have any questions.

Best,

Erica Yelensky
Santa Monica Bay National Estuary Program Coordinator, USEPA Region 9

General Comments

1. Given the complexity of this subject, we recommend sharing a draft revised version of the MOU and staff report at the December 2019 Governing Board meeting and not voting on a final version until February 2020.
2. Please include a definition of terms and a table of contents to help guide the reader.

MOU specific comments

1. Governing Board and Executive Committee Roles and Functions

Based on the diagrams in the Staff Report, it appears that the Governing Board is the top decision-making body for the Commission. If that is the case, please clarify the Governing Board and Executive Committee descriptions in the MOU. Currently the MOU states that both the Executive Committee and Governing Board are "one of the key decision-making authorities of the Commission..." (see pages 6 and 8). Assuming it is true, consider changing the language to

state that “the Governing Board is the key decision-making authority” (page 6) as opposed to “one of the key decision-making authorities of the Commission...”

2. **NEP Director:** We suggest broadening the discussion about the NEP Director in the draft MOU. Currently the only discussion about the NEP Director is on page 13 under the Host Entity section (Section E).
 - a. We suggest adding a section describing the primary roles and functions of the NEP Director in Section F under Administration, to complement the discussion about the Chief Administrative Director.
 - b. We also suggest adding language addressing how the NEP Director and Chief Administrative Director will work together to support CCMP implementation and how any potential disputes will be resolved.
3. The use of “may” in the following sentence is confusing: (page 13) “Upon concurrence and approval by the Governing Board, the Host Entity **may** provide a NEP director who is responsible for EPA grant management and daily operation of the Host Entity, and serves as liaison and representative of the Santa Monica Bay NEP.” Do you mean that, while the NEP Director currently is from the Host Entity, the NEP Director could come from elsewhere within the Management Conference? Please clarify.
4. **Host Entity:** (page 13) “The Governing Board has the ability to assess the performance of the Host Entity to ensure effective implementation of its CCMP on an ongoing basis and can decide at any time to select a new Host Entity for the Santa Monica Bay NEP. For example, the Governing Board could determine that the current Host Entity lacks the capacity to support the Santa Monica Bay NEP’s administrative and/or financial needs and initiate a process to identify a new Host Entity.”
 - a. We recommend replacing “can decide at any time to” with “has the authority to” (such that the sentence would read “The Governing Board has the ability to assess the performance of the Host Entity to ensure effective implementation of its CCMP on an ongoing basis and has the authority to select a new Host Entity...”
 - b. Please consider adding language describing how the Chair would work with the host entity if issues are identified to try to first resolve those issues. Also, the Chair should consult EPA before any decisions are made, as EPA manages an annual grant to the host entity to implement the CCMP and annual workplan.
 - c. The MOA should identify the process by which the host entity and Commission may sever ties.
5. (Page 10 of 15 in staff report) “The roles and functions were updated to reflect the intent for the EC to take a more active role as the Management Committee of the NEP to support development and implementation of the CCMP, provide direction and oversight to Commission staff, review work products, identify potential partnerships and resources to the program, and listen to stakeholder feedback.”
 - a. We concur with this change in direction. To further support this, we recommend adding USEPA and the Host Entity NEP Director to the EC as ex-officio, nonvoting members.
6. Please consider updating the Objectives of the Commission on page 2 to match the seven goals of the new CCMP Action Plan.

7. We note the Dispute Resolution Procedures in Attachment D. Please consider developing a code of conduct for both board members and the public. This should be read at the beginning of each meeting.
 8. Please consider having the Chair read a statement describing what the NEP is at the beginning of each meeting.
 9. Please consider making the following changes in “Functions of the Commission” (page 3). Changes are **highlighted and in bold.**
- #2. Oversee effective implementation of the Santa Monica Bay **NEP** CCMP.
- #3. Promote participation by **federal, state and** local governments, specials districts, community groups, and members of the public who are essential to implementation of Santa Monica Bay NEP watershed restoration and protection efforts.
- #7. Promote sound science that advances the implementation of the Santa Monica Bay **NEP** CCMP.
- #11. Facilitate inter-agency and inter-organizational efforts to improve the Santa Monica Bay’s water quality, **mitigation** of the impacts of climate change and sea level rise, and **restoration** of its natural and living resources, including opportunities to leverage funding.

Staff report specific comments

1. **Stakeholders:** Is the idea that there would be more time for public comment during already scheduled e.g. Governing Board meetings and not stand alone “Stakeholder” meetings?
2. **Technical Advisory Committee:** Please clarify whether the TAC can provide recommendations on certain actions which may or may not require consensus/vote.
3. **Figures 2.** Thank you for including these figures.
 - a. All recommendations to the host entity and SMBRC staff should come through the Executive Committee and Governing Board. There should not be a direct line between the stakeholders and the host entity.
 - b. The Host Entity block should include “+ NEP Director”
4. (Page 4 of 15) The Governing Board approved the 2018 CCMP Action Plan in October, not December 2018.
5. (Page 6 of 15) We recommend creating a timeline of accomplishments. It is important to celebrate the successes of the NEP.
6. (Page 6 of 15) “*Move the legislative history to the staff report.*” This change is fine but should not supersede the original intent of why the NEP was designated.
7. (Page 7 of 15) “*Add to key functions of the Commission*” This section is described well.