



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

Ms. Pamela C. Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, California 95670

Dear Ms. Creedon:

The U.S. Environmental Protection Agency (EPA) has reviewed the California State Water Resources Control Board Resolution Number 2015-0055; *Sacramento River and San Joaquin River Basins to Remove the Municipal and Domestic Supply (MUN) Beneficial Use in Twelve Constructed and/or Modified Water Bodies in the Sacramento River Basin*. The resolution makes revisions to the Basin Plan to de-designate twelve surface waters bodies in the Sacramento River Basin. EPA hereby approves this revision, which complies with provisions of the Clean Water Act as described below.

The Central Valley Regional Water Quality Control Board adopted the amendments on April 15, 2015 under Resolution No. R5-2015-0022 and State Water Resources Control Board adopted them on August 18, 2015 as Resolution No. 2015-0055. The amendments were certified by the California Office of Administrative Law (OAL) on December 23, 2015. EPA received notice of the OAL certification on December 24, 2015.

Section 303(c) of the Clean Water Act and 40 CFR Part 131 require EPA to approve or disapprove new or revised state-adopted water quality standards. The following paragraph outlines the scope and basis for EPA's approval of the revised standards. The State regulatory provisions which are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

The amendment makes revisions to the Basin Plan in Chapter 2 (Beneficial Uses) to de-designate the Municipal and Domestic Supply (MUN) beneficial use in twelve surface water bodies in the Sacramento River Basin. The twelve water bodies proposed for de-designation of the MUN beneficial use are: Ag Drain C (Logan Creek), Cherokee Canal, East Interceptor Canal, Lateral 1, Lateral 2, Lateral K, Main Drainage Canal (C Main Drain), New Ditch (2011), Powell Slough, unnamed tributary, Wadsworth Canal, and Western Intercepting Canal. EPA has determined that these revisions are consistent with the requirements of the CWA and its implementing regulations in 40 CFR Part 131.5 and 131.6.¹ The supporting documents for the revisions also comply with 40 CFR Part 131.10(a) which requires that the

¹ The regulations governing water quality standards were revised in a Final Rule signed August 5, 2015. See 80 FR 51019 ("Final Rule"). This revised rule is effective October 20, 2015, and includes a transition period. For that reason, the State's revisions are evaluated using the regulations as they existed before the Final Rule in accordance with the grandfathering of revisions in process before the effective date. See 80 FR 51022.

State take into consideration the use and value of water when removing designated uses other than the uses specified in section 101(a)(2) of the Clean Water Act.²

Public Participation

Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of State Board Resolution No. 2015-0055 and the Regional Board Resolution R5-2015-0022 are consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

Endangered Species Act Consultation

Section 7(a) of the Endangered Species Act (ESA) requires federal agencies to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. EPA's "Recommended Approaches to Improve Endangered Species Act (ESA) Consultation on Approvals on State and Tribal Water Quality Standards," dated January 16, 2009, states that ESA consultation requirements do not apply to actions where EPA lacks discretion to protect species, or where an EPA action has no effect on listed species or critical habitat. In order for ESA section 7 to apply, EPA must be taking an action in which it has sufficient federal involvement or control to protect listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves changes to state water quality standards to protect human health. MUN designated uses are designed to protect public health, not flora and fauna. EPA has no discretion to revise an otherwise approvable change to the MUN use to benefit listed species. Therefore, ESA consultation requirements do not apply to this action.

EPA looks forward to working with you and your staff toward our mutual goal of protecting and enhancing the quality of California's waters. If EPA can be of further assistance in meeting these goals, please call me at (415) 972-3337 or have your staff contact Matthew Mitchell at (415) 972-3508.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tomás Torres', with a date '7/21/16' written to the right.

Tomás Torres
Director, Water Division

cc: Rik Rasmussen, California State Water Resources Control Board

² 40 CFR Part 131.10(a) was revised in the Final Rule signed August 5, 2015. See 80 FR 51047. The revision clarifies that a use and value study is sufficient to support removal of non-101(a)(2) designated uses. The preamble of the rule further explains that the revised requirements are consistent with EPA's previously existing regulation at sections 131.10(a) and 131.6. See 80 FR 51026.