



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

SEP 04 2009

Ms. Dorothy Rice, Executive Director  
California State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Dear Ms. Rice:

The U.S. Environmental Protection Agency (EPA) has reviewed an amendment to the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (Basin Plan) to remove the beneficial use designations for MUN and the human consumption of aquatic organisms for Sulphur Creek (Colusa County) from Schoolhouse Canyon to the confluence with Bear Creek. The amendment would also establish site-specific mercury objectives to protect the remaining uses for this reach of Sulphur Creek; an instantaneous maximum of total mercury concentration and a maximum ratio of total mercury to total suspended solids. I am pleased to inform you that we are approving the amendment subject to completion of the Endangered Species Act (ESA) section 7(a)(2) consultation with the U.S. Fish and Wildlife Service.

The California Regional Water Quality Control Board, Central Valley Region, (Regional Board) adopted the amendment under Resolution No. R5-2007-0021 on March 16, 2007. The California State Water Resources Control Board approved the amendment on March 18, 2008 under Resolution No. 2008-0015, and the California Office of Administrative Law on June 27, 2008. EPA received the State's request for approval on August 5, 2008. By this letter, EPA is approving the 2007 amendment as a water quality standard pursuant to Section 303(c) of the Clean Water Act (CWA) and its implementing regulations at 40 CFR Part 131.

**The Amendment**

Regional Board Resolution No. R5-2007-0021 amends the basin plan to remove the MUN and human consumption of aquatic consumption beneficial uses from Sulphur Creek (Colusa County) from Schoolhouse Canyon to the confluence with Bear Creek. The Regional Board determined that these beneficial uses do not exist in this reach of Sulphur Creek and cannot feasibly be attained in the future. Sulphur Creek has never supported these uses due to naturally occurring conditions that prevent them from being attained.

The amendment would also establish for Sulphur Creek, an instantaneous total mercury concentration that does not exceed 1,800 ng/l during low-flow conditions and a

30 day average ratio of total mercury to total suspended solids that does not exceed 35 mg/kg during high-flow conditions. The site-specific objectives for mercury were adopted based on natural background conditions prior to anthropogenic disturbances.

### **Today's Action**

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. For purposes of section 303(c), water quality standards generally include designated uses and water quality criteria (or "beneficial uses" and "water quality objectives," respectively under California law), and antidegradation policies.

EPA has determined that both portions of the above Basin Plan amendment are subject to EPA's CWA section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves this amendment, subject to completion of the Endangered Species Act (ESA) section 7(a)(2) consultation with the Services. EPA's approval is based on our finding that these portions of the amendment are consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.

### **Public Participation**

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based on our review, the public review procedures followed by the State in the development and approval of Regional Board Resolution No. R5-2007-0021 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

### **ESA Consultation with the U.S. Fish and Wildlife Service on EPA's Action**

Section 7(a)(2) of the ESA states that each federal agency shall 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. On August 12, 2008, EPA initiated informal consultation with the U.S. Fish and Wildlife Service on our action concerning the revised mercury water quality objectives. We anticipate concluding consultation in the near future. Consistent with ESA section 7(d), we find that our approval of the revision of the water quality objectives for mercury will not "make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate [ESA section 7] subsection (a)(2)."

EPA commends the Central Valley Regional Board staff for its excellent work in establishing beneficial use designation changes and site-specific water quality objectives for mercury for Sulphur Creek. If there are any questions regarding our approval action, please contact Matt Mitchell of my staff at (415) 972-3508. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

*Alexis Strauss 4 Sept. 2009*

Alexis Strauss, Director  
Water Division

cc: Pamela Creedon, Central Valley Regional Water Quality Control Board  
Thomas Gardner, U.S. Environmental Protection Agency, Office of Water (4305)