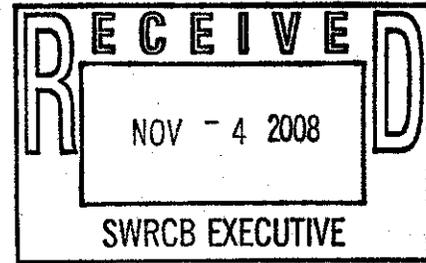


November 4, 2008

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Comment Letter - Proposed Revision to the Bacterial Standards for Water Contact Recreation in Fresh Waters of California.

Dear Ms. Townsend:

This letter comments on the scope and content of the State Water Resources Control Board's ("SWRCB") Proposed Revision to the Bacterial Standards for Water Contact Recreation in Fresh Waters of California.

A. The Proposed Standards Should Only Apply to Point Source Discharges to Marine Coastal Waters.

The SWRCB's Statewide Bacterial Standards Information Document references Title 40, Section 131.41 of the Code of Federal Regulations (40 CFR 131.41) and the BEACH Act of 2000, for applying the USEPA's bacterial indicator criteria to fresh waters of California. Although adopting the numeric Standards pursuant to 40 CFR 131.41 may be appropriate for point source discharges of wastewater under the NPDES permitting process, it is not appropriate for the Total Maximum Daily Loads ("TMDLs") or for determining the 303(d) listing. As expressly stated in section 131.41, the USEPA's bacterial indicator criteria only applies to "pathogen dischargers" that discharge to coastal recreation waters. The term "pathogen discharger" is defined as "any building, structure, facility, or installation from which there is or may be a discharge of pathogens." (40 CFR 131.41(b)(6) & (7).) Section 131.41 does not apply to non-point source discharges.

Furthermore, under both section 131.41 and the BEACH Act of 2000, the USEPA's bacterial indicator criteria only apply to coastal recreation waters. The term "coastal recreational waters" is defined as marine coastal waters, including coastal estuaries, "for use for swimming, bathing, surfing, or similar water contact activities." (33 USCS §1362(21)(A); 40 CFR 131.41(b).) The term "coastal recreation waters" expressly excludes (1) inland waters and (2) "waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea." (33 USCS §1362(21)(B).)

Accordingly, it is inappropriate to apply the Statewide Bacterial Standards to any inland waters or waters upstream of a river mouth. Correspondingly, the Standards should not be used for determining section 303(d) listing of any inland water bodies or water upstream of a river mouth. The SWRCB's proposed utilization of the USEPA's bacterial indicator criteria beyond "coastal recreational waters" is inconsistent with 40 CFR

131.41 and the BEACH Act of 2000.

B. The Proposed Standards Should Only Apply to Human Source Bacteria.

Where the proposed Statewide Bacteria Standards may be applicable (i.e., point source wastewater discharges to beaches and coastal estuaries), all non-human sources, including wildlife and livestock, must be specifically excluded under the "Natural Source Exclusion". For example, a provision excluding all natural sources on grazing lands, whether the source is wildlife or livestock, should be particularly described in the Natural Source Exclusion provision to better define the exclusions.

This interpretation that the Standards should only apply to human sources is consistent with Footnotes e and c of Table C of 40 CFR 131.41(c) and the USEPA's Ambient Water Quality Criteria for Bacteria - 1986, which expressly state that the bacterial indicator criteria is only applicable to human bacteria sources. In developing the criteria, the USEPA recommended that the criteria not be applied to non-human indicator bacteria sources and stated that non-human indicator densities "are not indicative of a health risk to those swimming in such waters." (USEPA, Ambient Water Quality Criteria for Bacteria - 1986). To be consistent with the USEPA's recommendation, the Standards must only apply to human bacteria sources, such as wastewater treatment plants, and the regulation must be drafted to particularly describe and exclude all non-human sources.

Accordingly, non-human, warm-blooded animal specific bacteria detected in water bodies should be considered background concentrations, which must be deducted from the total densities of bacteria detected before the SWRCB applies the Standards.

C. Laboratory Testing Must Be More Precise Before Implementing Such Standards

The USEPA acknowledges that the bacterial enumeration techniques are imprecise. (USEPA, Ambient Water Quality Criteria for Bacteria - 1986.) Before the SWRCB implements the human source numeric bacteria standards, the SWRCB must be confident that laboratory testing is sufficiently precise to distinguish between human specific bacteria and warm-blooded animal specific bacteria. Using correlation coefficients is not sufficient because, as stated by the USEPA in its Ambient Water Quality Criteria for Bacteria - 1986, no general correlation exists.

D. To Provide Scientifically Defensible Standards, the SWRCB Must Conduct State-Specific Epidemiologic Studies

The proposed Statewide Bacterial Standards are based on the USEPA's outdated epidemiologic studies conducted mostly on beaches in highly populated areas of the eastern United States. (USEPA, Ambient Water Quality Criteria for Bacteria - 1986.)

The epidemiologic studies were based on the public's exposure to treated effluents from large municipal wastewater treatment plants. (USEPA, Ambient Water Quality Criteria for Bacteria - 1986.) California was not a participant of these studies. USEPA admitted problems with applying its bacterial indicator criteria to other areas of the United States. For example, the USEPA observed that the relationship between the criteria and illness may not be valid if the size of the population contributing the fecal wastes becomes too small or if epidemic conditions are present in a community. (USEPA, Ambient Water Quality Criteria for Bacteria - 1986.)

Because the SWRCB has not conducted and therefore, does not rely on state-specific epidemiologic studies for promulgating the Standards, the proposed statewide Standards for California's fresh waters are not scientifically defensible. Accordingly, before enacting any bacterial standards for fresh waters, the SWRCB must conduct scientifically-based, state-specific epidemiologic studies on fresh waters.

Thank you for this opportunity to comment on the proposed statewide policy and don't hesitate to contact us should you have any questions.

Sincerely,



Justin T. Oldfield
Director of Industry Affairs
California Cattlemen's Association



Aaron Johnson
President
Monterey County Cattlemen's Association