



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 19 2012

OFFICE OF THE
REGIONAL ADMINISTRATOR

Mr. Robert E. Perdue
Executive Officer
California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, California 92260

RE: Approval of the Use of Freshwater Aquatic Life for Seeley County Water District's NPDES Permit, NPDES No. CA0105023

Dear Mr. Perdue:

The U.S. Environmental Protection Agency ("EPA") has reviewed the Seeley County Water District's request to apply the water quality standards for freshwater instead of the water quality standards for saltwater to implement the permit issued by the Colorado River Regional Water Quality Control Board for a number of pollutants at the facility's discharge point. We find that it is appropriate to apply the freshwater criteria to the Seeley County Water District's permit. Therefore, we tentatively approve the request to use the freshwater aquatic life criteria in the Seeley County Water District's National Pollutant Discharge Elimination System (NPDES) permit to discharge into an unnamed slough that flows into the New River.

In 2000, EPA established Federal Water Quality Standards in California (known as the California Toxics Rule or CTR) for a number of toxic pollutants. 40 CFR 131.38. These standards, technically referred to as water quality criteria, include both freshwater and saltwater criteria. For waters with salinity less than 1 part per thousand (ppt), freshwater criteria apply, while for waters with salinity greater than 10 ppt, saltwater criteria apply. For waters with salinity between 1 ppt and 10 ppt, the more stringent of the freshwater and saltwater criteria apply. For these waters, however, the EPA Regional Administrator has discretion to approve the use of less stringent freshwater or saltwater criteria based on information and data that demonstrates that the dominant biology of the water body is either freshwater or saltwater aquatic life.

On May 9, 2012, the Seeley County Water District requested that freshwater criteria be applied to its wastewater discharge into a slough that flows into the New River. The Water District indicated that its request applied to the receiving waters of the slough at the discharge point from the Seeley County Water District's wastewater treatment facility. This segment of the slough had salinity between 1 and 10 ppt at the time the permit was issued.

For waters with salinities between 1 and 10 ppt, 40 CFR 131.38(c)(3)(iii) provides as follows:

"For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs c(3)(i) and (ii), the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the [EPA] Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, EPA will publish for public comment a document proposing the change."

Pursuant to this requirement, the Colorado River Basin Regional Water Quality Control Board adopted an NPDES permit for the Seeley County Water District with the most stringent of the freshwater or saltwater criteria based on the information that salinity was between 1 and 10 ppt.

The Seeley County Water District submitted a *Biological Assessment* (the "Bioassessment") to EPA in support of its request for approval for the use of freshwater criteria. The Bioassessment, conducted by Barrett's Biological Surveys on behalf of the Water District, is a site-specific assessment of the biology of the slough surrounding the discharge location to determine whether the species observed are more typical of a freshwater or saltwater environment. Two sampling stations were established in the vicinity of the outfall. At each sampling station the following data were collected: water salinity, dominant vegetation, aquatic life, and animals. The water salinity was measured at 2 ppt at the discharge point and 4 ppt downstream of the discharge point. According to the Bioassessment, red shiners were observed in the vicinity of the discharge. Red shiners are not known to be tolerant of saline conditions. In addition, species typically found in a saltwater system, such as barnacles, pileworms, or brackish water snail were not observed. Saltwater vegetation and wildlife were also not observed.

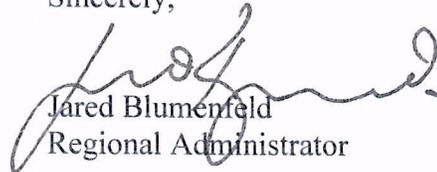
EPA agrees with the conclusion that the slough in the vicinity of the wastewater treatment facility is more typical of a freshwater ecosystem than a saltwater system. Therefore, EPA believes that the requested freshwater criteria are appropriate for that segment of the slough, defined as the Seeley County Water District's Wastewater Treatment Plant discharge point. EPA's approval would only apply to this segment and not to the slough in its entirety.

Prior to a final decision, in accordance with 40 CFR 131.38(c)(3)(iii), EPA will give public notice that it is proposing to approve the use of alternative freshwater aquatic life criteria for this portion of the slough. EPA will jointly public notice this letter with the Colorado River Basin Regional Water Quality Control Board's public notice for the proposed re-opening of the Seeley County Water District's NPDES Permit No. CA0105023.

EPA will take into consideration and respond to comments received during the public comment period. This proposed decision will become final unless EPA receives comments on the proposal prior to the close of the comment period in the public notice.

If there are any questions regarding our tentative approval action, please contact Matthew Mitchell, of the Standards and TMDL Office, at (415) 972-3508. As always, we look forward to continued cooperation with the Colorado River Basin Regional Water Quality Control Board in achieving our mutual environmental goals.

Sincerely,



Jared Blumenfeld
Regional Administrator

cc: Frank Cornejo, Seeley County Water District
John Carmona, Colorado River Basin Regional Water Quality Control Board

