



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 05 2012

Mr. Tom Howard
Executive Director
California State Water Quality Control Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Howard:

The EPA has reviewed the proposed Basin Plan amendment (R8-2012-0001, *Amendments to the Water Quality Control Plan for the Santa Ana River Basin to Revise Recreational Standards for Inland Fresh Surface Waters in the Santa Ana Region*). We have determined that the use attainability analyses (UAAs) and aspects of the proposed changes to the bacterial objective will not be approved by EPA.

We have objections to the UAAs because 1) they do not adequately demonstrate that the use cannot be attained using permit authority for point sources and/or best management practices for nonpoint sources, 2) they do not provide the basic information to evaluate whether the UAA factors specified in federal regulations at 40 CFR 131.10(g) have been met and 3) they do not demonstrate that downstream uses will be protected.

1. There is no evidence that the use cannot be achieved. Per 40 CFR 131.10(d), uses are deemed attainable "*if they can be achieved by the imposition of effluent limits required under sections 301 (b) and section 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control*". Our review of the dry-weather bacteria data in Cucamonga Creek, Temescal Creek and the Santa Ana Delhi Channel leads us to believe that reasonable actions might bring the waters into compliance. These water bodies meet REC1 objectives frequently during dry weather and the proposed high flow suspension of the recreational use would provide relaxation for storm events. There is no demonstration that the water quality criteria cannot be met with authorities under the stormwater permit or reasonable BMPs.

2. There is insufficient justification for the UAA factors cited under 40 CFT 131.10(g). The UAAs in the Basin Plan amendment describe the lack of dry-weather flow and shallow depths as a rationale for use removal under 131.10(g)¹. The description in the UAAs provides an incomplete assessment of depth throughout the reaches proposed for use removal. We are

¹ 131.10(g)2. Natural, ephemeral, intermittent, or low-flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met;

particularly concerned with the tidal prisms of the reaches where depth can be in the range of 5 to 7 feet during high tide.

The UAAs cite 131.10(g)⁴ and state *“Given the level of development in the vicinity of the channel and the ongoing need to provide flood protection, it is not considered feasible to restore the channel to its original condition or to operate the channel so as to attain the REC1 use.”* As discussed above, there is no evidence presented to support the notion that REC1 objectives cannot be met in these flood control channels.

The high flow suspension is a temporary suspension of the use requiring UAAs. Each water body with the high flow suspension should be formally evaluated against the 131.10(g) factors. We have approved such suspensions in Regional Boards 4 and 9, but these have generally been limited to concrete-lined channels. We need a better rationale before we could approve any temporary use suspension for channels with *“levees, bank stabilization (rip-rap), channel straightening, vegetation removal or other similar practices.”*

3. There is no demonstration of downstream protection. There is no evidence that relaxation or removal of the REC uses will protect the downstream uses. Three of the four UAAs include water bodies and reaches named in TMDLs that are in the implementation phase. The Santa Ana Delhi Channel discharges directly into Upper Newport Bay which remains on the 303(d) list. It is unclear how removing all REC standards for the Santa Ana Delhi Channel Reaches 1 and 2, and changing the existing numeric standard at the tidal prism would assure that the REC1 use in Upper Newport Bay is met. Similarly, both Cucamonga Creek and Temescal Creek are named in the Bacteria Indicator TMDL for the Middle Santa Ana River. It is unclear how removal of all REC uses from Cucamonga Creek and Reach 1b of Temescal Creek will protect downstream uses.

We also have the following concerns with changes to the bacterial standard and portions of the implementation chapter that affect or modify the standard. We consider factors that affect or modify the standard to be relevant standards changes, subject to EPA review and approval. Our major concerns are summarized below:

- We object to removal of numeric objectives for REC2 and replacement with a narrative antidegradation target based on the 75th percentile of existing concentrations. The use of the 75th percentile would allow a 25% increase in bacteria concentration before any action is taken. For waters that are already impaired, the use of the existing bacterial concentrations to establish a threshold maintains the existing degradation. This approach is inconsistent with current antidegradation policies and not scientifically defensible. We are likely to disapprove the antidegradation targeting procedure.

² 131.10(g)4. Hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use;

- The criteria for initiating and terminating the high flow suspension of bacteria criteria are also water quality objectives subject to EPA approval. These details should not be in the implementation chapter.
- The definition of controllable and uncontrollable sources of bacteria should be part of the standard and thus is subject to EPA review approval.
- The text on page 39 reads "*Pathogen indicator concentrations shall not exceed the values specified in Table 4-pio as a result of controllable water quality factors (see also Chapter 5, Recreational Water Quality Standards, Controllable and Uncontrollable Sources of Bacteria) unless it is demonstrated to the Regional Board's satisfaction that the elevated indicator concentrations do not result in excessive risk of illness among people recreating in or near the water.*" We believe that such a finding would require either an epidemiological study or a Quantitative Microbial Risk Assessment (QMRA). In either case any such finding would be site-specific criteria subject to EPA approval.
- The text on page 77 reads "*Where water quality monitoring data indicate significant non-compliance with the applicable pathogen indicator objective, agencies discharging to that waterbody must submit a plan to the Regional Board to identify the pollutant source(s) unless monitoring data show that their particular discharge is not causing or contributing to the exceedance. The source evaluation plan must be implemented upon approval by the Executive Officer.*" This text is more appropriately considered for inclusion in an NPDES permit or other Waste Discharge Requirement and should cover all discharges, not just discharges from "agencies." Inclusion of text along these lines in the appropriate discharge requirements must be drafted to ensure that it doesn't impinge upon State Board or EPA authority to enforce against Clean Water Act violations.

In conclusion, the amendment in general is not approvable. The challenges of meeting bacteria criteria in urban landscapes are not unique to the Santa Ana Region. We believe that these issues would be better addressed in association with the other Regional Boards. EPA is aware the State Board intends to adopt a statewide policy for freshwater bacteria. We would prefer that your agency adopt appropriate bacterial indicator criteria for human health protection as part of a statewide effort. Also as you know, the new EPA Recreational Water Quality Criteria will be published as final on November 30, 2012. We recommend that it be the starting point for any changes to bacterial standards.

Sincerely,



Nancy Woo, Acting Director
Water Division

cc: Vicky Whitney
Rik Rasmussen

