California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2012-0001

Resolution Approving Amendments to the Basin Plan Pertaining to Bacteria Quality Objectives and Implementation Strategies, Recreation Beneficial Uses, the Addition and Deletion of Certain Waters Listed in the Basin Plan and Designation of Appropriate Beneficial Uses, and Other Minor Modifications

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Regional Board on March 11, 1994, approved by the State Water Resources Control Board (SWRCB) on July 21, 1994, and approved by the Office of Administrative Law (OAL) on January 24, 1995. Subsequent amendments to the Basin Plan have been approved.

2. The Basin Plan identifies ground and surface waters within the Santa Ana Region (Region), designates beneficial uses for those waters, establishes water quality objectives for the protection of those uses, prescribes implementation plans whereby the objectives are to be achieved, and establishes monitoring and surveillance programs.

3. Designated beneficial uses of surface waters in the Basin Plan include Water Contact Recreation (REC1) and Non-contact Water Recreation (REC2). REC1 is essentially equivalent to “primary contact recreation”, the terminology employed by many states and accepted and used by the U.S. Environmental Protection Agency (USEPA). Similarly, REC2 is effectively equivalent to “secondary contact recreation”, as this use is recognized and used by USEPA.

4. The federal Clean Water Act and implementing regulations establish the presumption that all surface waters support primary contact (water contact) recreation and should be designated REC1. This presumption can be rebutted for one or more specific surface waters by demonstrating that: (a) REC1 is not an “existing” use, as defined in federal regulations (40 Code of Federal Regulations (CFR) 131.3); and, (b) a structured scientific assessment, known as a Use Attainability Analysis, demonstrates that attaining the use is not feasible based on one or more of the six factors identified in federal regulations (40 CFR 131.10(g)).

5. The Basin Plan establishes water quality objectives intended to protect both REC1 and REC2 uses of surface waters. These objectives were established in the 1975 Basin Plan, relying on federal guidance at that time that recommended

that fecal coliform bacteria be used to assess the sanitary quality of recreational waters and to assure the protection of public health and recreational uses. Fecal coliform are surrogate bacterial indicators of the presence of pathogens, such as viruses, that may cause disease in persons exposed, primarily via the ingestion of water.

6. In 1986, USEPA published revised guidance ("Ambient Water Quality Criteria for Bacteria – 1986") regarding the surrogate pathogen indicator bacteria that States should employ to assure the protection of primary contact recreation (REC1). For freshwaters, the revised guidance recommends that States adopt objectives based on *E. coli* or enterococcus. USEPA has acknowledged that there is no scientific basis for establishing pathogen indicator bacteria objectives to protect secondary contact (REC2) recreation, since the epidemiological data used by USEPA to derive the bacteria criteria were associated with swimming-related activities involving immersion, where the ingestion of water was likely. However, USEPA recommends that States set numeric objectives for secondary contact recreation based on multiplication (5X or 10X) of their primary contact recreation objectives.

7. USEPA expects States to adopt bacteria quality objectives that provide public health protection in primary contact recreation waters that is at least equivalent to that provided by the criteria in USEPA's 1986 criteria document. In 2004, USEPA promulgated bacteria criteria based on the 1986 guidance for the Great Lakes and for coastal recreation waters in those states that had not adopted equally protective objectives (Water Quality Standards for Coastal and Great Lakes Recreational Waters – Final Rule. 40 CFR 131.41).

8. Working with the Stormwater Quality Standards Task Force (SWQSTF, or Task Force), Regional Board staff developed recommendations for revising the Basin Plan fecal coliform objectives to implement USEPA's 1986 recommended criteria. As part of this process, the Task Force carefully considered the scientific basis of both the established fecal coliform objectives and the 1986 recommended bacteria criteria. Based on detailed understanding of the scientific basis for these objectives and criteria, the Task Force determined that it would be appropriate to consider also the need for and nature of amendments to the Basin Plan recreational use definitions, recreational use designations for certain surface waters in the Region, and bacteria indicator objective implementation strategies, including monitoring. The suite of Basin Plan amendments delineated in Attachments 1 (underline-strikeout version) and 2 ("clean"version) to this resolution are the product of this consideration.

9. The proposed Basin Plan amendments include recommendations for changes to pathogen indicator bacteria objectives in freshwater. These include: (1) establishing new, numeric pathogen indicator objectives, based on *E. coli,* for

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freshwaters designated both REC1 and REC2; (2) deleting the Basin Plan fecal coliform objectives for REC1 and REC2 in freshwaters; (3) establishing a new, narrative pathogen indicator objective; (4) establishing single sample maximum (SSM) values for *E. coli* that will be used, in part, to assess compliance with geometric mean objectives in the absence of sufficient data to calculate geometric means (and, principally, as public notification tools); (5) establishing numeric, antidegradation pathogen indicator bacteria targets (in lieu of objectives) for waters designated REC2 only, as justified by Use Attainability Analyses; and, (6) deleting the established total coliform objective for freshwaters designated MUN (municipal and domestic supply).

10. Water Code Section 13241 requires that certain factors, including economics, be evaluated, at a minimum, when the Regional Board considers changes to water quality objectives. Pursuant to this requirement, analysis was conducted of the proposed changes to pathogen indicator objectives in freshwater described in the preceding Finding (#9). This analysis was conducted in the context of the proposed strategies for the application and implementation of the revised objectives. These implementation strategies include: the de-designation of the REC1 use for certain surface waters, based on Use Attainability Analyses; implementation of *E. coli* SSMs principally as public notification tools or to provide a surrogate measure of attainment when insufficient data are available to calculate a representative geometric mean; and, implementation of the proposed temporary, high flow suspension of pathogen indicator objectives. The costs of compliance with the proposed objectives is not likely to be significantly different than the cost of meeting the established fecal coliform objectives, provided that the proposed objectives are applied and implemented in accordance with the suite of strategies proposed in these amendments. If the suite of amendments is approved and the proposed objectives are applied and implemented in that context, then the costs of compliance may be reduced since the need for bacteria control facilities is expected to be reduced. The costs associated with meeting the proposed objectives are necessary to ensure the reasonable protection of beneficial uses and the prevention of nuisance. Should one or more elements of the suite of amendments proposed in the attachments to this resolution not be approved, then the Section 13241 analysis may be invalid and any future reliance on this analysis for regulatory purposes would be improper. Under these circumstances, additional Section 13241 analysis would be appropriate.

11. Analysis of the proposed Basin Plan amendments was conducted to determine consistency with the antidegradation policy (SWRCB Resolution No. 68-16 “Statement of Policy with Respect to Maintaining High Quality Waters in California” and 40 CFR 131.12). None of the proposed amendments is expected to result in the lowering of water quality. Thus, the proposed amendments conform to antidegradation policy requirements.

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12. Pursuant to the requirements of the California Environmental Quality Act (CEQA) and implementing regulations, including those established by the SWRCB, analyses were conducted of the potential environmental effects of the proposed amendments. These analyses are presented in "Environmental Checklist and Analysis - Substitute Environmental Document for Proposed Amendments Related to Recreational Use Standards for Inland Fresh Waters within the Santa Ana Region", November 30, 2011. This environmental checklist and analysis document is attached (Attachment C) to the staff report prepared to describe the proposed Basin Plan amendments ("Staff Report, Basin Plan Amendments, Revisions to Recreational Standards for Inland Fresh Surface Waters in the Santa Ana Region", January 12, 2012). This staff report, the draft Basin Plan amendments included as attachments to this resolution, and the environmental checklist and analysis document collectively comprise the Substitute Environmental Document (SED) required under CEQA for Basin Plan amendments.

13. The analyses of the potential environmental effects of the proposed amendments were conducted on a programmatic level. Those entities subject to the amendments, if approved, are responsible for identifying specific compliance strategies and conducting required project-level CEQA analyses of the implementation of those strategies.

14. Based on the environmental analyses described in the preceding Findings (#12 and 13), Regional Board staff made the preliminary determination that the proposed amendments could not have a significant effect on the environment, and, therefore, no alternatives or mitigation measures are proposed. This includes the determination that the Basin Plan amendments would not have an impact on biological resources. On February 16, 2012, the California Department of Fish and Game issued a "No Effect Determination", confirming that the Basin Plan amendments have no potential effect on fish, wildlife and habitat.

15. Health and Safety Code Section 57004 requires that all proposed rules, such as the proposed Basin Plan amendments, that have a scientific basis or components must be submitted for scientific peer review. The proposed amendments were submitted for scientific peer review in accordance with this requirement. The review was conducted in accordance with California Environmental Protection Agency guidelines. Peer reviewer comments were considered in recommendations regarding the proposed amendments.

16. The proposed amendments meet the necessity standard of the Administrative Procedures Act, Government Code Section 11353, subdivision (b). The proposed amendments are required to fulfill the Regional Board's obligation pursuant to the California Water Code to exercise its full power and jurisdiction to protect the quality of waters in the state, including the duties to establish such objectives as

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will assure the reasonable protection of beneficial uses and to identify the program of implementation, including monitoring, needed to achieve those objectives.

17. A CEQA Scoping Meeting was held on January 28, 2010 to provide interested parties the opportunity to comment on the appropriate scope and content of the SED to be prepared for the proposed Basin Plan amendments. Written responses to comments provided were prepared and attached to the staff report (Attachment B). Periodic presentations to the Regional Board regarding the proposed amendments were made during the Board's regularly scheduled public meetings. Public and agency participation in the consideration of the proposed amendments was actively sought.

18. A Notice of Public Hearing/Notice of Filing and the SED, including the staff report, draft Basin Plan amendments and environmental checklist and analysis document, were prepared and distributed to interested individuals and public agencies for review and comment on January 12, 2012. Written responses to comments received by the date specified in the Public Hearing notice (February 27, 2012) were prepared and attached to the staff report (Attachment F).

19. On March 16, 2012, the Regional Board held a Public Hearing to consider the proposed Basin Plan amendments. The Regional Board considered all testimony offered at the hearing and the written comments submitted by interested parties and public agencies before taking any final action.

20. The Basin Plan amendments must be submitted for review and approval by the SWRCB, OAL and USEPA. The Basin Plan amendments will become effective upon approval by USEPA. A Notice of Decision will be filed.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Board has reviewed and considered the record of this matter, including the information contained in the SED, all written testimony provided during the public comment period, and all oral testimony provided at said public hearing.

2. The Regional Board confirms the preliminary determination by Regional Board staff that the proposed amendments could not have a significant effect on the environment and hereby certifies the environmental checklist and analysis document that is part of the SED.

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3. The Regional Board hereby adopts the Basin Plan amendments delineated in Attachment 1 (underline/strike-out version) and Attachment 2 ("clean" version) to this Resolution.

4. The Executive Officer is directed to forward copies of the Basin Plan amendments to the SWRCB in accordance with the requirements of Section 13245 of the California Water Code.

5. The Regional Board requests that the SWRCB approve the Basin Plan amendments in accordance with the requirements of Sections 13245 and 13246 of the California Water Code and, thereafter, forward the amendments to OAL and USEPA for their approval.

6. If during its approval process the SWRCB or OAL determine that minor, non-substantive corrections to the language of the amendments are needed for clarity or consistency, the Executive Officer may make such changes and shall inform the Regional Board forthwith.

7. The Executive Officer is directed, at the time of filing and posting the Notice of Decision, to file the No Effect Determination received from the Department of Fish and Game.

I, Kurt V. Berchtold, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board – Santa Ana Region on March 16, 2012.

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Kurt V. Berchtold
Executive Officer

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9. **Public Hearing: Basin Plan Amendments - Recreational Standards for Inland Surface Waters** - The Regional Board will be asked to consider adoption of Basin Plan amendments revising recreational standards for inland surface waters in the Santa Ana Region. Editorial and other changes are also proposed. {Joanne E. Schneider 951/782-3287 jschneider@waterboards.ca.gov } Resolution No. R8-2012-0001

For additional technical reports, references, comments and supporting documents regarding this item please see our web site:

Proposed Basin Plan Amendments: Recreation Standards for Inland Fresh Surface Waters