



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 20 2014

Ms. Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive
Rancho Cordova, California 95670-6114

Dear Ms. Creedon:

The Environmental Protection Agency (EPA) has reviewed the California State Water Resources Control Board (SWRCB) Resolution Number 2013-0038; Amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) To Establish a Drinking Water Policy for Surface Waters of the Delta and its Upstream Tributaries. I am pleased to inform you that we are approving the water quality standards portions of this amendment.

The Central Valley Regional Water Quality Control Board adopted the amendment on July 26, 2013 under Resolution No. R5-2013-0098. The SWRCB approved the amendment on December 3, 2013 as Resolution No. 2013-0038. The SWRCB submitted its approval request to EPA on May 7, 2014. The California Office of Administrative Law (OAL) approved the amendment on May 19, 2014. EPA received OAL's approval letter on May 27, 2014.

The Amendment

The amendment modifies Basin Plan Chapter 3, (Water Quality Objectives) to add a narrative water quality objective for *Cryptosporidium* and *Giardia* applied within the Sacramento-San Joaquin Delta and its tributaries below the first major dams. The narrative objective states that "Waters shall not contain *Cryptosporidium* and *Giardia* in concentrations that adversely affect the public water system component of the MUN beneficial use." Compliance with the objective will be assessed at existing and new public water system intakes. The amendment also clarifies in a footnote that the existing narrative objective for chemical constituents includes drinking water chemical constituents of concern, such as organic carbon. In addition, the amendment modifies Basin Plan Chapter 4 (Implementation), establishing a Drinking Water Policy.

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. The State regulatory provisions which are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

EPA has determined that the provisions of the Basin Plan Amendment establishing a new narrative water quality objective and adding a footnote for the existing narrative objective in Chapter 3 are subject to EPA's 303(c) approval authority. EPA has reviewed the Basin Plan amendment and has concluded that the above portions are consistent with the requirements of the CWA and EPA's regulations at 40 CFR Parts 131.5 and 131.6.

Public Participation

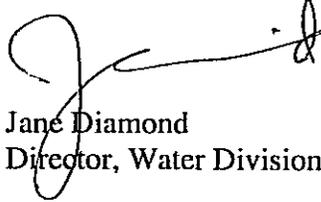
EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards and associated implementation provisions. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of State Board Resolution No. 2013-0038 and the Regional Board Resolution No. R5-2013-0098 are consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

The Endangered Species Act (ESA)

Section 7(a) of the ESA states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency will not likely jeopardize the continued existence of any threatened or endangered (listed) species or result in the destruction or adverse modification of critical habitat. The Basin Plan establishes a narrative water quality objective for *Cryptosporidium* and *Giardia* and clarifies in a footnote that the existing narrative objective for chemical constituents includes drinking water chemical constituents of concern, such as organic carbon. The amendment is intended to protect humans against excessive exposure to the pollutants through the consumption of drinking water at the intake of public water systems. EPA's "Recommended Approaches to Improve Endangered Species Act (ESA) Consultation on Approvals on State and Tribal Water Quality Standards," dated January 16, 2009, states that ESA consultation requirements do not apply to actions where EPA lacks discretion to protect species, or where an EPA action has no effect on listed species or critical habitat. In order for ESA section 7 to apply, EPA must be taking an action in which it has sufficient federal involvement or control to protect listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves state water quality standards to protect human health. Human health standards are designed to protect humans, not plants or other animals. EPA has no discretion to revise an otherwise approvable human health standard to benefit listed species. Therefore, ESA consultation requirements do not apply to this action.

If there are any questions regarding our action, please contact Janet Hashimoto at (415) 972-3452 or Matt Mitchell at (415) 972-3508. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Diamond', with a long horizontal flourish extending to the right.

Jane Diamond
Director, Water Division

cc: Jay Simi, Central Valley Regional Water Quality Control Board
Rik Rasmussen, State Water Resources Control Board
Noah Van Gilder, U.S. EPA, Office of Water