



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

FEB - 6 2007

Tom Howard, Acting Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Howard:

The Environmental Protection Agency (EPA) has reviewed the amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) that designates Commercial and Sport Fishing (COMM) as an existing use for Cache Creek, North Fork Cache Creek, and Bear Creek, and establishes site-specific water quality objectives for methylmercury in fish tissue for Cache Creek, North Fork Cache Creek, Bear Creek, and Harley Gulch. I am pleased to inform you that we are approving this amendment.

The subject amendment was adopted by the Central Valley Regional Water Quality Control Board (CVRWQCB, Regional Board) on October 21, 2005 under CVRWQCB Resolution No. 2005-0146. It was approved by the State Water Resources Control Board (SWRCB) on July 19, 2006 under SWRCB Resolution No. 2006-0054, and by the California Office of Administrative Law on October 19, 2006. The amendment was adopted in conjunction with a Total Maximum Daily Load (TMDL) for the control of mercury in Cache Creek, Bear Creek, Harley Gulch, and Sulphur Creek. The State Board sent the amendment to EPA on November 9, 2006 for approval. EPA received the submission on November 13, 2006. In this letter, EPA is approving only the water quality objectives component of CVRWQCB Resolution No. 2005-0146. We are addressing the TMDL in a separate action.

The Amendment

CVRWQCB Resolution No. 2005-0146 amended the Basin Plan to designate COMM as an existing use for Cache Creek and specified tributaries by adding the following footnote "d" to Table II-1 for Cache Creek Clear Lake to Yolo Bypass in Chapter II (Existing and Potential Beneficial Uses) (amendment text is underlined):

"(d) In addition to the beneficial uses noted in Table II-1, COMM exists for Cache Creek from Clear Lake to Yolo Bypass and in the following tributaries only: North Fork Cache Creek and Bear Creek."

CVRWQCB Resolution No. 2005-0146 also amended Chapter III (Water Quality Objectives) of the Basin Plan to establish site-specific methylmercury objectives by revising the text to read as

follows (text deleted by the amendment is shown in ~~strikeout~~; text added by the amendment is underlined):

“For Clear lake (53), the methylmercury concentration in fish tissue shall not exceed 0.09 and 0.19 mg methylmercury/kg wet weight of tissue in trophic level 3 and 4 fish, respectively. ~~Compliance with these objectives shall be determined by analysis of fish tissue as described in Chapter V, Surveillance and Monitoring.~~

For Cache Creek (Clear Lake to Yolo Bypass) (54), North Fork Cache Creek, and Bear Creek (tributary to Cache Creek), the average methylmercury concentration shall not exceed 0.12 and 0.23 mg methylmercury/kg wet weight of muscle tissue in trophic level 3 and 4 fish, respectively. For Harley Gulch (tributary to Cache Creek), the average methylmercury concentration shall not exceed 0.05 mg methylmercury/kg wet weight in whole, trophic level 2 and 3 fish.

Compliance with the methylmercury fish tissue objectives shall be determined by analysis of fish tissue as described in Chapter V, Surveillance and Monitoring.”

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 that are subject to EPA’s approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters.

EPA has determined that the above Basin Plan amendment is subject to EPA’s section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves this amendment. EPA’s approval is based on our finding that the amendment is consistent with the requirements of the CWA and EPA’s regulations at 40 CFR 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. Public involvement is an integral component of a successful water quality program. We wish to especially acknowledge the Board staff’s thoughtful consideration of the recommendations and comments provided by the U.S. Fish and Wildlife Service, which resulted in the adoption of methylmercury objectives expected to protect both human and wildlife consumers of fish from Cache Creek and its tributaries. Based upon our review, the public review procedures followed by the State in the development of CVRWQCB Resolution No. 2005-0146 and SWRCB Resolution No. 2006-0054 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the Endangered Species Act states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. On December 19, 2006, EPA Region 9 requested the U.S Fish and Wildlife Service's (FWS) concurrence that EPA's approval of the the site-specific methylmercury objectives adopted under CVRWQCB Resolution No. 2005-0146 is not likely to adversely affect the bald eagle nor the California red-legged frog. On January 16, 2007, FWS provided written concurrence that EPA's action will be wholly beneficial to those species. Pursuant to informal consultation with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, EPA has determined that our action will have no effect on any other federally listed species.

EPA commends the Central Valley Regional Board staff for its excellent work on the amendments adopted under CVRWQCB Resolution No. 2005-0146. If there are any questions regarding EPA's action, please contact Kathleen Goforth, of my staff, at 415-972-3521. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,


Alexis Strauss 6 February 2007
Director, Water Division

cc: Pamela Creedon (CVRWQCB)
Darrin Polhemus (SWRCB)
Caroline Whitehead (EPA Headquarters, Mail Code 4301)