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San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
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Subject: Comments on Proposed Amendment to the Water Quality Control Plan for the San Francisco Bay Basin – Addition of Surface Water Bodies and Beneficial Uses

Ms. O'Hara:

This provides comments on the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff's proposal to amend the San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan) regarding Bay Area surface water bodies and their associated beneficial uses. As first adopted in 1975, the Basin Plan did not assign beneficial uses to all of the water bodies that it lists, and many Bay Area water bodies were not listed at all. Regional Water Board staff is therefore proposing to improve the clarity and completeness of the Basin Plan by amending it to add previously unlisted water bodies and beneficial uses. The San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) appreciates this opportunity to comment on the proposed Basin Plan amendment. Our comments are provided below.

Designate Beneficial Uses for Specific Water Body Segments

Conditions related to aquatic life habitat, recreational use, and many other factors vary widely throughout water bodies, especially among various reaches of typical creeks in the Bay Area. The proposed Basin Plan amendment broadly and indiscriminately designates specific beneficial uses throughout an entire water body. We are very concerned about the potential regulatory consequences of such overly broad designations and the possible impacts on local agencies. For example, this approach could lead to the misapplication of water quality objectives to segments of water bodies that do not and cannot support a beneficial use designated for an entire water body. This could lead to unwarranted listings of impairment under Clean Water Act sections 303(b)/(d) and inappropriate Total Maximum Daily Load (TMDL) restoration actions. Inappropriate listings could potentially necessitate burdensome and resource-consuming actions, including delisting or modifying use designations. Such actions could necessitate, among other things, the expenditure of significant resources on use attainability analyses (UAAs), CEQA-related documents, and associated appeals and litigation.

The Basin Plan amendment should clearly describe the spatial extent of beneficial uses within creeks and other water bodies.[1] Beneficial uses should not be indiscriminately assigned to entire water bodies – they should be designated only for the specific water body segments (e.g., creek reaches) where they apply, based on appropriate supporting data.

Support Beneficial Use Designations with Appropriate Rationale and Data Sources

Appendix C to the staff report of the proposed Basin Plan amendment provides documentation of the rationale and/or data sources used to support the proposed beneficial use listings. We believe that two of the types of supporting information presented are inappropriate and inadequate. "Clean Water Act 101(a)(2) presumptive use" is used in many instances to support designation of the WARM, WILD, REC-1, and REC-2 beneficial uses. In addition, "Water Board staff knowledge" is occasionally used to support various proposed beneficial use designations.

In each instance these rationale should be replaced with a reference to site-specific data that show each proposed beneficial use actually exists in a specific water body segment (e.g., creek reach). REC-1 and REC-2 beneficial use designations should be supported by data showing the potential for the public to recreate at the water body segment. Data supporting REC-1 designations should demonstrate the potential for body contact with water where ingestion of water is reasonably possible (e.g., swimming or other water contact recreation is feasible and occurs in a creek reach during the warm and dry season of the year, when this type of recreation can reasonably be anticipated to occur).

Example Applications of the Above Comments

To illustrate the application of the above comments in light of available information, we are providing the following examples:

- Sanchez Creek (South Bay Basin) – The proposed Basin Plan amendment designates this entire water body with REC-1 and REC-2 beneficial uses. However, site-specific data are not provided in support of these designations; each designation is supported only as a "Clean Water Act 101(a)(2) presumptive use." During the fall of 2007 SMCWPPP (2008) walked the accessible urban reaches of this creek and characterized conditions using the Unified Stream Assessment (USA) protocol. Reaches designated S-1 and S-5 were 99% and 91% modified, respectively, by bed/bank armoring or underground culverting, and recreation sites were not observed during the assessment. Thus REC-1 and REC-2 beneficial uses do not appear to exist in, at a minimum, reaches S-1 and S-5 of this creek. In addition, another reach of Sanchez Creek from El Camino to San Francisco Bay is in an underground culvert (STOPPP 2002) and recreational beneficial uses presumably would not apply.

[1]In 1978 the State of Ohio pioneered a Tiered Aquatic Life Use (TALU) approach to beneficial use designations that considers the spatial variation in potential to support aquatic life within creek systems. At least twelve other states have since adopted similar approaches (Environmental Resources Coalition 2006, *Review of Tiered Aquatic Life Uses for Selected States*. Presentation to the Missouri Clean Water Forum Tiered Aquatic Life Use Group).

- Pulgas Creek (South Bay Basin) – The proposed Basin Plan amendment also designates this entire water body with REC-1 and REC-2 beneficial uses. Again, site-specific data are not provided in support of these designations and each designation is supported only as a "Clean Water Act 101(a)(2) presumptive use." During the fall of 2006 SMCWPPP (2007) walked the accessible urban reaches of this creek and characterized conditions using the USA protocol. A reach designated P-1 was 87% modified via bank hardening using a variety of materials, including concrete, sackcrete, gunnite, and stone. Recreation sites were not observed in this reach during the assessment. Thus REC-1 and REC-2 beneficial uses do not appear to exist in, at a minimum, reach P-1 of this creek. In addition, another reach of Pulgas Creek is in an underground culvert that mostly runs along El Camino Real and joins two branches of the creek (STOPPP 2002). As with the above example, recreational beneficial uses presumably would not apply in a culvert.

We appreciate the opportunity to work with you on this important effort. We request Regional Water Board staff reviews and revises the proposed beneficial uses of all San Mateo County creeks in the proposed Basin Plan amendment in accordance with the above comments. Please call me at 415/508-2134 if you have any questions or comments.

Sincerely,

Matthew Fabry
SMCWPPP Coordinator

References Cited

SMCWPPP 2007. *Unified Stream Assessment in Six Watersheds in San Mateo County*. Prepared for the San Mateo Countywide Water Pollution Prevention Program by EOA, Inc. August 2007.

SMCWPPP 2008. *Unified Stream Assessment in Seven Watersheds in San Mateo County*. Prepared for the San Mateo Countywide Water Pollution Prevention Program by EOA, Inc. August 2008.

STOPPP 2002. *Characterization of Imperviousness and Creek Channel Modifications for 17 Watersheds in San Mateo County*. Prepared for the San Mateo Countywide Stormwater Pollution Prevention Program by EOA, Inc. January 2002.