

Responses to March 15, 2012 Comments from Heal the Bay^{1, 2}

<p>#1. Rename the REC1 Use from “Water Contact Recreation” to “Primary Contact Recreation”: “We urge the Regional Board to retain the current definition.”</p>	<p>Please see the response to 2-23-12 comments from EPA Region 9, # 3</p>
<p>#2. Delete fecal coliform objectives and replace with <i>E. coli</i> objectives: The Basin Plan should specify that a rolling geometric mean be calculated based on five samples collected over the last thirty days or the five most recent samples.</p> <p>“In addition, the Regional Board must include a single-sample limit of <i>E. coli</i> density of 235/100ml. This single sample is critical for both public health protection and compliance purposes. There is no justification as to why this criterion is absent in this proposal.”</p>	<p>The proposed amendments included a recommended objective for <i>E. coli</i> expressed as the geometric mean of at least 5 sample in a 30-day period (running). (“Running” is the equivalent of “rolling” in the context of the expression and implementation of the objectives). See proposed Table 4-pio-Pathogen Indicator Bacteria Objectives for Fresh Water.</p> <p>Single sample maximum values, including 235/100ml <i>E. coli</i>, are included in the proposed amendments. Single sample maximum values and their application are described in detail in the proposed amendments (see “<i>Application of Single Sample Maximum values in REC1 freshwaters</i>”, including Table 5-REC-ssv (Chapter 5), and Table 4-pio- Pathogen Indicator Bacteria Objectives for Fresh Water (table note 3)). The detailed rationale for these amendments is described in the January 12, 2012 staff report for the amendments. The proposed single-sample maximum related amendments are wholly consistent with established USEPA guidance and regulation, including the Water Quality Standards for Coastal and Great Lakes Recreation Waters; Final Rule (BEACH Act rule) (2004) and, as such, will assure public health and beneficial use protection. Please see also the responses to 2-23-12- comments from EPA Region 9, #19-21.</p>

¹ Heal the Bay acknowledges in their March 15, 2012 letter that the comments provided focus on the proposals as described in the Executive Summary of the proposed amendments only, due to time constraints.

² On April 20, 2012, Heal the Bay submitted additional comments concerning the Use Attainability Analyses components of the proposed amendments. These additional comments were appended to the March 15, 2012 comment letter. The amended comment letter was not signed. Responses to the additional comments will be prepared and provided at the April 27, 2012 hearing.

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<p>#3. Establish narrative pathogen objective: “It is unclear why the Regional Board would propose a narrative pathogen objective. The numeric recreational water quality criteria are based on health impacts. These numeric criteria should be sufficient to protect public health.”</p>	<p>The rationale for the proposed narrative pathogen objective is discussed in the January 12, 2012 staff report and explicitly in the proposed amendments (see the proposed narrative in CHAPTER 4 WATER QUALITY OBJECTIVES, INLAND SURFACE WATERS, Pathogen Indicator Bacteria, third paragraph). In short, the intent of the narrative objective is to provide the Regional Board an additional regulatory tool to employ in situations where data on pathogens or other bacterial indicators of the presence of pathogens, numeric objectives for which are not specified in the Basin Plan, provide evidence of actual or threatened impacts to public health and recreational uses. Board staff is at a loss to understand why Heal the Bay would object to such an objective; indeed, we believe that Heal the Bay should applaud it and encourage its adoption by other regional boards in the state.</p>
<p>#4 and #5: “Subdivide REC1 standards into tiers based on intensity of use”: “We urge the Regional Board to reject the proposal of a tiered approach based on intensity of use....USEPA states that “the 2012 RWQC [proposed Recreational Water Quality Criteria, published in draft in 2011] are no longer recommending multiple “use intensity” values, in an effort to increase national consistency...and ensure equivalent health protection in all waters”. Thus, one set of standards based on the same health protection is appropriate.”</p> <p>“..we are concerned with the Regional Board’s assessment that the single sample value is for posting purposes only...Both the single sample and the geomean standards play an important role in public health protection and compliance assurance. The Regional Board cannot simply decide to use one or the other. “</p>	<p>Please see the response to 2-23-12 comments from EPA Region 9 , #1 and 7.</p> <p>As specified in the proposed amendments (see “<i>Application of Single Sample Maximum values in REC1 freshwaters</i>”, including Table 5-REC-ssv (Chapter 5), and Table 4-pio- Pathogen Indicator Bacteria Objectives for Fresh Water (table note 3)), the principal use of the SSMs would be as a beach posting/closure decision-making tool. This is entirely consistent with the express purpose of the SSMs, as described in USEPA guidance and regulations (e.g., USEPA’s 1986 bacteria criteria document and the USEPA 2006 Fact Sheet concerning SSMs (see references in the January 12, 2012 staff report)). However, pursuant to the proposed amendments, SSMs would be used also for compliance purposes where there are insufficient data to calculate a</p>

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<p>“Any derivation of the single sample or geomean from default values are (<i>sic</i>) a standards change and would be subject to EPA approval.”</p>	<p>geometric mean for comparison to the geometric mean objective (once again, please see see “<i>Application of Single Sample Maximum values in REC1 freshwaters</i>”, including Table 5-REC-ssv (see note1) (Chapter 5), and Table 4-pio- Pathogen Indicator Bacteria Objectives for Fresh Water (table note 3)). The proposed amendments include both recommended geometric mean objectives and SSMS.</p> <p>This is not the case. Explicit confirmation to the contrary is provided in the BEACH Act rule (p.67227). See also response to 2-23-12- comment from EPA Region 9, #21.</p>
<p>#6. Temporary suspension of bacteria objectives. “The term “high flow suspension” is very misleading. Did the Regional Board collect flow data over an extended period of time in the waterbodies proposed for temporary suspension of bacteria objectives? Without rain gauges on a specific waterbody, it is impossible to know if the flow is truly significantly elevated. ...Given the lack of understanding about flow, it is impossible to predict when individuals could be recreating in a waterbody. People who swim or surf in wet or winter weather are entitled to the same health protection and water quality standards as those that swim at beaches during the Fourth of July. ...Of note, high bacteria concentrations from upstream waterbodies could contribute to exceedances of water quality standards in downstream waterbodies. Thus we urge the Regional Board to not include a temporary suspension of bacteria objectives.</p>	<p>The January 12, 2012 staff report for the proposed amendments, and supporting technical documentation in the administrative record for this matter, describe in detail the technical bases for the recommended high flow suspension, the criteria to be used to trigger the suspension, and the criteria for termination of the suspension. Flow conditions in a number of streams considered representative of the types of channels to which the suspension criteria would apply were carefully evaluated. The flow response in these streams to storm events of different sizes, and the time required to return to base flow conditions, were evaluated. Further, the criteria employed by flood control agencies to determine when access to channels by the public should be prohibited in the interest of safety and the criteria employed by agencies engaged in stream monitoring (e.g., the United States Geological Survey) to determine when samplers are placed at undue risk were also evaluated and used to define the recommended suspension criteria. The suspension criteria proposed in the amendments identify those conditions in which flow conditions in the streams effectively preclude recreational uses because of safety considerations. To the extent that an individual chooses to recreate in such waters during unsafe conditions, the characteristics of the flow rather than bacteria quality are the principal public health and safety concern. In theory, the suspension should be applied to any surface stream</p>

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<p>The definition of “modified channels” can lead to use suspension in any water body where any vegetation has been removed or had any small modifications. This is completely inappropriate.</p>	<p>when the suspension criteria are met. However, Board staff recommends that the suspension be limited to engineered or heavily modified channels.</p> <p>It is recognized that bacteria concentrations from upstream waterbodies could contribute to exceedances of water quality standards downstream. Water quality standards in waters downstream of those for which the suspension is in temporary effect must be met, unless the suspension also applies to the downstream waters. In fact, the application of the temporary suspension to certain waters could facilitate the protection of downstream waters where recreation use may continue to occur (e.g., ocean beaches) by making it feasible to focus control efforts on those downstream waters, rather than in the upstream waters themselves. This approach would enhance rather than preclude public health and beneficial use protection.</p> <p>Please see the response to EPA Region 9 comment # 9.</p>
<p>#7. Re-designate specific waters to remove REC1 or REC1 and REC2 uses. “...the proposal sets an incentive to channelize inland waters in order to dedesignate beneficial uses and have less stringent requirements. The additional regulatory incentive of dedesignation will only lead to more efforts to channelize creeks and streams...rather than more ecologically friendly flood control efforts...More natural, bioengineered approaches to flood control will likely result when beneficial use designations are maintained.”</p> <p>“In addition, waterbodies dedesignated from a REC1 to a REC2 or complete dedesignation from water quality standards could stall restoration efforts.</p>	<p>The Regional Board exercises authority pursuant to the federal Clean Water Act (section 401 (water quality standards certifications)) and the California Water Code (e.g., consideration of the issuance of waste discharges requirements and enforcement of adopted waste discharge requirements) to regulate proposed discharges, such as those associated with stream modification projects, to assure that water quality and beneficial uses will be protected. The exercise of that authority does not negate the Regional Board’s responsibilities and authorities for determining the water quality standards that properly apply to waters of the state and the United States. The Regional Board’s determinations in surface water quality standards matters are subject to review and approval by the State Water Board and EPA Region 9.</p>

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<p>“The Regional Board states that dedesignated waters would be reviewed at least once every three years during the Triennial Review process. Given resource constraints, it is impossible that this review would be given the enormous amount of time needed to review all of the data and science.”</p>	<p>The recommendations in the proposed amendments for de-designation of REC1 or REC1 and REC2 uses for certain waters were based on detailed analyses described at length in the January 12, 2012 staff report (see the UAA sections of this staff report) and supporting documents in the administrative record. These analyses fully comply with relevant federal regulations for the consideration of de-designations.</p> <p>We understand that Heal the Bay is cognizant of, and disagrees at least in part with, the de-designations of some recreational uses for portions of Ballona Creek, which is in the Los Angeles Region. These de-designations were based on a Use Attainability Analysis performed by staff of the Los Angeles Regional Board. Of particular relevance in response to this Heal the Bay comment is the fact that the State Board took up the matter of the re-designations for Ballona Creek on its own motion. The Los Angeles Regional Board had declined to approve the recommendations of its staff for the de-designations, on the grounds that it would be appropriate to await consideration of future restoration efforts that might affect the attainability of recreational uses in the Creek. However, the State Board found instead that it would be appropriate to proceed with the re-designations, recognizing that changes could be made in the future if justified by restoration efforts. Federal regulations require the re-consideration of water quality standards that do not include “swimmable” (i.e., REC1) uses (and “fishable” uses) at least once every three years to determine whether conditions have changed such that the REC1 designation has become appropriate. This requirement applies to Ballona Creek, and to the waters in Region 8 that are proposed for de-designation. We appreciate the fact that Heal the Bay recognizes the resource constraints that confront the Board. These constraints confront virtually every agency and organization, and they make all the more essential sound decisions regarding applicable water quality standards. With appropriate standards established, resources can then be used in the most appropriate and effective manner to improve and</p>
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	<p>protect water quality, beneficial uses and public health</p> <p>It should be noted that the level of UAA documentation collected and reviewed by the Santa Ana Regional Board in recommending the de-designations in the proposed amendments is equal to or exceeds that which the State Board relied on to reclassify Ballona Creek. It may be noted that EPA Region 9 approved the re-designations for Ballona Creek without reservation.</p>
<p>#9. (note, there is no #8 in the Heal the Bay letter): Delete the bacterial quality objective for MUN. The Regional Board should not remove the MUN use without adequate documentation that MUN is not an “existing” use.</p>	<p>See response to 2-23-12 comments by EPA Region 9, #5</p>
<p>Conclusion: “ The Regional Board’s proposal has major implications on public health protection...many elements of the proposal will put recreators at greater risk and will not protect beneficial uses. At the same time, the proposal will likely stall restoration and water quality improvement efforts... The proposed Basin Plan amendment is the wrong action at the wrong time...Heal the Bay opposes the proposal as discussed above.</p>	<p>In contrast to the position expressed by Heal the Bay, and for the reasons described in part above, Regional Board staff believes that the proposed amendments, if approved and implemented, will result in public health and beneficial use protection. In fact, that the level of protection provided would exceed that now provided by the Basin Plan since (1) revised bacteria quality objectives based on an indicator organism now recommended by USEPA to protect public health would be established and (2) the suite of amendments, including changes to REC1 designations for certain waters and implementation strategies such as the temporary suspension of recreational standards, would enable and encourage responsible parties to implement control actions in prioritized and most appropriate fashion, thereby allowing limited resources to be applied first where the risks to public health and beneficial uses are most acute.</p>