

**Ben Neill - NPDES R9-2009-0021**


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**From:** Roger Butow <rogerbutow@mac.com>  
**To:** <bneill@waterboards.ca.gov>, Chad Loflen <cloflen@waterboards.ca.gov>, James Smith <jsmith@waterboards.ca.gov>, <dbarker@waterboards.ca.gov>, Bruce Posthumus <bposthumus@waterboards.ca.gov>  
**Date:** 6/1/09 8:09 AM  
**Subject:** NPDES R9-2009-0021  
**CC:** Deborah Jayne <DJayne@waterboards.ca.gov>, Deborah Woodward <DWoodward@waterboards.ca.gov>, John Robertus <jrobertus@waterboards.ca.gov>, <cgeorge@waterboards.ca.gov>, "Catherine Hagan (George)" <CHagan@waterboards.ca.gov>

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**To: NPDES Permit Staff**

**CC: Basin Plan Objectives (BPO) Staff**  
 XO John Robertus  
 Counsel Catherine Hagan

**Re: Reissue NPDES Order No. R9-2009-0021 for South OC Watersheds  
 Nexus with San Diego Basin Plan Objectives**

**Staff:**  
**Both of the NGO's I represent are quite pleased by the NPDES R9-2009-0021.**

We do have several questions about this permit which if answered could assist us in forming our agenda comments and also supporting it enthusiastically at next month's SDRWQCB hearing.

I would especially like to thank Bruce, Chad, Debbie and Deborah for their patience and professional assistance.

**HISTORY:**

I started petitioning Ms. Deborah Jayne and Ms. Debbie Woodward earlier this year to amend the Beneficial Uses and Water Quality Objectives for the Aliso Creek Watershed (ACW), bring them up to par with those of the San Juan (SJ) and San Mateo (SM) Watersheds respectively.

Contemporaneously, I informed Bruce Posthumus, Jimmy Smith and Chad Loflen.

This was due to my successful campaign that convinced NOAA (NMFS) to correct an oversight, add ACW as a So Cal Distinct Population Segment for the federally listed Endangered Species (ES) *O. mykiss* (Southern Steelhead Trout).

NMFS agreed with me that it was remiss, had over-looked or was not made aware of supporting data that sustained my contention regarding the historical presence of said coldwater, anadromous fish in the ACW. *O. mykiss* also enjoys a more prescriptive/protective status as an Evolutionary Significant Unit (ESU).

In 1997, the SDRWQCB passed an amendment to the BPO (Resolution 97-04) which reflected the historical presence of *O. mykiss* in the SJ and SM Watersheds, but the Board was, in my opinion, remiss in not including the ACW. Here's the link:

[http://www.swrcb.ca.gov/rwqcb9/water\\_issues/programs/basin\\_plan/docs/Resolution%20No.%2097-04.pdf](http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/basin_plan/docs/Resolution%20No.%2097-04.pdf)

**ISSUE:**

Below is a "cut & paste" from the new permit. I was under the impression that I needed to petition the Board to achieve parity (Same Beneficial Uses and Water Quality Objectives) due to this anadromous ES/ESU via BPO Amendments during the Triennial Review Process.

Does the new permit fulfill/accomplish my parity goal to protect this aquatic? In this case, I wouldn't need to waste either Staff or Board time.

In other words, can this NPDES accomplish by "fiat" what I thought I needed to formally petition as BPO amendments (plural)?

In the first sentence below, this NPDES doesn't APPEAR to cite Water Quality & Beneficial Use objectives on a watershed-by-watershed basis but rather generically. As there is no reference to EXISTING BPO, I'm unsure if this ambiguity might subsequently be challenged by ACW copermittees or lead agency The County of Orange.

**NOTE:**

I would ask Staff to note that the Central Coast (Region 3) BPO are more in alignment with the ABSOLUTE MINIMAL **Dissolved Oxygen (DO)** requirements for *O. mykiss*, that is **7.0 mg/l**, not the **6.0 mg/l** required in R9-2009-0021. Aquatic biologists and fishery experts seem unanimous that **8.0 mg/l** assures healthy spawning conditions in urbanized streams like ACW that experience tremendous solar gain (elevated temperatures).

Will I be allowed to petition the Board at the R9-2009-0021 Hearing to slightly increase that BPO regarding DO for this reissued permit?

**REVISED TENTATIVE ORDER No. R9-2009-0021**

**Page 18**

**E. STATUTE AND REGULATORY CONSIDERATIONS**

2. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for surface waters in Orange County: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1) Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional beneficial uses are identified for coastal waters of Orange County: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early

Development (SPWN), and Shellfish Harvesting (SHELL).

Thank you in advance for a considered detailed response in this matter, and I look forward to personally supporting this permit before your Board next month. Hopefully you can clear up my confusion.

Roger von Bütow Founder & Executive Director  
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A **"Keep California Beautiful"** Proud Communities Affiliate: [www.keepcaliforniabeautiful.org](http://www.keepcaliforniabeautiful.org)  
**"Friends of the Aliso Creek Steelhead"**: [www.alisocreeksteelhead.org](http://www.alisocreeksteelhead.org)

**Clean Water Now! Coalition (Est. 1998)**  
P.O. Box 4711 Laguna Beach CA 92652  
Beach Cleanup Info & Voicemail Messages: 949.280.2225  
[www.cleanwaternow.com](http://www.cleanwaternow.com)

***"The Clean Water Now! Coalition is dedicated to the protection, restoration and preservation of aquatic and riparian ecologies worldwide."***