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Submitted via email to commentletters@waterboards.ca.gov

August 16, 2017

Letter 2

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Bacteria Provisions

Dear Ms. Townsend:

The California Cattlemen's Association (CCA) appreciates the opportunity to provide comments on the State Water Resources Control Board's (SWRCB) Proposed Bacteria Provisions and Water Quality Standards Variance Policies for both the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California and for Ocean Waters of California (collectively, Draft Bacteria Provisions). CCA is a statewide trade organization representing more than 1,700 cattle ranchers and beef producers throughout California. Our members pride themselves on being responsible stewards of the lands and waters of the state, and seek to incorporate responsible management practices informed by the best available science into their ranching operations to ensure that our lands and waters remain healthy for Californians and sustainable for future generations of ranchers. CCA previously provided extensive scoping comments on the Proposed Bacteria Provisions in 2015.

2.01 CCA supports the adoption of *Escherichia coli* (*E. coli*) as the sole indicator organism for fresh waters and enterococci as the sole indicator organism for marine waters. However, **CCA urges the SWRCB to revise its Proposed Bacteria Provisions by adopting statewide bacterial objectives based on an estimated illness rate of 36 per 1,000 primary contact recreators, and to ensure that any adopted statewide bacterial provisions are no more restrictive than the *status quo* within each Region.**

2.02

Estimated Illness Rates and Corresponding Proposed Bacterial Standards

CCA opposes the recommendation to base bacterial standards on the estimated illness rate of 32 per 1,000 primary contact recreators, and urges the SWRCB to adopt the estimated illness rate of 36 per 1,000 primary contact recreators outlined in Alternative 4. While the Draft Bacteria Provisions propose adherence to the "more conservative estimate" of 32 illnesses per 1,000 primary contact recreators, there appears to be little evidence from USEPA or from the Regional Water Boards supporting this more restrictive standard.

First, it bears mentioning that USEPA recommended *either* an estimated illness rate of 36 per 1,000 primary contact recreators *or* 32 per 1,000 primary contact recreators in establishing its recreational water criteria—USEPA appears to have not recommended one estimated illness rate over another (and, importantly, USEPA refers to both standards as "protective of public health").

Moreover, the estimated illness rate of 36 per 1,000 primary contact recreators reflects the appropriate level of public health protection as established by every Regional Water Quality Control Board that uses *E. coli* and/or enterococci as indicator organisms. Currently, only the San Francisco Bay RWQCB (Region 2), the Los Angeles RWQCB (Region 4), and the Colorado River RWQCB (Region 7) employ *E. coli* and/or enterococci as indicator organisms (with the remaining six RWQCBs employing only fecal coliform as indicator organisms).

2.03

The San Francisco Bay Basin Plan sets the geometric mean for enterococci in waters designated Marine REC-1 at 35cfu/100mL and the freshwater REC-1 geometric mean for *E. coli* at 126cfu/100mL,[1] in accord with the estimated illness rate of 36 per 1,000 primary contact recreators. The Los Angeles Basin Plan states that in marine water designated REC-1, "enterococcus density shall not exceed 35/100 ml," and that in fresh waters designated REC-1, "*E. coli* density shall not exceed 126/100 ml,"[2] also in accord with the estimated illness rate of 36 per 1,000 primary contact recreators. The Colorado River Basin Plan appears to adopt the 1986 USEPA standards for enterococci and *E. coli* in fresh waters designated REC-1, establishing a geometric mean of 126/100mL for *E. coli* and 33/100mL for enterococci.[3] All three RWQCBs which have set an allowable geometric mean for *E. coli* in freshwater REC-1 waters have done so at 126cfu/100mL, and the two which have explicitly established allowable geometric means for enterococci in Marine REC-1 waters—Regions 2 and 7—have done so at 35cfu/100mL.

It is also worth noting that the San Diego RWQCB's Basin Plan references USEPA's 1986 bacteriological criteria for REC-1 waters without adopting them, stating that "[t]he criteria may be employed in special studies within this Region to differentiate between pollution sources or to supplement the current coliform objectives for water contact recreation."[4] The bacteriological criteria listed in the San Diego Basin Plan *also* reflect the less conservative 36 illnesses per 1,000 primary contact recreators figure—that is, they reflect the recommendation of 35cfu/100mL enterococci for saltwater samples and 126cfu/100mL *E. coli* for fresh water.[5]

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[1] CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION, SAN FRANCISCO BAY BASIN (REGION 2) WATER QUALITY CONTROL PLAN (BASIN PLAN) 7-71 (Dec. 31, 2011), *available at* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf.

[2] CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LOS ANGELES REGION, WATER QUALITY CONTROL PLAN: LOS ANGELES REGION 3-22 (June 13, 1994), *available at* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/electronics_documents/Final%20Chapter%203%20Text.pdf.

[3] CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD COLORADO RIVER REGION, WATER QUALITY CONTROL PLAN: COLORADO RIVER BASIN-REGION 7 3-3 (June 2006), *available at* http://www.waterboards.ca.gov/rwqcb7/publications_forms/publications/docs/basinplan_2006.pdf. No reference is made to allowable geometric means for enterococci in Marine waters.

[4] CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION, WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9) 3-7 n. 2 (Sept. 8, 1994 (with amendments effective on or before April 4, 2011), *available at* http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/docs/update082812/Chpt_3_2012.pdf.

[5] *Id.* at 3-6 to 3-7. The freshwater enterococci criterion listed in the Basin Plan 33cfu/100mL.

Presumably these regulations were rationally-based and developed in review of the best science available to the RWQCBs—absent some compelling argument for altering the *status quo* levels for allowable quantities of *E. coli* in fresh waters and/or enterococci in marine waters, the limits carefully considered and established by the RWQCBs ought to be maintained.

2.04

In a two-paragraph analysis of Alternative 4 (36 illnesses per 1,000 recreators), the Proposed Bacteria Provisions summarily dismiss the Alternative, noting that while this alternative "may potentially lead to fewer exceedances of the water quality objective," "the lower illness rate of 32 per 1,000 recreators is a more conservative recommendation [that t]he State Water Board feels…would be more protective of human health." However, staff does not appear to have considered and weighed the potential impacts of choosing the 32 illnesses per 1,000 recreators standard over the 36 illnesses per 1,000 recreators standard. For instance, the increased frequency of exceedances under the more restrictive standard will burden dischargers and place additional burdens upon Regional and State Water Board resources (such burdens upon staff may additionally necessitate increases in water quality fees, further burdening dischargers). The more conservative standard also unnecessarily introduces administrative inconsistency in Regions 2, 4, and 7, which have already adopted *E. coli* and enterococci as indicator bacteria, but have done so at the less conservative standard. Weighed against USEPA's conclusion that *both* the 32 and 36 illness standards are protective of public health, **an analysis of the impacts of the proposed standard and Alternative 4 clearly weigh in favor of adopting the less restrictive standard of Alternative 4**.

Given that (1) USEPA has recommended *either* an estimated illness rate of 36 per 1,000 primary contact recreators *or* 32 per 1,000 primary contact recreators, (2) all RWQCBs which have considered using enterococci as indicator organisms in marine waters and *E. coli* as indicator organisms in fresh water have set the geometric mean for those indicators at 35cfu/100mL and 126cfu/100mL, respectively, and (3) that maintaining the current geometric means for Regions 2, 4, 7, and 9 would ensure the greatest level of administrative consistency for the regulated community, **CCA prefers that SWRCB adopt the U.S. EPA's estimated illness rate of 36 per 1,000 as the appropriate level of public health protection for illness rate.**

Correlation Between Fecal Coliform and Proposed Bacterial Standards

2.05

In our February 20, 2015 scoping comments on the Statewide Bacterial Objectives, CCA opposed bacterial standards that would prove *more restrictive* that the status quo, and requested that "the SRWCB provide more definitive information that would demonstrate if switching to *E. coli* and enterococci as the sole indicator organism may actually result in more restrictive water quality standards than presently exist in each region."

Throughout Appendix C of the Draft Bacteria Provisions (Calculations of Illness Rates), staff has estimated (without further explanation or analysis) that "*E. coli* is ~ 90% of Fecal Coliform." It is unclear how staff arrived at this estimate, and that estimate appears to conflict with correlative analyses between *E. coli* and fecal coliform conducted by other states (detailed in our February 20, 2015 scoping letter).

While CCA supports a shift to *E. coli* and enterococci as the statewide bacterial indicators,

standards based on these indicators ought not to be more restrictive than the *status quo*, as this would cause undue burden for dischargers and the SWRCB. CCA therefore urges the SWRCB to more thoroughly examine the correlation between fecal coliform and *E. coli*/enterococci, and to adopt an estimated illness rate and corresponding bacterial standards which will not be more restrictive than those currently in place.

Sincerely,

Kirk Wilbur
Director of Government Affairs