Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Letter 18

August 16, 2017

Chair Felicia Marcus and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

VIA EMAIL

Re: Comments on California Bacteria Provisions

Dear Chair Marcus and State Water Board Members,

On behalf of Heal the Bay, we submit the following comments on the *Proposed California Bacteria Provisions* (Bacteria Provisions). Heal the Bay is an environmental organization with over 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean. We appreciate the opportunity to provide comments on the Bacteria Provisions.

After careful review of the proposed Bacteria Provisions, Heal the Bay has two overarching concerns of the State Water Resources Control Board (State Board or SWRCB) document as written: 1) the provisions are more compliance-oriented, as opposed to being focused on public health protection and 2) there is no mechanism to reconcile public health impairments with water quality standards. Monitoring and reporting requirements are narrowed while new beneficial use designations are geared to relax bacteria standards.

18.01

The State Board's interest to streamline processes, reduce the time and money involved in monitoring, and make the path to compliance appealing to entities across the state in the name of consistency is perplexing. Coming into full compliance allows for those involved to feel like they've done their job and can move on to other equally as pressing issues. This is especially understandable when considering the limited resources of everyone involved.

But compliance-oriented provisions could actually do a disservice by lulling the people of California into a false sense of protection. Regulations that are easily met, but don't protect public health are more detrimental than regulations that are not met at all. Limiting bacteria regulations to only one indicator species would do exactly that.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The SWRCB should continue to require the use of both Fecal Coliform (E.coli) and Enterococcus standards for all monitoring of receiving waterbodies (freshwater, estuarine, and marine) with REC-1 and REC-2 designated beneficial uses

18.02

Though intestinal *enterococci* might make for a more ideal indicator for human health effecting pathogens, fecal indicator bacteria sampling should remain as it provides insight into how safe it is to swim in recreational waters.

As documented on page 5 of the Bacteria Provisions Staff Report, the 2012 U.S. Environmental Protection Agency (EPA or USEPA) Recreational Water Quality Criteria recommends using enterococci as an indicator for marine waters and either enterococci or *Escherichia coli* (*E. coli*) as an indicator for fresh waters.[1] Considering this we understand why the State Board is considering using the EPA's standards. But within the EPA's "2012 Recreational Water Quality Criteria" two-page summary sheet, the EPA reminds us that "Water Quality criteria recommendations are intended as guidance in establishing new or revised water quality standards," and that "states and authorized tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from EPA's recommended criteria."[2]

When did the EPA become the gold standard for the Golden State? In this light, the State Board should look at the EPA's recommendations as a start and implement slightly more rigorous provisions for our own coast where they would be even more protective of our beneficial uses.

Heal the Bay recommends, in the interest to human health, to implement and maintain sampling and restrictions on fecal coliform bacteria as well as the EPA guidance for enterococci and *E. coli*. This will bolster the surveillance of the bacteria in both marine and fresh waters and will help human health in multiple ways.

Considering marine waters, studies have shown that enterococci count is a good indicator for *Cryptosporidium parvum*, *Giardia duodenalis*, and *Enterocytozoon bieneusi* in recreational marine water.[3] All of these pathogens are very dangerous to healthy

[1] State Water Resources Control Board. (June 30, 2017). *Draft Staff Report, Including Substitute Environmental Documentation*.

[2] United States Environmental Protection Agency. (December 2012). "2012 Recreational Water Quality Criteria Fact Sheet."
Accessed August 14, 2017 at: https://www.epa.gov/sites/production/files/2015-10/documents/rec-factsheet-2012.pdf

[3] Graczyk TK, Sunderland D, Awantang GN, Mashinski Y, Lucy FE, Graczyk Z, Chomicz L, Breysse PN. (2010). "Relationships among bater density, levels of human waterborne pathogens, and fecal coliform counts in marine recreational beach water." *Parasitol Res* 106: 1103-1108

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

individuals and deadly to the very young, the immunosuppressed, and the elderly. Enterococci are found in the feces of humans and other warm-blooded animals and were made the bacteria indicator of choice for marine waters by the EPA in the mid-1980s.[4] Though it is easy to maintain that Enterococci might be the closest to an ideal indicator if we were forced to only have one, we argue that there is not much to be gained by doing so and in the consideration of human health the state could have a lot to lose.

From our records, if enterococcus were the sole bacterial indicator sampled for in California beaches over the last ten years, 25% of the bacterial exceedances would have been missed.[5] Looking at all of our Beach Report Card data from all of our beach sampling sites from 2007 to present, approximately 75% of our exceedances held enterococcus exceedances within (**Fig.1**). The remaining 25% had exceeded only for either fecal coliform, total coliform or both. Making a case for fecal coliform, it registered exceedances for 80% of the exceedances that Enterococcus did not. A Venn diagram providing a summary of bacteria indicator exceedances is provided below.

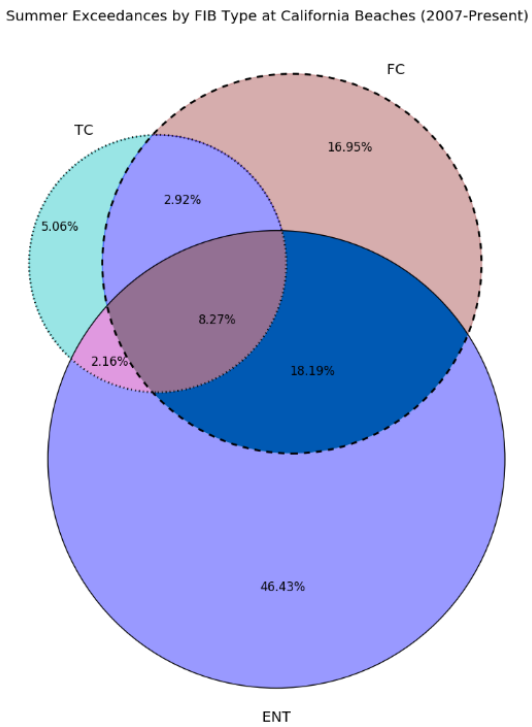

Figure 1: Venn diagram showing all summer (April-October) bacterial indicator exceedances from 2007 to mid-August 2017. The diagram separates Enterococcus (ENT, lower bottom), Total Coliform (TC, upper left), Fecal Coliform (FC, upper right), and denotes all overlap between. Source: Ryan Searcy and the Heal the Bay Beach Report Card Archives.

[4] Elmir ME, et al. (2007). "Quantitative evaluation of bacteria by bathers in a marine water." *Water Res* 41(1): 3-10
[5] Accessed August 14, 2017 at: http://beachreportcard.org/

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The argument that the EPA or the State Board might make is that enterococcus is much more accurate indicator for the possible human pathogens that are in the water, so where only fecal, total, or a mixture of coliforms are represented there isn't necessarily danger. Heal the Bay would disagree with that conclusion.

Looking at the EPA's own document released in 2006, *The Volunteer Estuary Monitoring Manual*, they mention that fecal coliforms are recommended as an indicator by the U.S. Food and Drug Administration for classifying shell-fishing waters in addition to testing recreational waters.[6] They do acknowledge that some bacteria in the fecal coliform group includes species that have a non-fecal origin and there's a possibility for members to regrow in tropical waters.[6] Still, this doesn't seem to be likely in California's mostly temperate waters. The EPA goes further to claim on page 17-5, "Even though fecal coliform bacteria have some deficiencies when it comes to being a "perfect" indicator, they are generally considered the best available indicators of contamination at the present time." This is hardly the description of an indicator that should be discarded, and if anything should be used in combination with Enterococcus to make the waters of California protective of human health for its recreational centered beneficial uses.

We also want to make the point that the sources of fecal bacteria contamination can come from a myriad of places. Some of the main sources are wastewater treatment plants, compromised septic tanks, landfill leachate, marina waste, and human swimmers. Because enterococcus is found in the intestinal tract of all warm-blooded animals, they are particularly adept at indicating the presence of human feces. This makes the above anthropogenic sources ideal for being indicated for by enterococcus. But when looking at non-point sources, contamination may be harder to discover without using the coliform indicators. In a Santa Monica Bay study, Haile et al. reported a correlation between enterococcus, fecal, and total coliforms and swimming-related illnesses.[7] Studies like this were responsible for the establishment of water-quality standards for fecal indicator bacteria at beaches though out California.

Other advantages to sampling for fecal coliform bacteria is that it shows more *recent* fecal contamination when compared to enterococcus because they are thought to die off more quickly in the environment.[8] This could be important in sourcing the origin of the pollution

[6] US Environmental Protection Agency. (2006). *Volunteer Estuary Monitoring Manual, Chapter 17: Bacteria Indicators of Potential Pathogens*.
[7] Haile RW, Alamillo J, Barrett K, et al. (1996). *An Epidemiological Study of Possible Health Effects of Swimming in Santa Monica Bay: Final Report*. Los Angeles, CA. Santa Monica Bay Restoration Commission.
[8] Meal DW, Harcum JB, Dressing SA. (2013). "Monitoring for microbial pathogens and indicators." Tech Notes 9, Developed for EPA by Tetra Tech, Fairfax VA, p. 29 Available online at: https://www.epa.gov/sites/production/files/2016-05/documents/tech_notes_9_dec2013_pathogens.pdf

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

by fecal coliform giving a limit to how long it has feasibly been there. Because both pathogens and the fecal index organisms that flag them are inactivated at varying rates, the use of just one index organism can be limiting in pathogen estimation.[9] Studies of fecal coliforms have shown them to be higher as beach crowds grow due to both present time shedding from the bathers themselves in addition to becoming re-suspended from their attachment to sediment as a result of "disturbance of bottom sediments and sand from bathers, surface runoff, boat traffic, storms, tides, and dredging."[3]

To be sure, Heal the Bay agrees that if entities had the opportunity to monitor for only one indicator bacteria, enterococcus would be the clear one to sample. But when a small suite of bacteria, including fecal coliform, can be sampled for at a low cost and minimal extra resources, it seems like the State Board should request that they be part of the State Bacteria Provisions. At some date in the future, much more advanced bacteria sampling at a low cost is likely to have the ability to trace an exact point of origin of human pathogens. Until that day, erring on precaution when it comes to public health seems like the prescient path to take.

Just weeks ago in late July 2017, three adults and eleven children contracted *E. coli* from recreating in Lake Wildwood in Nevada County, CA.[10] When you discover how close one of the younger victims came to having his kidneys fail it is a sobering reminder how much is at stake when it comes to monitoring California's waterbodies to protect public health. Considering this, and erring on caution with the public health of our citizens, Heal the Bay asks that the State Board require the use of both fecal coliform and enterococcus standards for all monitoring of receiving waterbodies (freshwater, estuarine, and marine) with REC-1 and REC-2 designated beneficial uses.

18.03

The SWRCB should not apply a Limited REC-1 beneficial use statewide

The SWRCB cite the Los Angeles Regional Water Quality Control Board's (RWQCB or Regional Board's) implementation of a LREC-1 beneficial use for Ballona Creek as a rationale to expand this policy across the State. This was a bad precedent in 2003 and makes for even poorer policy today. Heal the Bay was highly critical of this decision at both the local Regional Board (2003) and the State Board (2004)—our letters are included as Attachments A and B. In fact, the local Regional Board did not agree with the Limited REC-1 decision proposed by the Los Angeles County Department of Public Works at the time and decided that it was a premature request given the opportunities being developed and explored by the Ballona Creek Task Force and Regional Board regulatory implementation.

[9] World Health Organization. (2003). *Guidelines For Safe Recreational Water Environments, Vol. 1: Coastal and Fresh Waters.*

[10] Heise S (2017). "11 children, 3 adults contract E. coli at Nevada County lake." KCRA. Accessed August 9, 2017 at: http://www.kcra.com/article/11-children-3-adults-contract-e-coli-at-nevada-county-lake/11661075

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Our arguments to the SWRCB in 2004 on the County's appeal aptly apply to this policy as well:

> In summary, the County's petition makes a multitude of assumptions regarding recreational uses in Ballona Creek without providing any additional data beyond those presented in the RWQCB's UAA [Use Attainability Analysis]. This UAA was extremely limited in scope, relying on seven field visits and one small survey, and likely does not meet the requirement that a UAA must be a structured, scientific assessment. Insufficient evidence has been provided to show that REC-1 and REC-2 uses are not occurring along Ballona Creek. Importantly, a significant multi-stakeholder process to develop a comprehensive restoration plan for Ballona Creek is being finalized, with water quality identified as a top priority. This plan will contain the stakeholders' vision of a restored Ballona Creek and will have a significant impact on future uses. **It is imperative that the SWRCB and the RWQCB comprehensively consider the actual existing uses and potential future uses of Ballona Creek, an important community asset, before any decisions regarding designated beneficial uses are made.**

Yet the Draft Provisions will only incentivize communities to further fence off, and channelize their urban creeks and streams so they can receive the LREC-1 designation. Given the remarkable increase in river and watershed restoration in California, including public access to urban rivers in urban Los Angeles, there is an increasing amount of attention to integrating natural resources protection and public recreation. There are a multitude of state-funded restoration programs from diverse legislative mandates, ballot initiatives, and citizen-sponsored programs focused on restoring our urban waterways. Before allowing communities to further degrade their urban waterways, the State Water Board should consider the unanticipated consequences of allowing a LREC-1 beneficial use.

For project option 5.1.1, the SWRCB should select Option 1, no action on LREC-1 beneficial uses.

18.04

USEPA's 2012 Recreational Water Quality Criteria Beach Action Value should be incorporated into the SWRCB's Bacteria Provisions

In the Executive Summary, the SWRCB explicitly states "The Bacteria Provisions are intended to protect human health by reducing the risk of illness associated with exposure to water containing fecal bacteria." If this is the case, then the SWRCB should adopt the Beach Action Values (BAV) instead of the Statistical Threshold Value (STV) as a more conservative approach to public notification or resource impairment? As the EPA states, "…use a BAV as a conservative, precautionary tool for making beach notification decisions. For states that do not use a BAV, EPA suggests using the criteria STV values as "do not exceed" values for beach notification or retaining their current beach notification values in their WQS."[11] The Bacteria Provisions do not provide a rationale for why the BAV could not be applied.

[11] United States Environmental Protection Agency. (2012). "Recreational Water Quality Criteria."

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

If the SWRCB is arguing that the single indicator enterococcus for marine waters at a value of 110 for STV is more protective than the existing standards, then logically using the BAV values of either 60 or 70 would be even more protective. It is arbitrary for the SWRCB to stop short of being most protective of public health.

18.05

The Geometric mean should continue to be a rolling-mean calculated based on samples collected within a 30-day period

There is no scientific valid reason to extend the geometric mean time-period from 30 days to 45 days. Given that the SWRCB has gone to great lengths to continuously cite the USEPA's 2012 RWQC as its rationale for updating the Bacterial Provisions, it is ironic that it chooses to ignore the USEPA's recommended 30-day time period for determining a geometric mean. Instead, the SWRCB should have required monitoring agencies to actually collect the samples—i.e. increase the frequency—if we are truly concerned with protecting public health. Unfortunately, extending the timeframe to 45-days is a matter of convenience for monitoring agencies and not in the best interest of public health.

Heal the Bay commented extensively on the LARWQCB and City of Los Angeles study of various averaging periods, and found that all proposed averaging time-periods that were not the 30-day and rolling—as required by the Ocean Plan and recommended in the 2012 RWQC, such as summer, 6-week, and 30-day non-rolling, produced less exceedances. Instead of protecting public health, the monitoring agencies were seeking regulatory relief.

For project option 5.2.5, the SWRCB should select Option 1, no action or Option 2.

18.06

Criteria need to be developed for Natural Source Exclusion, Use Attainability Analysis, High Flow Suspension, Seasonal Suspension before SWRCB encourages these options for non-compliance.

The SWRCB proposes a number of avenues for monitoring agencies to address non-compliance with bacterial standards such as employing a natural source exclusion, conducting a use attainability analysis, or implementing a high flow or seasonal suspension policy. Such administrative policies should not be used to manage or address water quality issues stemming from regulatory compliance that adversely impact ecological or public health.

Accessed August 14, 2017
https://www.epa.gov/sites/production/files/2015-10/documents/rwqc2012.pdf

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Implementation of such policies should be an extremely rigorous process and explored *only* as a last resort after all BMPs and water quality improvement project efforts toward improving water quality have been implemented. Furthermore, to ensure that water quality standards are not being weakened, the regional boards, State Board and USEPA must require that the policies be a high quality analysis which appropriately assesses water-bodies of concern. Heal the Bay has commented at length to the Regional and State Boards about such policies—see Attachment C.

However, many of these policies have little to no guiding criteria to ensure a high level of rigor and scientific assessment actually occur.

As such, the SRWCB should not be pushing monitoring agencies to these compliance avoidance policies until criteria are developed. The SWRCB is need to develop criteria for statewide consistency of these policies.

For example, EPA's current UAA criteria are extremely vague and do not provide much needed implementation guidelines. It is extremely vital for the state to develop strong UAA criteria to best preserve beneficial uses, support meeting water quality standards in receiving waters, strengthen public health protection, and provide statewide consistency during UAA implementation.

Statewide UAA criteria should include the following:

- At least five years of consistent water quality monitoring data (at least weekly) showing chronic water-body impairment (exceedances of state water quality standards). These data must be consistent among all areas seeking to undergo a UAA.
- All efforts towards improving water quality (BMPs, water quality improvement projects, source tracking etc.) must be exhausted. These efforts should include an analysis of water quality monitoring data before and after project implementation.
- Must provide adequate data to demonstrate human sources are not contributing to water quality impairment.

Must prove significant documentation on the suggested lack of public use or access (pictures alone do not justify). This should be demonstrated by obtaining information through a combination of documented historical use, personal interviews, historians and digital archives.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Thank you for your consideration of these comments. If you have any questions, then please feel free to contact me at (310) 451-1500.

Sincerely,

Steven Johnson
Water Resources Policy Analyst
Heal the Bay

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Attachment A

May 24, 2003

Mr. Dennis Dickerson, Executive Officer
Los Angeles Regional Water Quality Control Board
320 W. 4th St.
Los Angeles, CA 90013

Re: Proposed Basin Plan Amendment to Remove REC-1 Beneficial Use for Ballona Creek to Estuary

Dear Mr. Dickerson:

Heal the Bay has numerous objections and concerns about the proposed Basin Plan Amendment to remove the REC-1 beneficial use for the water body segments from Ballona Creek near Cochran Ave. to the estuary at Centinela Ave. This is the first Use Attainability Analysis (UAA) performed by the LA-RWQCB and Heal the Bay is extremely concerned about the numerous bad precedents that this Basin Plan amendment sets for future dedesignation efforts for the region. As you know, there is a significant effort in the regulated community spearheaded by the Coalition for Practical Regulation and others, to push for dedesignation of as many beneficial uses as possible in order to eliminate the requirement for TMDL development and the addition of Waste Load Allocations in the L.A. County Municipal Stormwater NPDES permit. As such, any UAA developed by the RWQCB must meet the CWA requirements for UAA development and shall not set a precedent for further weakening of water quality protections in the region.

Heal the Bay objects to the following provisions to the preferred alternative in the UAA:

The creation of a Limited Rec-1 beneficial use sets a horrible precedent of unequal protection under the Clean Water Act. One of the single greatest achievements of this RWQCB was the development and approval of the dry and wet weather TMDLs for fecal indicator bacteria (FIB) at Santa Monica Bay beaches. One of the arguments brought by Los Angeles County and CPR that the RWQCB and the SWRCB soundly rejected was the premise that the public recreating at infrequently visited beaches was entitled to less health protection than those that swim at popular beaches. The RWQCB and the SWRCB made it clear that people who swim or surf in wet weather are entitled to the same health protections and water quality standards as those that swim at Santa Monica's beaches during the Fourth of July. Similarly, those that surf at Leo Carillo Beach during a rainstorm are entitled to the same public health protections as those that surf at Malibu Surfrider Beach during a storm. The State made this determination because they acknowledged that swimming and surfing are activities that occur in Southern California waters 365 days a year, rain or shine.

The UAA proposes using a limited Rec-1 designation for Reach 2 of Ballona Creek, thereby proposing the weaker water quality objective of 576 E. coli/100 mls. instead of the more protective existing objective of 235 E. coli/100 mls. This recommendation is completely inconsistent with the recent FIB TMDLs for

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Santa Monica Bay beaches. The creation of a Limited Rec-1 category sets a horrible precedent of unequal public health protection under the Clean Water Act that may be applied to other inland waters, enclosed bays or estuaries, and even ocean waters on a year-round or seasonal basis.

The proposed dedesignation of the REC-1 beneficial use on Ballona Creek is premature. At a time when nearly every single Basin Plan amendment, TMDL and major discharge permit has been opposed by members of the regulated community, it is unconscionable to modify a beneficial use of a water body when there have been no efforts to decrease FIB densities in Ballona Creek. In a classic case of putting the cart before the horse, the RWQCB's proposed amendment provides a regulatory incentive to dischargers to push for weaker water quality standards before undertaking any efforts to improve water quality. To date, there have been no successful efforts to reduce FIB densities in any inland water in the entire Los Angeles region. Until such time as there are RWQCB approved comprehensive programs to reduce FIB densities in inland waters and there is incremental reduction in FIB densities, there should be no attempts to weaken water quality standards for those same inland waters. Otherwise, efforts to reduce FIB densities in Ballona Creek and the L.A. River to protect the public health of swimmers in the receiving waters and the beaches impacted by the polluted Creek and River will likely continue to be non-existent to half-hearted and will certainly be pushed off to the distant future.

The proposed dedesignation sets an incentive to dedesignate inland waters for REC-1 uses. On page 36, the UAA states that this Basin Plan amendment will result in a precedent for dedesignation of other similar concrete lined channels. However, it is completely unclear how this precedent will be applied in the future. With the current ambiguity in the UAA, one can easily see future regulatory community efforts to push for dedesignation of any inland water with concrete lined bottoms and/or sides, or ephemeral flows. As stated in the UAA, requests to dedesignate the San Gabriel River have already occurred despite the fact that most of the river is soft-bottomed and the public has the opportunity to recreate in the river along much of its length.

Also, the UAA states that the lack of easy public access is additional grounds for dedesignating Ballona Creek. One can easily see how this creates an incentive for resource management agencies to limit access to the very resources the RWQCB is trying to protect. For example, why would a resource management agency put in a new bike path segment along a concrete lined receiving water if the beneficial action would lead to tougher regulatory requirements?

The proposed dedesignation sets an incentive to channelize inland waters in order to eliminate the REC-1 beneficial uses. – Since the REC-1 dedesignation for Ballona Creek sets a precedent for dedesignation of concrete lined channels, this provides an incentive for further flood control channelization of riparian inland waters. More natural, bioengineered approaches to flood control will likely result in the maintenance of the REC-1 beneficial use designation, while concrete channelization may lead to dedesignation. Much to Heal the Bay's dismay, riparian habitat destroying, flood control channelization projects still occur today (See recent Medea Creek project in Agoura Hills). The additional regulatory incentive of REC-1 dedesignation will only lead to more efforts to channelize creeks and streams to prevent flooding, rather than more ecologically friendly flood control efforts such as those in Sun Valley or a bioengineering approach.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The proposed dedesignation may result in a disincentive to restore or enhance receiving water resources.

Currently, there are large-scale, funded efforts to develop riparian restoration and enhancement plans and projects for Ballona Creek, the L.A. River, the San Gabriel River and many other degraded waterways in the region. To date, well over one hundred million dollars in bond funds have been allocated to these efforts. If efforts to improve water quality and restore riparian resources will result in tougher regulatory requirements, this will provide a tremendous disincentive for restoration and enhancement projects. The current regulatory framework provides no such incentive because the potential REC-1 beneficial use exists on most of the receiving waters that are the focus of dedesignation efforts. Modification of the current Basin Plan beneficial uses could well result in the unintended consequence of providing a disincentive to the many long-overdue restoration efforts of our urban creeks and rivers.

The REC-1 dedesignation provides illusory regulatory relief , so the only benefit to the regulated community is the bad precedent of the UAA – Under the tributary rule, Ballona Creek still must meet REC-1 water quality objectives for inland waters. The Ballona Creek estuary maintains an existing REC-1 use (both in current use and regulatory designation) and has been designated as REC-1 since prior to 1975. Since the Ballona Creek estuary has an existing (E) beneficial use, then the use cannot be changed. Also, there are no new sources of Creek flow between Reach 2 and the estuary, so Ballona Creek waters must meet REC-1 water quality objectives at Centinela Ave. with no allowable dilution – even at low tide conditions where Ballona Creek flow makes up the entire filled Creek volume in the upper estuary. As a result, all of Ballona Creek must meet REC-1 FIB water quality objectives.

The fact that all of Ballona Creek must meet REC-1 FIB water quality objectives despite dedesignation because of the downstream impact issue will lead to additional efforts to weaken the tributary rule. Already, as part of the controversial Basin Plan record critique document funded by CPR, the Los Angeles County Sanitation Districts and others, some in the regulated community have made it clear that they oppose the RWQCB's application of the tributary rule.

The RWQCB did not adequately demonstrate that conditions 2 and 4 under 40 CFR S 131.10(g) were met. Conditions 2 and 4 under the requirements for dedesignation are the basis of the RWQCB's proposed dedesignation. Condition 2 – states that low flow conditions prevent the attainment of use. However, the analysis of human use in Ballona Creek was based on a very small number of returned questionnaires (n=33) and limited staff observation of the creek. Between 2:30 and 4:30 PM on May 4th 2003, I walked Ballona Creek from Sepulveda Blvd. to Lincoln Blvd. and I saw 6 children wading in the water near the Mar Vista Gardens in efforts to catch four-square balls floating down the creek a day or

two after a storm. Clearly, based on my own limited observations and the lack of detailed RWQCB field analysis and questionnaires, the issue of REC-1 use in Ballona Creek is still uncertain. Also, the fact that conditions of low flow and low stream depth are prevalent does not eliminate the possibility that Ballona Creek could be restored to provide more optimal conditions for REC-1 through the creation of a soft Creek bottom with pools habitat.

As for condition 4, Ballona Creek does not even come close to attaining a condition of precluded use because of hydrological modification and infeasibility of restoration. There is a concerted effort to focus on the restoration of Ballona Creek, so any conclusion that the Creek cannot be restored would be in direct opposition of this stakeholder based watershed management effort. Also, the mere presence of concrete does not eliminate the REC-1 use in any way, shape or form and the UAA fails to demonstrate why concrete eliminates the REC-1 use.

There are a number of other issues that Heal the Bay is concerned about in the UAA. The geometric mean and single sample water quality objectives apply to Ballona Creek. However, there are no currently required monitoring programs in segment one or two of the Creek, let alone the estuary. Without a current monitoring program, it will be impossible to determine if Ballona Creek is in compliance with the REC-1single sample water quality objective, let alone the geometric mean requirement. Typically, numerous samples are required to determine if an effluent or receiving water is in compliance with the geometric mean requirement. For example, at least five samples a month are needed to determine if a discharger is in compliance with 30 day geometric mean requirements in an NPDES permit.

An issue that was not discussed in the alternatives section of the UAA was the possibility of issuing a five year variance for the REC-1 beneficial use on Ballona Creek. In light of the clear concerns about the precedent setting nature of this UAA, why didn't the RWQCB investigate temporarily dedesignating the receiving water via a variance route ? As you know, five year variances have been given to power plants for thermal and chlorine discharges for over three decades. Although Heal the Bay does not necessarily support such variances, at least there is precedent for giving them under certain, narrow environmental and regulatory circumstances.

In conclusion, the RWQCB's first attempt at a UAA sets a dangerous precedent for dedesignation at a time when nearly every new TMDL, Basin Plan amendment and major NPDES permit is under attack by the certain members of the regulated community. Heal the Bay believes that the proposed Basin Plan amendment is the wrong action at the wrong time. Until such time as there has been incremental progress in reducing FIB densities in inland waters and the RWQCB crafts a UAA that more carefully, narrowly and completely addresses the legal requirements under S.131.10(g), then Heal the Bay will continue to oppose similar REC-1 dedesignation efforts.

If you have any questions about Heal the Bay's comments, please call me at 310-453-0395 x119.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Sincerely,

Mark Gold, D.Env.
Executive Director

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Attachment B

March 29, 2004

State Water Resources Control Board

1001 "I" Street
Sacramento CA 95814
Fax: (916) 341-5621

RE: Petition of the County of Los Angeles and the Los Angeles County Flood Control District for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region, in Failing to Amend the Water Quality Control Plan for the Los Angeles Region

Dear Chairman Baggett and Board Members:

Heal the Bay opposes the Los Angeles County's (County's) petition that seeks review of the Los Angeles RWQCB's decision to defer changes to the beneficial use designations for REACHES 1 and 2 of Ballona Creek. The County is appealing the RWQCB's decision to the State Board and is requesting the State Board to remove the REC-1 and REC-2 designations from REACH 1, and the REC-1 designation from REACH 2 of Ballona Creek.

Heal the Bay contends that the RWQCB's actions in denying the proposed amendments to the Basin Plan were proper, and that the removal or modification of any of the recreational use designations for Ballona Creek at this time would be in conflict with the Clean Water Act and the RWQCB's Use Attainability Analysis for REC-1 Beneficial Uses of Ballona Creek (UAA).

As discussed below, the RWQCB appropriately decided to defer any consideration of recreational use designations along Ballona Creek until after completion of a comprehensive restoration plan for Ballona Creek, currently under development by the multi-stakeholder Ballona Creek Watershed Task Force. However, even if a restoration plan was not under development, removal or modification of any of the recreational use designations at this time by the RWQCB or the SWRCB would be in conflict with the Clean Water Act and the RWQCB's limited UAA for a multitude of reasons:

- The definition of REC-1 includes the activity of wading. Wading is very relevant to Ballona Creek because the flows are usually quite low and conducive to wading, and because children, who are particularly susceptible to waterborne illnesses, enjoy wading. In the urban neighborhoods that Ballona Creek runs through, there are few recreational parks and other activities available for children. Ballona Creek is therefore an appealing place to recreate despite the fact that

access is limited. The County's petition fails to consider wading as an existing or potential REC-1 activity.

- The potential REC-1 use from REACH 1 cannot be removed at this time because the County's petition and the RWQCB's UAA do not provide sufficient data to demonstrate that any of the conditions in 40 CFR 131.10(g) regarding removal of this potential use have been met, nor is there sufficient data to demonstrate that this use is not, in fact, currently existing in REACH 1, particularly in the form of wading.

- The County is also requesting removal of the REC-2 use designation from REACH 1. The REC-2 use designation cannot be removed from REACH 1 because it is an *existing* use. 40 CFR 131.10(g) is unequivocal that existing uses cannot be removed unless a use requiring more stringent criteria is added.

- The potential REC-1 use for REACH 2 cannot be removed at this time because the RWQCB's UAA provided data that indicates this use, in the form of wading, *is* occurring along this REACH. The County's petition failed to show that any of the conditions in 40 CFR 131.10(g) are met, and it did not provide any additional data to demonstrate this use is not occurring.

- The County fails in its argument to demonstrate that efforts to attain recreational water quality standards in the downstream Ballona Creek Estuary will not be negatively impacted by their request to remove the recreational use designations in upstream REACH 1 and REACH 2. The REC-1 use of the Ballona Creek Estuary is not in question.

These issues are discussed further below.

The RWQCB's failure to adopt the proposed amendments to the Basin Plan regarding recreational designated uses for Ballona Creek was appropriate because the RWQCB recognized it is premature to consider whether recreational uses are feasible in the future before completion of a 2-year multi-stakeholder effort to develop a restoration plan for Ballona Creek.

It is baffling to Heal the Bay that the County, as the co-chair of the Ballona Creek Watershed Task Force, would request a change in the beneficial uses for Ballona Creek at this time, particularly because water quality is one of the top issues identified by the Task Force. This group has been meeting on a monthly basis for over 2 years, and will spend about $200,000 on professional consulting services to develop a comprehensive restoration plan for Ballona Creek. The funding for this effort was provided by Proposition 13, the SWRCB's watershed planning funds.

It is reasonable to expect that the restoration plan for Ballona Creek will include elements that will affect recreational use in and along the creek. For example, it is conceivable that the plan could include removal of some of the concrete along short sections of the creek, thus creating a recreational environment conducive to REC-2 activities and some REC-1 activities, most notably, wading. Examples of similar situations and projects exist. Portions of the Los Angeles River are unlined but do not hinder

the flood controlling capacity of the river. Removing concrete along portions of urbanized channels has occurred in other cities as part of urban creek restoration plans.

In the June 5, 2003 hearing, the RWQCB recognized the importance and high quality of the Ballona Creek Task Force's efforts to develop a comprehensive management plan for Ballona Creek, and appropriately deferred the decision on changing the beneficial uses of Ballona Creek until the Watershed Task Force's final plan is completed (scheduled for June 2004). By appealing this decision to the SWRCB and requesting changes to designated uses at this point in time, the County appears to be undermining the efforts of the Ballona Creek Watershed Task Force.

The potential REC-1 use from REACH 1 cannot be removed because the County's petition fails to provide data or demonstrate that one or more of the conditions of 40 CFR 131.10(g) have been met. The RWQCB's UAA was also insufficient to show that any of these conditions exist in REACH 1. Additionally, no data has been presented by either the County or the RWQCB that REC-1 use is not already occurring in REACH 1.

The County's request to remove the potential REC-1 use from REACH 1 at this time does not conform with the Clean Water Act which requires that one or more of the conditions of 40 CFR 131.10 (g) be met before a potential use can be removed. 40 CFR 131.10 (g) allows the removal of a potential use if one or more of six conditions can be shown. These conditions are:

1. Naturally occurring pollutant concentrations prevent the attainment of the use
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met
3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place
4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use
5. Physical conditions related to the natural features of the water body, such as the lack or a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses
6. Control more stringent than those required by sections 303(b) [Effluent Limitations] and 306 [National Standards or Performance] of the Act would result in substantial and widespread economic and social impact.

The County's petition states that conditions 2 – 5 are met in REACH 1 for potential REC-1 use.

Conditions 2, 4 and 5 of 40 CFR 131.10(g) do not apply to REACH 1:

- Condition 2 does not apply because the RWQCB's UAA states that approximately 4 inches of water exists on average during the dry season. REC-1 includes the activity of wading. Wading can be easily conducted in 4 inches of water. No data were provided by the County that shows wading does not occur in this reach.

- Condition 4 does not apply, because although REACH 1 has been hydrological modified, this modification (boxed, concrete-lined channel) does not prevent wading, a REC-1 activity.

- Condition 5 is not applicable because it specifically applies to attainment of aquatic life protection.

While it is conceivable that human caused conditions (in this case, restricted access to the creek via fencing and vertical concrete walls) may prevent the attainment of the use (Condition 3), no data is offered by the County or in the RWQCB's UAA to prove that such human caused condition(s) actually exist and cannot be remedied, thus the County cannot argue that 40 CFR 131.10(g) (3) has been met, warranting removal of this use. In order to meet the requirements of 40 CFR 131.10(g)(3), data must be provided that clearly shows there is no public access to REACH 1, so no wading or other REC-1 activities can occur. The RWQCB's UAA did not collect the appropriate data, in this case, field reconnaissance work along the length of REACH 1, to demonstrate that no public access to REACH 1 exists, including unintentional or illegally made access points that the general public uses to access the creek for wading. Inaccessibility must be clearly documented to establish that no wading or other REC-1 activities are occurring. Additionally, it must be demonstrated that inaccessibility will be maintained in the future. The County's petition failed to provide any new data or information beyond that available in the RWQCB's UAA regarding access to Ballona Creek.

Likewise, 40 CFR 131.10 (g) Condition 3 requires proof that the human conditions cannot be remedied or would cause more environmental damage to correct than to leave in place. There is no evidence provided in the County's petition or the RWQCB's UAA that indicates REC-1 use cannot be attained. The County's petition suggests that REC-1 attainment is infeasible because of dangerous conditions that exist during high flow. However, during dry weather, which is most of the time in Los Angeles, there is no reason that the REC-1 activity of wading cannot occur along REACH 1. Neither the County nor the RWQCB present any data that supports the assumption that the current fencing and concrete walls do not preclude attainment with REC-1 uses, or that these conditions could be remedied to a certain extent to attain REC-1 uses during dry weather. As already discussed, it is completely reasonable to consider removal of short segments of some of the concrete along the channel as part of a restoration plan for Ballona Creek.

Contrary to the County's petition, there is public access to at least a portion of REACH 1. East of National Blvd. access to the creek is easily obtained through an unsubstantial fence constructed of three horizontal wires and short vertical posts. This portion of REACH 1 runs directly adjacent to Syd Kronenthal Park, a popular Culver City park that includes ball fields, picnic areas, children's playgrounds, and tennis and basketball courts. Clearly, REACH 1 is accessible from this area and limited recreational activities in and along Ballona Creek in this area is a possibility in the future.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The REC-2 use for REACH 1 is a designated *existing* use. The Clean Water Act prohibits the removal of an existing use (40 CFR § 131.10).

The County is also requesting removal of the REC-2 use designation from REACH 1. 40 CFR 131.10(g) is unequivocal that existing uses cannot be removed unless a use requiring more stringent criteria is added. The policy behind this strict regulatory scheme protects waters from perpetual reassessment, and resource degradation. The County's petition attempts to undercut this fundamental regulatory scheme and asserts that there is no prohibition to the removal of the REC-2 designation because REC-2 uses are not in fact an existing use (County petition, page 14, line 22). .The County presents no data to support the assumption that REC-2 use in REACH-1 is not an existing use, and merely offers the theory that the REC-2 use is a "historical accident." (County petition at p.12, lines 17-18.) Conclusions regarding use "attainability" are made at the time of establishment of the use. The County cannot attempt to second-guess that process.

The County's petition attempts to use the findings of the RWQCB's UAA as evidence that REC-2 uses do not exists along REACH 1. The UAA process does not apply to existing uses. Moreover, even if a UAA was applicable to an existing use designation, the RWQCB's UAA was specifically conducted to assess potential REC-1 use, not the existing REC-2 use, thus the UAA would still have no bearing on the REC-2 use designation of REACH 1.

Removing the potential REC-1 use from REACH 2 would be inconsistent with the findings of the RWQCB's UAA which determined, during their extremely limited field work, that REC-1 usage occurs in the form of wading. The County's petition fails to acknowledge wading as an existing REC-1 activity that occurs in REACH 2.

The definition of REC-1 use includes wading. The RWQCB's UAA documented the following uses in or near the creek: dog walking in the creek and at the waters edge, sailing of model powerboats, water quality education and monitoring, and creek cleanups. All of these activities could involve or result in wading, a REC-1 activity. In fact, a picture of a woman wading in the water is included in the UAA. The RWQCB's UAA also established that limited public access is available at a minimum of two locations along REACH 2. Thus, to limit the REC-1 designation from this creek entirely would be in direct conflict to the limited data collected in the RWQCB's UAA.

Again, as already discussed, wading is the most likely REC-1 use for Ballona Creek. Anecdotal data indicates wading occurs relatively frequently in REACH 2. For example, on May 4th, 2003, between 2:30 and 4:30 PM, Heal the Bay's Executive Director, Mark Gold, walked a portion of REACH 2 from Sepulveda Blvd. to Lincoln Blvd. He observed 6 children wading in the water near the Mar Vista Gardens in efforts to catch four-square balls floating down the creek.

Heal the Bay believes the data collected for the RWQCB's UAA was very limited. A survey of 33 bike path users in REACH 2 and 7 field visits provides extremely limited data for the basis of a UAA. The Clean Water Act defines a UAA to be a "structured scientific assessment". The number of survey

responses and field observations must be statistically high enough to extrapolate from the results. The RWQCB's UAA did not show that their survey results are statistically representative of the actual use occurring along the creek.

Clearly, given the high potential for wading in REACH 2 due to the fact that there is public access to the creek in close proximity to a densely populated urban area that is desperately short of recreational parks, and the lack of a comprehensive UAA, REC-1 usage in Ballona Creek cannot be removed. In fact, the limited data that is available suggests ample REC-1 use along REACH 2 is occurring. Once again, the County failed to provide any additional data on the uses in along Ballona Creek and they did not conduct a structured scientific assessment of the factors affecting the recreational uses in the upper reaches of Ballona Creek, as required by law.

The County's petition fails to address how dedesignation of some of the recreational uses for REACH 1 and REACH 2 will affect the downstream Ballona Estuary's water quality standards attainment and maintenance.

The Ballona Creek estuary maintains an existing REC-1 use (both in current use and regulatory designation) and has been designated as REC-1 since prior to 1975. REC-1 use in the Ballona Creek estuary is not in question. Currently, the estuary is listed on the State's 303(d) list as impaired due to elevated levels of fecal bacteria. Currently, REACH 1 and REACH 2 are also listed as impaired due to excessive levels of fecal bacteria.

The County's petition fails to adequately address how their requested changes in use designations would affect efforts to meet the REC-1 health standards (as required by a forthcoming TMDL). Very little additional flow enters the creek along REACH 1 and REACH 2, providing little opportunity for dilution. In fact, recent sampling and modeling activities of the water quality along the creek completed to support Region IV's TMDL development for the creek and estuary did not show a conclusive trend in bacteria densities along the creek. Instead, these efforts show highly variable densities along the creek, with exceedances of the REC-1 health standards observed along the entire length of the REACH 1 and REACH 2 to the estuary (Stein and Tiefenthaler, February, 2004).

In summary, the County's petition makes a multitude of assumptions regarding recreational uses in Ballona Creek without providing any additional data beyond those presented in the RWQCB's UAA. This UAA was extremely limited in scope, relying on seven field visits and one small survey, and likely does not meet the requirement that a UAA must be a structured, scientific assessment. Insufficient evidence has been provided to show that REC-1 and REC-2 uses are not occurring along Ballona Creek. Importantly, a significant multi-stakeholder process to develop a comprehensive restoration plan for

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Ballona Creek is being finalized, with water quality identified as a top priority. This plan will contain the stakeholders' vision of a restored Ballona Creek and will have a significant impact on future uses. It is imperative that the SWRCB and the RWQCB comprehensively consider the actual existing uses and potential future uses of Ballona Creek, an important community asset, before any decisions regarding designated beneficial uses are made.

Sincerely,

Mitzy Taggart, D. Env.
Staff Scientist
Heal the Bay

Mark Gold, D. Env.
Executive Director
Heal the Bay

Reference

Stein, E.D., Tiefenthaler, L, February, 2004, DRAFT Characterization of Dry Weather Metals and Bacteria Levels in Ballona Creek, Southern California Coastal Water Research Project and Los Angeles Regional Water Quality Control Board.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Attachment C

September 27, 2012

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

Re: Proposed Approval of Amendments to the Water Quality Control Plan for the Santa Ana River Basin to Revise Recreational Standards for Inland Fresh Surface Waters in the Santa Ana Region.

Dear Chairman Hoppin and State Board members,

On behalf of Heal the Bay, we submit the following comments on the *Proposed Approval of Amendments to the Water Quality Control Plan for the Santa Ana River Basin to Revise Recreational Standards for Inland Fresh Surface Waters in the Santa Ana Region* ("Draft Amendments") adopted by the Santa Ana Regional Water Board (Regional Board) on June 15, 2012. The following comments specifically address the de-designation of the REC-1 use for certain surface waters, based on Use Attainability Analyses (UAAs) in Item #10, as adopted by the Regional Board (Resolution NO. R8-2012-0001), and discuss our written and verbal concerns left unaddressed in the Draft Amendments.

We have several major concerns, many shared with the United States Environmental Protection Agency (USEPA) Region 9, about the Draft Amendments as adopted by the Regional Board. Our primary concern is the proposed beneficial use de-designation of four water-bodies [REC-1 (primary contact recreation) to REC-2 (non-contact water recreation)] by means of UAA. We are also concerned with the Draft Amendment's failure to adequately protect public health, inadequate effort to address water quality problems, and inappropriate rationale for de-designation of a water-body's beneficial use. Our concerns were addressed verbally at the Regional Board hearings on March 16 and April 27, 2012, and detailed written comments were submitted to the Regional Board on March 15 and April 20 of this year (see letter and attachment below).

While we appreciate the opportunity to express our concerns, we strongly recommend that the State Board remand the proposed Draft Amendments to the Regional Board so our concerns can be appropriately addressed.

UAAs should not be used to manage or address water quality issues

UAAs are an extraordinary tool that should only be used in exceptional cases and where they would not impact or weaken existing water quality standards. Statewide, there has been only one UAA leading to an approved Basin Plan Amendment and de-designation of a water-body's beneficial use – the Ballona Creek UAA in the Los Angeles Region (see attached comments on Ballona Creek's UAA starting on page

21). Which is why we are extremely concerned with the sheer number (four) of de-designations proposed in the Draft Amendments.

De-designating a water-body's beneficial use can have long lasting negative impacts on public health and water quality at receiving water-bodies. Thus, due-diligence must occur to determine if a UAA should be pursued at all and to ensure that a UAA is completed appropriately. UAAs are not suitable for any water-body when water quality improvement efforts like Total Maximum Daily Loads (TMDLs) are in place. Two of the four UAAs presented in the staff report (Cucamonga Creek Reach 1 and Santa Ana-Delhi Channel) are in areas where Bacteria TMDLs are in the implementation phase with future compliance deadlines of December 2019. Why are UAAs being pursued, while water quality improvement efforts towards meeting future compliance deadlines have not been completed and/or fully explored? This is inappropriate. It is unacceptable for an area to undergo a UAA when a TMDL has been implemented or is underway.

The proposed de-designation of the REC-1 beneficial uses in the Proposed Amendment is premature

Not only do we disagree with the proposed water-body's de-designation from a technical standpoint, but also, the proposal is premature. EPA is planning to release the 2012 Recreational Water Quality Criteria for Bacteria ("Criteria") before the end of this year. Though coastal states have the authority to create and implement their own water quality standards, many closely follow EPA's recommendations to develop and improve their own state's bacteria standards. This is the case in California, and because EPA has yet to release its Criteria, statewide efforts for developing inland bacteria standards were put on hold. Therefore, approving the proposed Draft Amendments is untimely and inappropriate, as the state will move forward with developing its recreational water quality standards for bacteria after EPA's Criteria are released.

UAAs must provide sufficient evidence to justify the four de-designations

Implementation of a UAA should be an extremely rigorous process and explored *only* as a last resort after all BMPs and water quality improvement project efforts toward improving water quality have been implemented. Furthermore, to ensure that water quality standards are not being weakened, the regional boards, State Board and USEPA must require that the UAA be a high quality analysis which appropriately assesses water-bodies of concern. However, the UAAs included in the staff report fail to adequately meet EPA's water quality guidelines, specifically by the inability to prove that naturally occurring pollutant concentrations prevent the attainment of a water-body's use (see Table 1 and Attachment 1). The proposed UAAs also fail to protect receiving waters which are required to meet REC-1 standards.

The rationale provided in the Draft Amendments for implementing the UAAs is inadequate. Adequate rational and assessment for de-designating the proposed water-bodies (Santa Ana-Delhi Channel, Greenville-Banning Channel, Temescal Creek and Cucamonga Creek, Reach 1) was not included in any of the technical staff reports. For example, the Regional Board failed to analyze and include actual Best Management Practices (BMPs) implementation and performance criteria associated with those

implemented BMPs. Citing studies on BMP efficacy does not count as BMP implementation. It is also argued that some BMPs implemented were insufficient, however not all BMPs will be appropriate for every water-body, and should be considered on a case-by-case basis. The proposed UAAs fail to investigate a variety of BMPs in order to achieve water quality objectives, which should take priority prior to UAA implementation. Furthermore, BMPs which were implemented fail to provide comparative monitoring data in order to affectively analyze BMP effectiveness.

A number of other technical flaws demonstrate that insufficient analyses were performed, which ultimately calls into question the integrity of the UAAs performed. Among the many flaws is the lack of sufficient evidence which would suggest removing a water-body's beneficial use is appropriate. For instance, when conducting a UAA it is important to take into account a water-body's recreational uses, which can be determined by accessibility, public use and the potential for human contact. However, it is inappropriate to determine these uses through subjective evidence such as intermittent photographs, which is how the Regional Board determines a water-body's beneficial use. Furthermore, it is extremely important to conduct sufficient water quality monitoring in order to determine if and where standards are being exceeded in order to identify potential pollution sources. The technical report fails to provide this information along with any source control measures.

The proposed de-designations may result in a disincentive to restore or enhance water-bodies

Modification of the current Basin Plan beneficial uses could result in the unintended consequence of providing a disincentive to the many long-overdue restoration efforts of our urban creeks and rivers. How can we expect to meet beneficial uses in downstream REC-1 designated receiving waters when inland standards are de-designated to REC-2 standards? It is inappropriate to potentially preclude or provide a disincentive for restoration.

UAA criteria need to be developed for statewide consistency

EPA's current UAA criteria are extremely vague and do not provide much needed implementation guidelines (see Table 1). It is extremely vital for the state to develop strong UAA criteria to best preserve beneficial uses, support meeting water quality standards in receiving waters, strengthen public health protection, and provide statewide consistency during UAA implementation.

Statewide UAA criteria should include the following:

- At least five years of consistent water quality monitoring data (at least weekly) showing chronic water-body impairment (exceedances of state water quality standards). These data must be consistent among all areas seeking to undergo a UAA.
- All efforts towards improving water quality (BMPs, water quality improvement projects, source tracking etc.) must be exhausted. These efforts should include an analysis of water quality monitoring data before and after project implementation.
- Must provide adequate data to demonstrate human sources are not contributing to water quality impairment.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

- Must prove significant documentation on the suggested lack of public use or access (pictures alone do not justify). This should be demonstrated by obtaining information through a combination of documented historical use, personal interviews, historians and digital archives.

***

In conclusion, we urge the State Board to remand the proposed Draft Amendments to the Regional Board due to the major negative implications on public health protection, the dangerous precedent this sets for regions considering de-designation of a waterway, inadequate effort put forth towards improving water quality prior to UAA implementation, and insufficient data collection and interpretation of UAAs. Heal the Bay believes that the proposed Basin Plan amendment is the wrong action presented at the wrong time. We strongly recommend the development of statewide UAA criteria, to ensure a high level of public health protection and to avoid future statewide inconsistencies.

Thanks you for taking our comments into consideration. Please feel free to call us with any questions or comments at 310-451-1500.

Sincerely,

Amanda Griesbach, MS
Water Quality Scientist
Heal the Bay

Kirsten James, MESM
Water Quality Director
Heal the Bay

Table 1.

EPA's water quality standards for UAA's[1]	
1	Naturally occurring pollutant concentrations prevent the attainment of the use; or
2	Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

3	Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
4	Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
5	Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
6	Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

[1]A describes in EPA's water quality standards regulation [40 CFR 131.10(g)(1)-(6)]

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

March 15, 2012

Kurt V. Berchtold, Executive Officer
Regional Water Quality Control Board
Santa Ana
3737 Main Street, Suite 500
Riverside, California 92501

Re: Basin Plan Amendments to Revise Recreation Standards for Inland Fresh Surface Waters in the Santa Ana Region

Dear Mr. Berchtold,

On behalf of Heal the Bay, we submit the following comments on *Basin Plan Amendments to Revise Recreation Standards for Inland Fresh Surface Waters in the Santa Ana Region* ("Draft Amendments") issued by the Santa Ana Regional Water Quality Control Board (Regional Board) for public review on January 12, 2012. We focus our comments on the proposals as described in the Executive Summary only, due to time constraints. We appreciate staff's willingness to include our comment letter in the record and in Board materials despite being submitted past the original response deadline.

Our overarching concern with these proposals is that human health will not adequately be protected. This concern is discussed in more detail below, and our comments follow the outline of the Executive Summary.

#1. Rename the REC1 use from "Water Contact Recreation" to "Primary Contact Recreation."

We echo USEPA's concern expressed in their February 23, 2012 comment letter that renaming the REC1 use would be inconsistent with the State Water Resources Control Board's definition that was developed through an extensive process. Thus, we urge the Regional Board to retain the current definition.

#2. Delete the current Basin Plan fecal coliform objectives and replace with E. *coli* objectives.

We concur with Regional Board's general finding that fecal coliform objectives be replaced by E. *coli* objectives. However, we are extremely concerned by the proposal to require at least 5 samples over a 30 day period. Instead, 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. As shown in the Regional Board's data analysis, there are many instances where only four samples were collected in a 30 day period. This would lead to no geometric mean calculation, therefore putting the public's health at risk. Not having a geomean calculation is problematic because it helps to reveal chronic pollution problems.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

In addition, the Regional Board must include a single-sample limit of E. *coli* density of 235/100 ml. The single sample is critical for both public health protection and compliance purposes. There is no justification as to why this criterion is absent in the proposal.

#3. Establish a 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.

#4 and #5. Sub-divide 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. Each individual who recreates in a water-body should be afforded the same public health projection, regardless of how many "fellow swimmers" are utilizing the same water-body. In fact USEPA recognizes the flaw with the tiered approach in the proposed Recreational Water Quality Criteria (Office of Water 820-D-11-002). USEPA states that "the 2012 RWQC are no longer recommending multiple "use intensity" values, in an effort to increase national consistency across bodies of water and ensure equivalent public health protection in all waters." (Criteria at 4). Thus, one set of standards based on the same health protection is appropriate.

In addition, we are concerned with the Regional Board's assessment that the single sample value is for posting purposes only and that insufficient data may exist for the geomean calculation. 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. Any derivation of the single sample or geomean from default values are a standards change and would be subject to EPA approval. Both standards must be used, and a sufficient number of samples should be taken for the geomean calculation (the five most recent samples or five samples collected over the last 30 days).

#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 proper rain gauges on a specific water-body, it is impossible to know if the flow is truly significantly elevated. Simply relying on nearby (or regional) rain gauge data is not sufficient to understand the flow regime. Given the lack of understanding about flow, it is impossible to predict when individuals could be recreating in a water-body. People who swim or surf in wet or winter weather are entitled to the same health protections and water quality standards as those that swim at beaches during the Fourth of July. Also the State Water Board made this determination as they acknowledged

that swimming and surfing are activities that occur in Southern California waters 365 days a year, rain or shine. 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.

Also we echo USEPA's concerns that 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.

#7. Re-designate specific waters to remove REC1 or REC1 and REC2 uses.

As this is the first Use Attainability Analysis (UAA) performed by the Santa Ana Region Board, and only second in the entire state, we are extremely concerned about the bad precedent this Basin Plan amendment sets for future dedesignation efforts throughout the state.

In fact, 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 to prevent flooding, rather than more ecologically friendly flood control efforts or a bioengineering approach. More natural, bioengineered approaches to flood control will likely result when beneficial use designations are maintained.

In addition, waterbodies dedesignated from a REC1 to a REC2 or complete dedesignation from water quality standards could stall restoration efforts. Millions of dollars in bond funds have been allocated to develop riparian restoration and enhancement plans and projects for many degraded waterways in the state. If efforts to improve water quality and restore riparian resources will result in tougher regulatory requirements, this will provide a tremendous disincentive for restoration and enhancement projects. The current regulatory framework provides no such incentive because the potential REC1 beneficial use exists on most of the receiving waters that are the focus of dedesignation efforts. Modification of the current Basin Plan beneficial uses could result in the unintended consequence of providing a disincentive to the many long-overdue restoration efforts of urban creeks and rivers. Also, one can easily see how this creates an incentive for resource management agencies to limit access to the very resources the Regional Board is trying to protect. For example, why would a resource management agency put in a new bike path segment along a concrete lined receiving water if the beneficial action would lead to tougher regulatory requirements?

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.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

#9. Delete the bacterial quality objective for MUN

How did the Regional Board determine that the waterbodies in question do not meet the threshold for MUN as described in the State Board's Sources of Drinking Water Policy? Federal regulations prohibit removal of designated uses which are existing uses, as defined in 40 CFR Sect. 130.3, unless a use requiring more stringent criteria is added. We echo USEPA's concern that documentation is lacking showing that the proposed excepted waterbodies do not have existing MUN use designations. Thus, the Regional Board should not remove this beneficial use.

***

In conclusion, the Regional Board's proposal has major implications on public health protection. As discussed above, 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. Heal the Bay believes that the proposed Basin Plan amendment is the wrong action at the wrong time. Thus, Heal the Bay opposes the proposal as discussed above.

Comments on the four proposed UAAs are attached (see below).

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

ATTACHMENT ONE (04/20/2012)

UAA Comments

Santa Ana-Delhi Channel

Reach Identification

- The reaches should have been:
  - Tidal Prism: Bike Path to Mesa Dr. (earthen bottom/one side rip-rap)
  - Mesa Dr to Alton Ave. (box channel)
  - Alton Ave to Warner Ave (earthen bottom/rip-rap)
- By segmenting these reaches according to similar characteristics, such as earthen bottoms, rip-rap walls, and more natural landforms, the public has a better sense of the possibilities for each reach, in terms of water quality, habitat, and recreational uses. The UAA's segmentation of the Creek combines reaches with different characteristics, like earthen bottoms segments with box channel segments. This type of segmentation can promote certain features or attributes as being homogeneous throughout the stretch of Creek, when they are not.

Water Quality

- It is first argued that there is not enough flow: the dominant dry weather flows create perennial flow of a few inches (6 inches or less) …and sources are groundwater and urban runoff (pg7-8). Then it is argued that the region cannot attain water quality criteria during dry weather because the BMPs implemented are not sufficient (5.6.3.7.1-- pg14). Perhaps the BMPs implemented should not be treatment types, but capture and reuse or infiltration given the low flow volumes.

- There is no documentation on whether a source control/source identification program, and the subsequent source abatement program having been implemented. There is no discussion on whether a watershed approach to BMP implementation was ever adopted. No documentation on actual BMP implementation, and or performance criteria associated with those implemented BMPs. All the information associated with BMPs in this section are citations to studies on efficacy. There is no actual information highlighting any implemented BMPs, aside from diversions, in the watersheds. How can the public reasonable expect that the effort was made to control Bacteria inputs by any agency or municipality to control urban runoff or nuisance flows without such information?

- Dry weather diversions are stated as 100% effective. The rational cited on the phone—per our conversation (04/19) was a concern for habitat. Yet, the UAA states that "treatment agencies do not like them", and view them as a temporary practice. Which of the two responses is it? If the later, this is not a sufficient reason why bacterial objectives can't be obtained. Dry-weather, and

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

even some wet-weather, low-flow diversions are an integral part in RWQCB 4 Bacterial TMDL compliance. In addition, the UAA argues that full capture is economically infeasible. This is understandable if the argument is for wet weather conditions. However, this is should not be the case for dry weather time-periods and low flow events.

- Why did the RWQCB 8 use a calendar time-period to conduct its geometric mean analysis for bacteria for this UAA, when the Basin plan uses a 30-day rolling average (pg13)?

- The UAA fails to demonstrate how efforts to attain recreational water quality standards in the downstream receiving water body—currently REC 1—will not be negatively impacted by the request to remove the upstream recreational use designations—an action that will allow higher levels of indicator bacteria in the upstream tidal prism, REACH 1 and REACH 2. The REC-1 use of the downstream receiving water-body is not in question. (pg 23). If bacterial standards during dry weather in this section of the receiving water-body can't be met, then how does it figure this runoff or flow will not have a negative impact on the downstream receiving water-body?

USES

- Did RWQCB 8 solicit information from 'historic societies', local historians, or personal interviews to complete if determination of historic uses? Historic uses exploration should have included a people survey of local historians or senior citizens of the area. Personal Interviews should have been a component of this process. Simply looking on Google or electronic archives can be insufficient and incomplete due to the nature of digital archives.

- In addition, there were photos that showed 'tagging' or graffiti in portions adjacent to the Creek, which suggests that there is access. Such actions would indicate that people are able to access the areas. In RWQCB 4, 'tagging' or graffiti, while illegal, can demonstrate that access and use exist in the area.

- The OCFCD denies access due to safety concerns. As it relates to this issue of de-designation or this UAA, the argument may be applicable for wet-weather (high velocity flow) conditions, yet is completely inappropriate for dry-weather. There is little justification as to why the public should not be able to use or have access to the Creek during the 98% of time when such high-flow conditions do not exist. While there are vertical walls in segments, there is a sufficient amount of area that is covered with rip-rap. RWQCB 8 seems to make the subjective argument that even in dry-weather the Creek is unsafe in these areas (pg12) to access. This UAA fails to even discuss the statewide, and Southern California, initiatives to obtain great access to these once off-limit areas. For example, the City of Los Angeles has the lead the way in making the LA River a destination

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

place for contact water recreation and public education. There are several other examples in Los Angeles County where semi-channelized waterbodies are being utilized for their non-direct recreation benefits, habitat opportunities, and public education. A number of State Conservancies and Private Non-profits are currently looking at acquiring parcels to develop greater open space opportunities for park poor regions by working with local groups. Neither the State Agencies, Non-Profit groups, nor local community groups appear to have been solicited for this review. On the State level, SB1201 (De Leon) seeks to address this issue of public access to flood control channels, engineered creeks, streams, and rivers. The bill, if adopted, will amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) "to include or provide for **public use** of navigable waterways that are suitable for **recreational and education purposes**" as they relate to the Los Angeles River. This bill is likely to set precedent for other receiving waterbodies in the State.

- The UAA appears to argue that hydro-modifications impacts are indefinite. In addition, the UAA seemed only to consider full restoration of the Creek as the only alternative. There is no discussion of partial enhancement to the Creek as a viable option. Also, this section took no account of statewide and southern California wide measures that consider these areas as important sites for implementing integrated water management opportunities, LID, and other multiple-benefit land-use policies to treat water.

- Finally, the summary of adjacent land-uses and their potential to impact water quality or the role they could play in addressing water quality issues—as the relate to the previous bullet point—are not sufficiently address. How is the public able to determine possible sources impact the Creek or evaluate opportunities for watershed-wide multiple benefit BMPs. For example, there are two large golf courses, a regional park, and a school all in located is close proximity to the Creek.

Greenville-Banning Channel

Water Quality

- First argue that there is not enough flow: the dominant dry weather flows create perennial flow of a few inches (6 inches or less)…and sources are groundwater and urban runoff (pg 7-8). Then it is argued that the region cannot attain water quality criteria during dry weather because the BMPs implemented are not sufficient (pg 16-17). Perhaps the BMPs implemented should not be treatment types, but capture and reuse or infiltration given the low flow volumes.

- Dry weather diversions are stated as 100% effective. The rational cited on the phone—per our conversation (04/19) was a concern for habitat. Yet, the UAA states that "treatment agencies do not like them", and view them as a temporary practice. Which of the two responses is it? If the

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

later, this is not a sufficient reason why bacterial objectives can't be obtained. Dry-weather, and even some wet-weather, low-flow diversions are an integral part in RWQCB 4 Bacterial TMDL compliance. In addition, the UAA argues that full capture is economically infeasible. This is understandable if the argument is for wet weather conditions. However, this is should not be the case for dry weather time-periods and low flow events.

- An 'Orange County Areawide Urban Stormwater Runoff Management Plan' is mentioned, and a suggestion that the drainage area limits the effectiveness of many BMPs. What documents or data support this assertion? Most management plans are an iterative process, based on implemented programmatic and structural BMPs. Has this type of evaluative component been completed on actual implemented structural BMP performance and design? Beyond low-flow diversions, what other actual BMPs were installed in this watershed? What changes or modifications to those implemented BMPs were completed to address short-coming to initial BMP construction? As for programmatic BMPs, what evaluative measures were used to determine behavioral changes in municipalities (the general population), given that urban runoff is the primary bacterial source? Has enforcement been implemented in this watershed as a deterrent to urban runoff or nuisance flows in association with MS4 or NPDES compliance? (pg.16)

- There is no documentation on whether a source control/source identification program, and the subsequent source abatement program having been implemented. There is no discussion on whether a watershed approach to BMP implementation was ever adopted. No documentation on actual BMP implementation, and or performance criteria associated with those implemented BMPs. All the information associated with BMPs in this section are citations to studies on efficacy. There is no actual information highlighting any implemented BMPs, aside from diversions, in the watersheds. How can the public reasonable expect that the effort was made by any agency or municipality to control bacteria inputs from urban runoff without such information?

- Why did the RWQCB 8 use a calendar time-period to conduct its geometric mean analysis for bacteria for this UAA when the Basin plan uses a 30-day rolling average (pg11)?

- The UAA fails to demonstrate how efforts to attain recreational water quality standards in the downstream receiving water body—currently REC 1—will not be negatively impacted by the request to remove the upstream recreational use designations—an action that will allow higher levels of indicator bacteria in the upstream tidal prism, and REACH 1. The REC-1 use of the downstream receiving water-body is not in question. (pg 23). If bacterial standards during dry

weather in this section of the receiving water-body can't be met, then how does it figure this runoff or flow will not have a negative impact on the downstream receiving water-body?

USES

- Did RWQCB 8 solicit information from 'historic societies', local historians, or personal interviews to complete if determination of historic uses? Historic uses exploration should have included a people survey of local historians or senior citizens of the area. Personal Interviews should have been a component of this process. Simply looking on Google or electronic archives can be insufficient and incomplete due to the nature of digital archives. (Pg.21)

- This UAA fails to even discuss the statewide, and Southern California, initiatives to obtain great access to these once off-limit areas (pg 22-probable future uses). For example, the City of Los Angeles has the lead the way in making the LA River a destination place for contact water recreation and public education. There are several other examples in Los Angeles County where semi-channelized waterbodies are being utilized for their non-direct recreation benefits, habitat opportunities, and public education. A number of State Conservancies and Private Non-profits are currently looking at acquiring parcels to develop greater open space opportunities for park poor regions by working with local groups. Neither the State Agencies, Non-Profit groups, nor local community groups appear to have been solicited for this review. On the State level, SB1201 (De Leon) seeks to address this issue of public access to flood control channels, engineered creeks, streams, and rivers. The bill, if adopted, will amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) "to include or provide for **public use** of navigable waterways that are suitable for **recreational and education purposes**" as they relate to the Los Angeles River. This bill is likely to set precedent for other receiving waterbodies in the State.

- The UAA appears to argue that hydro-modifications impacts are indefinite. In addition, the UAA seemed only to consider full restoration of the Creek as the only alternative. It appears that the only criteria RWQCB 8 used for channel restoration was a complete riparian wetland restoration? There is no discussion of partial enhancement to the Creek as a viable option for supporting REC-1 uses. There are many gradients, without full restoration, that could support REC-1 as has been witnessed in the LA River. Also, this section took no account of statewide and southern California wide measures that consider these areas as important sites for implementing integrated water management opportunities, LID, and other multiple-benefit land-use policies to treat water.

Heal the Bay
1444 9th Street
Santa Monica CA 90401
ph 310 451 1500
fax 310 496 1902
info@healthebay.org
www.healthebay.org

- Finally, the summary of adjacent land-uses and their potential to impact water quality (Mesa Verde and Costa Mesa golf courses) or the role they could play in addressing water quality issues (Fairview Regional Park and Talbert Regional Park)—as the relate to the previous bullet point—are not sufficiently addressed (5.6.4.9.2). How is the public able to determine possible sources impact the Creek or evaluate opportunities for watershed-wide multiple benefit BMPs.

Temescal Creek

Reach Identification

- The UAA Reach 1a should not have included:
  - Cota St to Lincoln Ave (earthen bottom/rip-rap); everything else is in this reach is a box or trapezoidal channel. (pg 1)
  - By segmenting these reaches according to similar characteristics, such as earthen bottoms, rip-rap walls, and more natural landforms, compared to box and trapezoidal channels, the public has a better sense of the possibilities for each reach, in terms of water quality, habitat, and recreational uses. The UAA's segmentation of the Creek combines reaches with different characteristics, like earthen bottoms segments with box channel segments. This combining of different segments can promote or hide certain desirable features or attributes as not existing or being homogeneous throughout the stretch of Creek, when they are not.

Water Quality

- A 'Comprehensive Bacteria Reduction Plan' has been developed and is the foundation for achieving compliance of water quality standards as part of the MS4 permit, and to support compliance with the Middle Santa Ana River TMDL. (pg 15):
  - While Bacteria treatment or structural BMPs are stated, and citations to Stormwater Design Handbook mentioned, there is no actual projects referenced or discussed. "Planning is underway to develop future management controls" but this is not explained in detail as to what actual projects will be forthcoming, and whether those identified projects will actually work. (pg15 and pg16);
  - In the meantime, as the UAA asserts "the 'Comprehensive Bacteria Reduction Plan' is an iterative and adaptive process" that was started in 2006 and nearing completion in 2010—"Final Draft CBRPs were submitted in late December 2010...to RWQCB staff for review. (pg 16)" What BMPs, treatment, structural or programmatic, have been implemented during this time-period? Has any evaluative component been completed on actual implemented structural BMP performance and design? Beyond low-flow diversions, what other actual BMPs were installed in this watershed? What changes or modifications to those implemented BMPs were completed to address short-coming to initial BMP construction? As for programmatic

BMPs, what evaluative measures were used to determine behavioral changes in municipalities or the general population, given that urban runoff is a bacterial source? Has enforcement been implemented in this watershed as a deterrent to urban runoff or nuisance flows in association with MS4 or TMDL compliance? (pg.16);

- In addition, the Middle Santa Ana River TMDL and MS4 are stated as the drivers for Bacteria compliance in Temescal Creek. Compliance is set for December 2015, at the latest. Why move forward with a UAA now instead of waiting 3 years until the TMDL has run its course? Also, it seems premature to proceed with a UAA for Temescal Creek when the 'Comprehensive Bacteria Reduction Plan' was barely finalized—"Final Draft CBRPs were submitted in late December 2010...to RWQCB staff for review. (pg 16)" It seems that the plan hasn't had enough time to be in effect to make a UAA determination for non-compliance with water quality objectives for Bacteria. Implementing a UAA will most certainly impact monitoring (removing or reducing), BMP implementation, and water quality compliance schedules (eliminating the use, eliminates the compliance).

- How can the public reasonable expect that the effort was made by any agency or municipality to control bacteria inputs from urban runoff without such information?

- Sources are nuisance flows from urban runoff, wastewater, and Water District. (pg7-8) If the waste water plant is coming off line, does this impact the District's recycled water program? What is the capacity of the wastewater or district agencies to capture first flush or storm events?

- The UAA fails to demonstrate how efforts to attain recreational water quality standards in the downstream receiving water body—currently REC 1—will not be negatively impacted by the request to remove the upstream recreational use designations—an action that will allow higher levels of indicator bacteria in the upstream portions of REACH 1a and REACH 1b in Temescal Creek. The REC-1 use of the downstream receiving water-body is not in question. (pg 23). If RWQCB 8 can't comply with bacterial standards during dry weather in this section of the receiving water-body, then how does it figure this runoff or flow will not have a negative impact on the downstream receiving water-body?

USE

- The 'Probable Future Uses' section appears limited to local municipalities. Did RWQCB 8 check with State or other open space/Park groups desires regarding future uses for the area?

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

- Did RWQCB 8 solicit information from 'historic societies', local historians, or personal interviews to complete if determination of historic uses? Historic uses exploration should have included a people survey of local historians or senior citizens of the area. Personal Interviews should have been a component of this process. Simply looking on Google or electronic archives can be insufficient and incomplete due to the nature of digital archives. (pg 22)

- The RCFCD denies access due to safety concerns. As it relates to this issue of de-designation or this UAA, the argument may be applicable for wet-weather (high velocity flow) conditions, yet is completely inappropriate for dry-weather. There is little justification as to why the public should not be able to use or have access to the Creek during the 98% of time when such high-flow conditions do not exist. RWQCB 8 seems to make the subjective argument that even in dry-weather the Creek is unsafe in these areas (pg 23) to access.

- Again, the characterization of adjacent land-uses and available areas is limited in its scope (pg11) as it relates to bacterial inputs or opportunities for regional or site specific BMP implementation. For example, there is a large sized lot at Magnolia and 6th (27 acres)—willing seller based on Google photos—in proximity to Temescal Creek that could be identified as a multiple benefit project.

- This UAA fails to even discuss the statewide, and Southern California, initiatives to obtain great access to these once off-limit areas (pg 22-probable future uses). For example, the City of Los Angeles has the lead the way in making the LA River a destination place for contact water recreation and public education. There are several other examples in Los Angeles County where semi-channelized waterbodies are being utilized for their non-direct recreation benefits, habitat opportunities, and public education. A number of State Conservancies and Private Non-profits are currently looking at acquiring parcels to develop greater open space opportunities for park poor regions by working with local groups. Neither the State Agencies, Non-Profit groups, nor local community groups appear to have been solicited for this review. On the State level, SB1201 (De Leon) seeks to address this issue of public access to flood control channels, engineered creeks, streams, and rivers. The bill, if adopted, will amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) "to include or provide for **public use** of navigable waterways that are suitable for **recreational and education purposes**" as they relate to the Los Angeles River. This bill is likely to set precedent for other receiving waterbodies in the State.

Cucamonga Creek

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Water Quality

- Documented sources are nuisance flows urban runoff (2.8mgd), agricultural (feed-lots and farming), and wastewater (2.8mgd). (pg 8)
    - Did the San Bernardino Stormwater Program include the wastewater effluent as part of the nuisance flows or is this a separate 2.8 mgd value? Is there a runoff value for Ontario Airport?
    - Has the San Bernardino Stormwater Program, the local POTW or RWQCB 8 considered an Integrated Water Resources Management Plan in an effort to limit the amount of nuisance flows to Cucamonga Creek? There is no discussion of this type of planning in the UAA. While there is a recycled water program, there is no discussion as to volumes being recycled or goals/capacity of future recycling efforts? This is critical information if flows from treated wastewater create conditions that exacerbated bacterial growth? Given that the POTW is treating its sewage water to tertiary level, is groundwater infiltration a possibility versus discharging it into a box channel?

- A 'Comprehensive Bacteria Reduction Plan' has been developed and is the foundation for achieving compliance of water quality standards as part of the MS4 permit, and to support compliance with the Middle Santa Ana River TMDL. (pg 15):
    - While Bacteria treatment or structural BMPs are discussed, and citations to Stormwater Design Handbook mentioned, there are no actual projects referenced or discussed. "Planning is underway to develop future management controls" but this is not explained in detail as to what actual projects will be forthcoming, and whether those identified projects will actually work. (pg15 and pg16)
    - In the meantime, as the UAA asserts "the 'Comprehensive Bacteria Reduction Plan' is an iterative and adaptive process" that was started in 2006 and nearing completion in 2010—"Final Draft CBRPs were submitted in late December 2010...to RWQCB staff for review. (pg 16)" What BMPs, treatment, structural or programmatic, have been implemented during this time-period? Has any evaluative component been completed on actual implemented structural BMP performance and design? Beyond low-flow diversions, what other actual BMPs were installed in this watershed? What changes or modifications to those implemented BMPs were completed to address short-coming to initial BMP construction? As for programmatic BMPs, what evaluative measures were used to determine behavioral changes in municipalities or the general population, given that urban runoff is a bacterial source? Has enforcement been implemented in this watershed as a deterrent to urban runoff or nuisance flows in association with MS4 or TMDL compliance? (pg.16)

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

- In addition, the Middle Santa Ana River TMDL and MS4 are stated as the drivers for Bacteria compliance in Cucamonga Creek. Compliance is set for December 2015, at the latest. Why move forward with a UAA now instead of waiting 3 years until the TMDL has run its course? Also, it seems premature to proceed with a UAA for Cucamonga Creek when the 'Comprehensive Bacteria Reduction Plan' was barely finalized—"Final Draft CBRPs were submitted in late December 2010...to RWQCB staff for review. (pg 16)" It seems that the plan hasn't had enough time to be in effect to make a UAA determination for non-compliance with water quality objectives for Bacteria. Implementing a UAA will most certainly impact monitoring (removing or reducing), BMP implementation, and water quality compliance schedules (eliminating the use, eliminates the compliance).
- How can the public reasonable expect that the effort was made by any agency or municipality to control bacteria inputs from urban runoff without such information?

- Finally, the UAA fails to demonstrate that efforts to attain recreational water quality standards in the downstream receiving water body will not be negatively impacted by their request to remove the recreational use designations in upstream portions of REACH 1 in Cucamonga Creek. The REC-1 use of the downstream receiving water-body is not in question. If you can't comply with bacterial standards during dry weather in this section of the receiving water-body, then it is impossible to not have an impact on the downstream receiving water-body.

USE

- Did RWQCB 8 solicit information from 'historic societies', local historians, or personal interviews to complete if determination of historic uses? Historic uses exploration should have included a people survey of local historians or senior citizens of the area. Personal Interviews should have been a component of this process. Simply looking on Google or electronic archives can be insufficient and incomplete due to the nature of digital archives. (pg 22)

- The RCFCD and SBCFCD deny access due to safety concerns. As it relates to this issue of de-designation or this UAA, the argument may be applicable for wet-weather (high velocity flow) conditions, yet is completely inappropriate for dry-weather. There is little justification as to why the public should not be able to use or have access to the Creek during the 98% of time when such high-flow conditions do not exist. RWQCB 8 seems to make the subjective argument that even in dry-weather the Creek is unsafe in these areas (pg 23) to access.

- The 'Probable Future Uses' section appears limited to local municipalities. Did RWQCB 8 check with State or other open space/Park groups desires regarding future uses for the area? A

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

number of State Conservancies and Private Non-profits are currently looking at acquiring parcels to develop greater open space opportunities for park poor regions by working with local groups. Neither the State Agencies, Non-Profit groups, nor local community groups appear to have been solicited for this review. On the State level, SB1201 (De Leon) seeks to address this issue of public access to flood control channels, engineered creeks, streams, and rivers, specifically the Los Angeles River. The bill, if adopted, will amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) "to include or provide for **public use** of navigable waterways that are suitable for **recreational and education purposes**". This bill is likely to set precedent for other receiving waterbodies in the State.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

Mr. Dennis Dickerson, Executive Officer
Los Angeles Regional Water Quality Control Board
320 W. 4th St.
Los Angeles, CA 90013

Re: Proposed Basin Plan Amendment to Remove REC-1 Beneficial Use for Ballona Creek to Estuary

Dear Mr. Dickerson:

Heal the Bay has numerous objections and concerns about the proposed Basin Plan Amendment to remove the REC-1 beneficial use for the water body segments from Ballona Creek near Cochran Ave. to the estuary at Centinela Ave. This is the first Use Attainability Analysis (UAA) performed by the LA-RWQCB and Heal the Bay is extremely concerned about the numerous bad precedents that this Basin Plan amendment sets for future dedesignation efforts for the region. As you know, there is a significant effort in the regulated community spearheaded by the Coalition for Practical Regulation and others, to push for dedesignation of as many beneficial uses as possible in order to eliminate the requirement for TMDL development and the addition of Waste Load Allocations in the L.A. County Municipal Stormwater NPDES permit. As such, any UAA developed by the RWQCB must meet the CWA requirements for UAA development and shall not set a precedent for further weakening of water quality protections in the region.

Heal the Bay objects to the following provisions to the preferred alternative in the UAA:

The creation of a Limited Rec-1 beneficial use sets a horrible precedent of unequal protection under the Clean Water Act. One of the single greatest achievements of this RWQCB was the development and approval of the dry and wet weather TMDLs for fecal indicator bacteria (FIB) at Santa Monica Bay beaches. One of the arguments brought by Los Angeles County and CPR that the RWQCB and the SWRCB soundly rejected was the premise that the public recreating at infrequently visited beaches was entitled to less health protection than those that swim at popular beaches. The RWQCB and the SWRCB made it clear that people who swim or surf in wet weather are entitled to the same health protections and water quality standards as those that swim at Santa Monica's beaches during the Fourth of July. Similarly, those that surf at Leo Carillo Beach during a rainstorm are entitled to the same public health protections as those that surf at Malibu Surfrider Beach during a storm. The State made this determination because they acknowledged that swimming and surfing are activities that occur in Southern California waters 365 days a year, rain or shine.

The UAA proposes using a limited Rec-1 designation for Reach 2 of Ballona Creek, thereby proposing the weaker water quality objective of 576 E. coli/100 mls. instead of the more protective existing objective of 235 E. coli/100 mls. This recommendation is completely inconsistent with the recent FIB TMDLs for Santa Monica Bay beaches. The creation of a Limited Rec-1 category sets a horrible precedent of unequal public health protection under the Clean Water Act that may be applied to other inland waters, enclosed bays or estuaries, and even ocean waters on a year-round or seasonal basis.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The proposed dedesignation of the REC-1 beneficial use on Ballona Creek is premature. At a time when nearly every single Basin Plan amendment, TMDL and major discharge permit has been opposed by members of the regulated community, it is unconscionable to modify a beneficial use of a water body when there have been no efforts to decrease FIB densities in Ballona Creek. In a classic case of putting the cart before the horse, the RWQCB's proposed amendment provides a regulatory incentive to dischargers to push for weaker water quality standards before undertaking any efforts to improve water quality. To date, there have been no successful efforts to reduce FIB densities in any inland water in the entire Los Angeles region. Until such time as there are RWQCB approved comprehensive programs to reduce FIB densities in inland waters and there is incremental reduction in FIB densities, there should be no attempts to weaken water quality standards for those same inland waters. Otherwise, efforts to reduce FIB densities in Ballona Creek and the L.A. River to protect the public health of swimmers in the receiving waters and the beaches impacted by the polluted Creek and River will likely continue to be non-existent to half-hearted and will certainly be pushed off to the distant future.

The proposed dedesignation sets an incentive to dedesignate inland waters for REC-1 uses. On page 36, the UAA states that this Basin Plan amendment will result in a precedent for dedesignation of other similar concrete lined channels. However, it is completely unclear how this precedent will be applied in the future. With the current ambiguity in the UAA, one can easily see future regulatory community efforts to push for dedesignation of any inland water with concrete lined bottoms and/or sides, or ephemeral flows. As stated in the UAA, requests to dedesignate the San Gabriel River have already occurred despite the fact that most of the river is soft-bottomed and the public has the opportunity to recreate in the river along much of its length.

Also, the UAA states that the lack of easy public access is additional grounds for dedesignating Ballona Creek. One can easily see how this creates an incentive for resource management agencies to limit access to the very resources the RWQCB is trying to protect. For example, why would a resource management agency put in a new bike path segment along a concrete lined receiving water if the beneficial action would lead to tougher regulatory requirements?

The proposed dedesignation sets an incentive to channelize inland waters in order to eliminate the REC-1 beneficial uses. – Since the REC-1 dedesignation for Ballona Creek sets a precedent for dedesignation of concrete lined channels, this provides an incentive for further flood control channelization of riparian inland waters. More natural, bioengineered approaches to flood control will likely result in the maintenance of the REC-1 beneficial use designation, while concrete channelization may lead to dedesignation. Much to Heal the Bay's dismay, riparian habitat destroying, flood control channelization projects still occur today (See recent Medea Creek project in Agoura Hills). The additional regulatory incentive of REC-1 dedesignation will only lead to more efforts to channelize creeks and streams to prevent flooding, rather than more ecologically friendly flood control efforts such as those in Sun Valley or a bioengineering approach.

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

The proposed dedesignation may result in a disincentive to restore or enhance receiving water resources.
Currently, there are large-scale, funded efforts to develop riparian restoration and enhancement plans and projects for Ballona Creek, the L.A. River, the San Gabriel River and many other degraded waterways in the region. To date, well over one hundred million dollars in bond funds have been allocated to these efforts. If efforts to improve water quality and restore riparian resources will result in tougher regulatory requirements, this will provide a tremendous disincentive for restoration and enhancement projects. The current regulatory framework provides no such incentive because the potential REC-1 beneficial use exists on most of the receiving waters that are the focus of dedesignation efforts. Modification of the current Basin Plan beneficial uses could well result in the unintended consequence of providing a disincentive to the many long-overdue restoration efforts of our urban creeks and rivers.

The REC-1 dedesignation provides illusory regulatory relief , so the only benefit to the regulated community is the bad precedent of the UAA – Under the tributary rule, Ballona Creek still must meet REC-1 water quality objectives for inland waters. The Ballona Creek estuary maintains an existing REC-1 use (both in current use and regulatory designation) and has been designated as REC-1 since prior to 1975. Since the Ballona Creek estuary has an existing (E) beneficial use, then the use cannot be changed. Also, there are no new sources of Creek flow between Reach 2 and the estuary, so Ballona Creek waters must meet REC-1 water quality objectives at Centinela Ave. with no allowable dilution – even at low tide conditions where Ballona Creek flow makes up the entire filled Creek volume in the upper estuary. As a result, all of Ballona Creek must meet REC-1 FIB water quality objectives.

The fact that all of Ballona Creek must meet REC-1 FIB water quality objectives despite dedesignation because of the downstream impact issue will lead to additional efforts to weaken the tributary rule. Already, as part of the controversial Basin Plan record critique document funded by CPR, the Los Angeles County Sanitation Districts and others, some in the regulated community have made it clear that they oppose the RWQCB's application of the tributary rule.

The RWQCB did not adequately demonstrate that conditions 2 and 4 under 40 CFR S 131.10(g) were met. Conditions 2 and 4 under the requirements for dedesignation are the basis of the RWQCB's proposed dedesignation. Condition 2 – states that low flow conditions prevent the attainment of use. However, the analysis of human use in Ballona Creek was based on a very small number of returned questionnaires (n=33) and limited staff observation of the creek. Between 2:30 and 4:30 PM on May 4th 2003, I walked Ballona Creek from Sepulveda Blvd. to Lincoln Blvd. and I saw 6 children wading in the water near the Mar Vista Gardens in efforts to catch four-square balls floating down the creek a day or two after a storm. Clearly, based on my own limited observations and the lack of detailed RWQCB field analysis and questionnaires, the issue of REC-1 use in Ballona Creek is still uncertain. Also, the fact that conditions of low flow and low stream depth are prevalent does not eliminate the possibility that Ballona Creek could be restored to provide more optimal conditions for REC-1 through the creation of a soft Creek bottom with pools habitat.

As for condition 4, Ballona Creek does not even come close to attaining a condition of precluded use because of hydrological modification and infeasibility of restoration. There is a concerted effort to focus

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

on the restoration of Ballona Creek, so any conclusion that the Creek cannot be restored would be in direct opposition of this stakeholder based watershed management effort. Also, the mere presence of concrete does not eliminate the REC-1 use in any way, shape or form and the UAA fails to demonstrate why concrete eliminates the REC-1 use.

There are a number of other issues that Heal the Bay is concerned about in the UAA. The geometric mean and single sample water quality objectives apply to Ballona Creek. However, there are no currently required monitoring programs in segment one or two of the Creek, let alone the estuary. Without a current monitoring program, it will be impossible to determine if Ballona Creek is in compliance with the REC-1single sample water quality objective, let alone the geometric mean requirement. Typically, numerous samples are required to determine if an effluent or receiving water is in compliance with the geometric mean requirement. For example, at least five samples a month are needed to determine if a discharger is in compliance with 30 day geometric mean requirements in an NPDES permit.

An issue that was not discussed in the alternatives section of the UAA was the possibility of issuing a five year variance for the REC-1 beneficial use on Ballona Creek. In light of the clear concerns about the precedent setting nature of this UAA, why didn't the RWQCB investigate temporarily dedesignating the receiving water via a variance route ? As you know, five year variances have been given to power plants for thermal and chlorine discharges for over three decades. Although Heal the Bay does not necessarily support such variances, at least there is precedent for giving them under certain, narrow environmental and regulatory circumstances.

In conclusion, the RWQCB's first attempt at a UAA sets a dangerous precedent for dedesignation at a time when nearly every new TMDL, Basin Plan amendment and major NPDES permit is under attack by the certain members of the regulated community. Heal the Bay believes that the proposed Basin Plan amendment is the wrong action at the wrong time. Until such time as there has been incremental progress in reducing FIB densities in inland waters and the RWQCB crafts a UAA that more carefully, narrowly and completely addresses the legal requirements under S.131.10(g), then Heal the Bay will continue to oppose similar REC-1 dedesignation efforts.

If you have any questions about Heal the Bay's comments, please call me at 310-453-0395 x119.

Sincerely,

Mark Gold, D.Env.
Executive Director

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org