



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

Jeanine Townsend
Clerk to the State Water Board
California State Water Resources Control Board
P.O. Box 100
Sacramento California, 95812-0100



Dear Ms. Townsend:

We appreciate the opportunity to comment on the proposed *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* which include four Use Attainability Analyses (UAAs), submitted by the State Water Resources Control Board (State Board) for Public Review on August 29, 2012.

EPA Region 9 has informally and formally commented on the proposed amendments several times since 2008. We met with the Santa Ana Regional Water Quality Control Board (Regional Board) in February, 2008, submitting comments in writing to the Regional Board's "Strawman" document on March 25, 2008 (the State Board also commented at this time, on April 15, 2008). EPA Region 9 also testified at the State Board meeting regarding our concerns with this amendment on November 4, 2008. We have formally commented on the proposed amendments twice. On April 10, 2012, both we and State Board staff met with the Regional Board to verbally present our concerns on the proposed amendments. Formal comments were submitted on February 23, 2012 and April 25, 2012 for April 27th Regional Board meeting.

As you know, the United States Environmental Protection Agency (USEPA), as required by the Clean Water Act (CWA), developed and published draft Recreational Water Quality Criteria (Office of Water 820-D-11-002) in 2011 and is under court order to finalize by November 30, 2012. This document provides USEPA's recommended CWA Section 304(a) Recreational Water Quality Criteria. We believe it would be prudent to refrain from action on this amendment until after the publication of the final Recreational criteria. We note that the State Board has postponed working on the statewide freshwater bacterial objective until after the publication of the final EPA Recreational Criteria. EPA has concerns with some of the Regional Board's proposed amendments. Our specific comments are below.

Definition of REC1:

EPA does not support the language added to the Basin Plan (Pages 3 to 6) that details what REC1 and REC2 consist of in the Regional Board amendment. EPA Region 9 has conveyed our disagreement with the REC definition revision in every communication we've had with the

Regional Board. The new language appears to be counter to what the Regional Board agreed to with the State Board and EPA Region 9 at our meeting on April 10, 2012. In addition, the revision may have ramifications for other California Regional Water Quality Control Boards that may not support such a change.

The Regional Board responded that the language is necessary "...to provide the clarification initially sought in the proposed refinements to the REC1 definition itself. This clarification is necessary to assure that recreation standards are applied and implemented in a manner consistent with federal guidance and with the conditions and assumptions underlying the epidemiology studies that USEPA relied on the [sic] derive the recommended national bacteria criteria." The Regional Board argued that "It is not reasonably possible to ingest appreciable quantities of water by merely touching or being splashed by the water" are not justified, and not "...entirely consistent with federal guidance". EPA Region 9 disagrees. The supporting document for the 1986 criteria (EPA-600/1-80-031, August 1983), states that "The criteria suggest that there are measurable health effects associated with enterococcus of *E. coli* water densities as low as 10/100 mL via a route in which only 10-50 mL of water is ingested", which could reasonably occur during activities such as splashing. In addition, the epidemiology studies performed by EPA to support the draft 2011 Recreational Criteria (Wade *et al.* 2008), found that: "Children may be more likely to swallow water, transfer water to their mouth after exposure".

REC2 Antidegradation Targets and Downstream Protection

EPA Region 9 previously commented that we appreciate that the Regional Board has changed the proposed REC2 antidegradation standard from being based on the 95th percentile to the 75th percentile, which is more protective than the previous proposal. We note that the revision was made to the Basin Plan amendment but not the UAAs. This should be corrected.

EPA Region 9 commented that the implementation of the proposed REC2 standards depends on proper monitoring programs, and that the adequacy of said monitoring programs should be reviewed by the State Board and EPA. The Regional Board responded: "We believe that it would be an inappropriate use of both State Water Board and EPA staff resources to focus time and effort on the review of monitoring programs designed to address REC2 only waters." Consequently, it is unclear how the antidegradation based objectives will be implemented.

EPA Region 9 maintains that an adequate monitoring program is also needed to address protection of downstream recreational uses. To meet the requirements of 40 CFR 131.10(b), a state "...shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." It has not been demonstrated that removing the recreational uses from these reaches would allow for the protection of downstream waters. For example, it is unclear how removing the REC1 use and relaxing the bacteria objectives in the Santa Ana Delhi Channel, would ensure protection of the REC1 use in the downstream waters of Newport Bay, which is also currently impaired for bacteria.

It is also unclear how the changes to the REC1 use will affect the current allocations for the Bacterial Indicator Total Maximum Daily Load (TMDL) for the Middle Santa Ana River (Resolution R8-2005-0001) or the TMDL for Fecal Coliform Bacteria in Newport Bay (Resolution R8-99-10). We believe it would be more sensible to address issues of use attainability and use designations within the context of these TMDLs.

Tiering of Uses

EPA Region 9 pointed out in our prior comments, regarding the tiering of uses, that while EPA's current guidance allows for the adjustment of single sample maxima for waters where use is not frequent, in the 2011 draft Recreational Water Quality Criteria Guidance we are no longer recommending multiple use intensity values. This is in an effort to increase national consistency across bodies of water and to ensure equivalent public health protection in all waters. USEPA's proposed criteria remove the tiering component partly because of confusion by States on its application. This confusion is evident in the Regional Board's tiering of remote water bodies at lower tiers (Tier D) because as they are not used as frequently due to being remote, while adding footnotes that protect those water bodies because they are "natural". The Regional Board noted the comment but did not respond. EPA Region 9 is concerned that the tiering of uses involved a great deal of subjectivity, and does not stand up to justification for adjusting single sample maxima to a less protective criterion.

Use Attainability Analyses (UAAs)

Based on our preliminary review of the UAAs, there is some evidence that the removal of the REC1 use may be justified in some reaches based on low flow and channel morphology, but it is not apparent that the REC2 use can be removed.

Santa Ana Delhi Channel (SAD): The reasoning for REC1 uses not being attainable in Reaches 1 and 2 based on low flow data is apparent, but it is not apparent that this reasoning applies to REC2. Also the low flow and channel morphology reasoning doesn't apply to the tidal prism.

Greenville Banning Channel (GB): There is evidence (low flow, channel morphology) that REC1 can be removed in Reach 1, but there is no evidence to support the removal of REC2. Particularly considering the BMPs employed have shown that there has been water quality improvement. The discussion regarding not designating REC2 (page 24 of UAA) is insufficient; Low flow, algae, and lack of vegetation are not 40 CFR 131.10(g) factors. Figure GB-12 shows an area that appears accessible and is surrounded by a residential area. The tidal prism is accessible from the Santa Ana River which is designated REC1. There is no firm evidence for designating the tidal prism as REC2.

Temescal Creek: The Regional Board renamed reaches and proposes to remove the REC1 use from Reaches 1a and 1b. The Regional Board also proposes to remove REC2 from Reach 1b.

There is some evidence (low flow, channel morphology) that REC1 might be removed, but there is no evidence to support the removal of REC2 in Reach 1b.

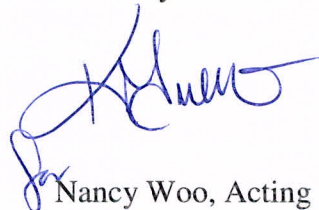
Cucamonga Creek Reach 1: There is evidence (low flow, channel morphology) that REC1 can be removed, but there is no evidence to support the removal of REC2. The bacteria data presented show that REC1 is met about half the time (Figures CC-16 and CC-17), but there's no discussion or evidence that REC2 can't be met. As stated in the UAA (page 24), in 1974 the U.S. Army Engineer district, Los Angeles, Corps of Engineers, Los Angeles District proposed a Recreation Master Plan for Cucamonga Creek which included equestrian, hiking and bicycle trails adjacent to the creek.

The Regional Board has not demonstrated that changing the recreational uses from these reaches would allow for the protection of the Upper Newport Bay, or the Santa Ana River, or other receiving waters, which have standards that include REC1 uses.

Conclusion

EPA Region 9 has identified many serious issues with this Basin Plan Amendment. EPA Region 9 recommends that the State Board remand this amendment back to the Regional Board at this time. We also recommend that the Regional Board delay any revisions of their Recreational Uses until the Santa Ana River and Newport Bay TMDL's are revised and there's a more thorough assessment of sources and attainability.

Sincerely,



10/11/2012

Nancy Woo, Acting Water Director