

This document constitutes responses to comments submitted regarding the Fecal Bacteria Water Quality Objectives [Basin Plan Amendment](#) and [Staff Report and Substitute Environmental Document](#) circulated for review in February 2022

Comment	Response
<p><i>A. Kahn, Soares &amp; Conway LLP (Centennial Livestock)</i></p> <p><b>1. Summary</b></p> <p>On behalf of Centennial Livestock, we appreciate the opportunity to provide comments on the Proposed Amendment of the Water Quality Control Plan for the Lahontan Region for Fecal Bacteria Water Quality Objectives (Bacteria Amendment). Further, we appreciate all of your efforts to move the Bacteria Amendment forward and make it a reality for Lahontan Regional Water Quality Control Board (Lahontan Board) consideration. However, while we support parts of the Bacteria Amendment, we must convey our concern with respect to retaining a narrative Bacteria objective in the Water Quality Control Plan for the Lahontan Region (Basin Plan). In summary, we support removal of the Fecal Coliform objective of 20/100 ml (and related text). We do not support adoption of the new narrative objective and request that the narrative objective be removed in its entirety and not be replaced with the new objective. We convey our concerns here.</p>	<p>Thank you for your comment. The March 2023 Draft Basin Plan Amendment (March 2023 BPA) has been revised to remove the narrative bacteria water quality objective in its entirety without replacement. Removal of the bacteria narrative objective is necessary to reduce confusion caused by the application of multiple bacteria water quality objectives and as further explained in the 2023 Draft Staff Report.</p>
<p><i>Kahn, Soares &amp; Conway LLP (Centennial Livestock)</i></p> <p><b>2. Narrative Objectives are Open Ended and Subject to Future, Unknown Interpretation in Violation of Porter-Cologne Water Quality Control Act</b></p>	<p>See response A.1., above. Water quality objectives may be stated in either numeric or narrative form. Narrative water quality objectives can be narrative statements that represent a quality of water to support one or more beneficial uses. The definition of “water quality objective” does not require that the beneficial uses to be protected by</p>

Comment	Response
<p>The existing and proposed narrative objectives are concerning because they are open ended and specifically designed to be interpreted in the future with water quality criteria or thresholds that are not adopted as water quality objectives under the California Water Code. The Technical Staff Report &amp; Substitute Environmental Document (Staff Report) freely admits this intent when it indicates that the narrative water quality objective allows for application of future source specific or other fecal waste criteria if and when developed. (Staff Report, p. 11.) This means that anytime now or in the future the Lahontan Board may identify an un-adopted water quality threshold to determine if water bodies in the Lahontan Region are impaired. Such an approach circumvents the intent and purposes of the Porter-Cologne Water Quality Control Act (Porter-Cologne).</p> <p>Specifically, Porter-Cologne defines water quality objectives to mean, “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” (Wat. Code, § 13050(h).) The open-ended narrative objective being proposed fails to meet the definition of being a water quality objective because it goes beyond being applied to a specific area as it would be applied to any waterbody in the region. Further, it is inconsistent with Porter-Cologne, which requires reasonable protection of beneficial uses – not absolute protection of beneficial uses. Porter-Cologne clearly recognizes that water may be changed by some degree without unreasonably affecting beneficial uses.</p>	<p>the narrative water quality objective be limited in number or identified by name. (Wat. Code, § 13050(h).) Rather the water quality objective is established for “the reasonable protection of beneficial uses of water.” Narrative water quality objectives that define a narrative level of water quality constituents to protect “beneficial uses” can be consistent with this definition. However, commenter’s concern is rendered moot through the proposed removal of the narrative water quality objective in the 2023 draft BPA.</p>

Comment	Response
<p>(Wat. Code, § 13241.) Because the language is open-ended and undefined, it leaves open the possibility that the objective will be applied in a manner that requires absolute protection of beneficial uses based on some unknown criteria or threshold. Moreover, nothing in the language of the objective, the Basin Plan or the staff report constricts application of the narrative objective from going beyond reasonable protection of beneficial uses.</p>	
<p><i>Kahn, Soares &amp; Conway LLP (Centennial Livestock)</i></p> <p><b>3. Staff Report Fails to Properly Consider California Water Code 13241 Factors as Applied to the Narrative Objective</b></p> <p>Although the Staff Report suggests that it has considered California Water Code section 13241 factors as required by Porter-Cologne, the considerations fail on their face as applied to the narrative objective. The considerations fail because the narrative objective is open-ended and subject to future interpretation, and as a result the Staff Report does not properly consider if application of the narrative objective can be reasonably attained in all areas of the Lahontan Region. Further, the Staff Report does not properly consider economic considerations because it is unknown how the narrative objective will be interpreted and applied in the future.</p> <p>Section 7.3 of the Staff Report ignores the need to consider if water quality conditions under the narrative objective could be reasonably attained through coordinated control of all factors. (Staff Report, pp. 25-26.) The section discusses the impact of moving from the</p>	<p>See response A.1., above. This concern is rendered moot by the removal of the narrative water quality objective proposed in the March 2023 draft BPA.</p>

Comment	Response
<p>current numeric objective to the State's E. coli standard for REC-1 water bodies but does not mention the narrative objective and its impact on attaining water quality conditions.</p> <p>Similarly, section 7.4 that pertains to economic considerations fails to discuss potential economic impacts that may occur to dischargers, e.g., agricultural interests, based on the application of new thresholds in the future through interpretation of the narrative objective. We understand and appreciate that this is not possible because future thresholds are unknown, which is our point exactly. The narrative objective is open-ended and subject to change without proper consideration of the statutory factors contained in Water Code section 13241. Accordingly, if adopted, it is done so in violation of Water Code section 13241 for not properly considering applicable statutory factors.</p>	
<p><i>Kahn, Soares &amp; Conway LLP (Centennial Livestock)</i></p> <p><b>4. The Newly Proposed Narrative Objective is So Broad that It would Apply to Noncontrollable Sources</b></p> <p>The newly proposed narrative objective means that natural sources of fecal material may in fact be the cause of impairment to beneficial uses. In such instances, how does the Lahontan Board intend to address such impairments? If the cause of impairment is from non-controllable sources, how will the Lahontan Board respond to ensure attainment of beneficial uses? In short, the broad nature of the narrative objective appears to be unreasonable and</p>	<p>See response A.1, above. In any situation, regardless of whether an impairment is determined using a narrative objective or a numeric objective, natural sources of fecal material could be one of the causes contributing to the impairment. When there is an impairment, a TMDL is prepared to calculate the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for the pollutant in question. Pollutant sources are assigned allocations. For purposes of assigning Load Allocations (LA), natural background sources are also considered. However, commenter's concern is rendered moot by the</p>

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<p>impractical. Fecal material comes from many sources and is prevalent in the environment. It is impossible to control natural sources that may be the cause of impairment. Porter-Cologne and the Clean Water Act were designed to control discharges of waste from controllable sources – not from natural/background sources that exist in the environment.</p>	<p>removal of the narrative water quality objective proposed in the March 2022 draft. The proposal aligns the Lahontan Basin Plan Bacteria water quality objective with existing statewide Plans and Policies.</p>
<p><i>Kahn, Soares &amp; Conway LLP (Centennial Livestock)</i></p> <p><b>5. Recommendations</b></p> <p>In short, Centennial Livestock supports removal of the existing fecal coliform objective of 20/100 ml from the Basin Plan and supports inclusion of the E. coli objective as adopted by the State Board. However, for the reasons expressed above, the Basin Plan should not include a narrative objective. The existing narrative objective, and the proposed new narrative objective, are broad and open-ended. As such, they are subject to constant re-interpretation which violates the intent and purposes of water quality objectives as expressed in Porter-Cologne. Accordingly, the existing narrative objective should be removed and not replaced with an alternative narrative objective.</p>	<p>Thank you for your comments, and for your ongoing support for this Basin Plan Amendment. Refer to response A.1, above.</p>
<p><i>B. California Cattlemen’s Association</i></p> <p><b>1. Support for removal of fecal coliform objective</b></p> <p>In summary, CCA supports removal of the Fecal Coliform objective of 20/100 ml (and related text) from the Water Quality Control Plan for the Lahontan Region (Basin Plan).</p>	<p>Thank you for your comment in support of removing the fecal coliform objective.</p>

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<p><i>California Cattlemen’s Association</i></p> <p><b>2. Concerns with proposed narrative objective</b></p> <p>However, CCA joins Centennial Livestock in its concerns regarding the existing narrative objective and proposed new narrative objective. CCA is concerned that, in general, narrative objectives are open ended and subject to future unknown interpretations. Accordingly, it is impossible to know if these future, unknown interpretations will make it difficult to sustain cattle ranching operations throughout the Lahontan Region.</p> <p>Further, as a practical matter, CCA is uncertain how the Lahontan Regional Water Quality Control Board (Lahontan Board) would apply the broad, newly proposed narrative objective to waterbodies impaired by multiple sources of fecal material – including uncontrollable sources such as wildlife. CCA is concerned that the Lahontan Board could look to establish total maximum daily loads (TMDLs) for waterbodies determined to be impaired due to controllable and uncontrollable sources that may result in zero load allocations for nonpoint sources such as cattle ranching operations. This would have a devastating impact on the cattle industry that is located throughout the Lahontan Region.</p>	<p>This concern is rendered moot by the removal of the narrative water quality objective proposed in the March 20223 draft BPA. Please see response A.1 and A.2, above.</p>
<p><i>California Cattlemen’s Association</i></p> <p><b>3. Conclusions</b></p>	<p>Please see response A.1 and A.2, above.</p>

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<p>For these reasons, as well as the legal reasons expressed by Centennial Livestock, CCA requests that the narrative objective be removed from the Basin Plan and that the newly proposed narrative objective be excluded from the Bacteria Amendments. Thank you for the opportunity to comment.</p>	
<p><i>C. Los Angeles Dept. of Water and Power (LADWP)</i></p> <p><b>1. Summary support for removal of fecal coliform objective and inclusion of text related to <i>E. coli</i> water quality objective</b></p> <p>LADWP appreciates the level of effort the Lahontan Regional Water Quality Control Board (Regional Board) has put into the proposed Basin Plan Amendment and supports the proposed Basin Plan Amendment that removes the fecal coliform fecal indicator bacteria and its associated water quality objectives (WQO's) from the Basin Plan. Further, LADWP supports the addition of language referencing the State Water Quality Control Board's (State Board) Bacteria Provisions, which established <i>E. coli</i> and Enterococci WQO's for the REC-1 beneficial use in all California surface waters and which are already effective in the Lahontan Region. LADWP agrees that this change in the Basin Plan will allow the Regional Board to be consistent with the United States Environmental Protection Agency's (USEPA) FIB recommendations. Additionally, LADWP believes this change clarifies the Basin Plan's scope and consistency with the State Board Bacteria Provisions.</p>	<p>Thank you for your comment in support of removing the fecal coliform objective.</p>

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<p><i>Los Angeles Dept. of Water and Power (LADWP)</i></p> <p><b>2. LADWP seeks clarification on the implementation of the narrative bacteria WQO and suggests all future Regional Board decisions based on evaluation guidelines go through appropriate public review and comment.</b></p> <p>The proposed Basin Plan Amendment asserts that the narrative FIB WQO will apply to all surface waters of the Lahontan Region regardless of beneficial use, including where REC-1 uses do not apply. LADWP requests additional clarification concerning evaluation guidelines referenced in section 5.1 of the staff report. Further, LADWP would like clarification on how specific monitoring methodology will be chosen in future compliance situations. LADWP recommends that all future water board decisions based on evaluation guidelines and monitoring methodology go through appropriate public review.</p> <p>Additionally, LADWP requests that the Regional Board clarify how regulatory compliance will be implemented in situations where fecal waste does not rise to the level that exceeds the numeric WQOs of the Bacteria Provisions. It is unclear how the Regional Board will evaluate waterbodies and appropriate supporting data to determine implementation if bacteria levels do not exceed the numeric WQOs of the Bacteria Provisions.</p>	<p>This concern is rendered moot by the removal of the narrative water quality objective proposed in the March 2023 draft. Please see response A.1 and A.2, above.</p>
<p><i>Los Angeles Dept. of Water and Power (LADWP)</i></p>	<p>This Basin Plan amendment removes the existing regionwide numeric and narrative water quality objectives. It also includes the statewide Bacteria Provisions within</p>

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<p><b>3. LADWP recommends that the Basin Plan Amendment should follow the State Board guidance and include language indicating that six-week rolling geometric means shall be based on a minimum of five samples over a six-week period.</b></p> <p>The Statewide Bacteria Provisions adopted by the State Board in 2018 indicate that a six-week rolling geometric mean for the E. coli bacteria water quality objective shall be based on a statistically sufficient number of samples, which is generally not less than five samples distributed over a six-week period. The State Board staff report indicates that the minimum of five samples over a six-week period is desirable because this provides more data for the calculation and leads to a more statistically robust result. LADWP notes that the use of a minimum of five samples in calculating the geometric mean concentration is also consistent with the scientific studies that were used to derive the WQO.</p> <p>However, the proposed Lahontan Basin Plan Amendment suggests that because of the large geography of the Lahontan Region and finite staff resources available to sample surface waters on a weekly basis, a geometric mean may be calculated from as few as three samples spread over a six-week period. Unfortunately, the proposed Basin Plan Amendment does not contain any technical justification to demonstrate that three samples collected over a six-week period would constitute a statistically sufficient number of samples. The Basin Plan Amendment also indicates that should less than three samples be available in a six-week period, the Statistical</p>	<p>the Basin Plan without change. Issues of interpreting the Bacteria Provisions use for water quality assessment and the development of the Integrated Report are outside the scope of this amendment. The commenter made a similar comment during the 2018 Integrated Report Regional Board process (Comment DWP-4, <a href="#">2018 Integrated Report Response to Comments (ca.gov)</a>). The listings that the commenter objected to were approved by the State Board and US EPA.</p>

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<p>Threshold Value (STV) shall be applied on a per-sample basis to determine compliance with the water quality objective.</p> <p>Reliance upon a statistically insufficient number of samples, such as three over a six-week period, increases the probability that unwarranted exceedances of the geometric mean WQO would occur due to the influence of a single high result; this would be much less likely when the geometric mean is calculated using five or more samples collected over a six-week period. As an example, Table 1 below shows that the calculation of the geometric mean based on six samples collected over a six-week period (with two high results of 276 cfu/100 mL and 308 cfu/100 mL) yielded a geometric mean of 98.2 cfu/100 mL, which would be below the WQO of 100 cfu/100 mL. However, if the calculation were based on only three samples collected over a six-week period with one high result (308 cfu/100 mL), the geometric mean would be 109.2 cfu/100 mL, exceeding the WQO.</p> <p>LADWP recommends that the Basin Plan Amendment follow the State Board guidance and include language indicating that six-week rolling geometric means shall be based on a minimum of five samples over a six-week period. In addition, LADWP recommends that the Basin Plan Amendment should indicate that when fewer than five samples are available in a six-week period, the STV shall be applied as stated in the Statewide Bacteria Provisions.</p>	
<p><i>Los Angeles Dept. of Water and Power (LADWP)</i></p>	<p>If the proposed Basin Plan Amendment is adopted, the Lahontan Water Board will seek to remove surface water bodies from the 303(d) list where compelling E. Coli FIB</p>

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<p><b>4. LADWP requests clarification on the process of delisting water bodies which listings were based solely on the Fecal coliform WQO.</b></p> <p>As mentioned in the Staff Report, the Proposed Basin Plan Amendments will result in the removal of thirty-five (35) surface waters from the 303(d) List because such surface waters were placed on the list based on exceedances of the fecal coliform WQO but met the REC-1 E. coli standard. LADWP requests clarification on how this removal from the 303(d) list will be implemented. LADWP suggests that the Lahontan Regional Board immediately remove water bodies from the 303(d) list when the proposed Basin Plan Amendment is adopted. LADWP recommends the Regional Board should not wait until its next listing cycle to remove such water bodies from the 303(d) list as these water bodies should no longer be listed as impaired.</p>	<p>data indicate REC-1 beneficial use impairment is no longer observed and 303(d) delisting is warranted.</p>