



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

DEC - 5 2011

Ken Harris  
Assistant Deputy Director  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Mr. Harris:

The Environmental Protection Agency (EPA) has reviewed the amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to update bacteria objectives for freshwaters designated for water contact recreation by removing the fecal coliform objective. I am pleased to inform you that we are approving the amendment.

The subject amendment was adopted by the Los Angeles Water Quality Control Board (LARWQCB, Regional Board) on July 8, 2010 under Resolution No. R10-005, and approved by the State Water Resources Control Board on July 19, 2011 under Resolution No. 2011-0031. The complete submission package, with the Office of Administrative Law certification, was received by EPA on November 8, 2011.

The amendment updates the bacteria objectives for freshwaters designated for water contact recreation and limited water contact recreation (REC-1 and LREC-1, respectively) in the Basin Plan by removing the fecal coliform objective. This amendment serves to maintain consistency with EPA's recommendation in 1986 that *E. coli* replace fecal coliform as an indicator of the presence of pathogens in freshwater. *E. coli* was adopted in 2001 by the LARWQCB as Resolution No. RO1-018, and fecal coliform was not struck at that time to allow for a transition period for incorporation of *E. coli* objectives into water quality programs.

**Today's Action**

Section 303(c) of the Clean Water Act (CWA) requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters. EPA has determined that the above Basin Plan amendment is subject to EPA's section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves this amendment. EPA's approval is based on our finding that the amendment is consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.

## **Public Participation**


EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of Regional Board Resolution No. R10-005 and State Board Resolution No. 2011-0031 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

## **The Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. The Basin Plan amendment updates bacteria objectives to fresh waters designated Water Contact Recreation by removing fecal coliform objectives where *Enterococcus* and *E. coli* have already been adopted. The objectives are meant to protect humans recreating in waters against pathogens that are detrimental to human health. EPA's "Recommended Approaches to Improve Endangered Species Act (ESA) Consultation on Approvals on State and Tribal Water Quality Standards," dated January 16, 2009, states that ESA consultation requirements do not apply to actions where EPA lacks discretion to protect species, or where an EPA action has no effect on listed species or critical habitat. In order for ESA Section 7 to apply, EPA must be taking an action in which it has sufficient discretionary federal involvement or control to protect listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves state water quality standards actions to protect human health. Human health standards are designed to protect humans, not plants or non-human animals. EPA has no discretion to revise an otherwise approvable human health standard to benefit listed species. Therefore, ESA consultation requirements do not apply to this action.

EPA commends the Los Angeles Regional Board staff for its work in updating its bacteria objectives in this amendment to the Basin Plan. If there are any questions regarding EPA's action, please contact Suesan Saucerman at 415-972-3522. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

 5 Dec 2011  
Alexis Strauss  
Director, Water Division

cc: Samuel Unger (LARWQCB)  
Vicky Whitney (SWRCB)