

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TENTATIVE RESOLUTION No. R2-2016-00XX

Supporting Implementing a Water Quality Improvement Plan to Achieve Water Quality Objectives for Bacteria in San Vicente Creek, and Recommending Delisting of the Fitzgerald Marine Reserve for Bacteria Pursuant to Section 303(d) of the Clean Water Act

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:

1. Federal Clean Water Act (CWA) section 303(d) requires states to identify water bodies that do not meet water quality standards and to take appropriate actions to remedy the impairment(s); and
2. San Vicente Creek and the section of Pacific Ocean adjacent to the James V. Fitzgerald Marine Reserve (Fitzgerald Marine Reserve) are identified on California's CWA section 303(d) list (303d list) as impaired by elevated levels of fecal indicator bacteria (FIB); and
3. The beneficial uses of San Vicente Creek and waters adjacent to the Fitzgerald Marine Reserve impaired by FIB pollution are contact and non-contact water recreation (wading, fishing, swimming, boating, tide-pooling, etc.); and
4. Water Board staff assembled and considered all readily available data to assess water quality conditions in San Vicente Creek and at the Fitzgerald Marine Reserve to evaluate these listings, consistent with the "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List" (Listing Policy); and
5. Under CWA section 303(d), the Water Board is required to establish a total maximum daily load (TMDL) for those pollutants identified as causing impairment of waters on the 303d list; and
6. Monitoring data indicate that levels of FIB in San Vicente Creek remain high and that water quality standards are not being attained; and
7. Monitoring data indicate that water quality objectives at the Fitzgerald Marine Reserve are being attained, and both contact and non-contact water recreation beneficial uses are no longer impaired in this water body.

WATER QUALITY IMPROVEMENT PLAN FOR SAN VICENTE CREEK

8. San Vicente Creek, the impaired water body, is located in a relatively small watershed: the sources of its FIB loadings are well-delineated, some actions to reduce loadings have already taken place, and remaining actions can be implemented through existing regulatory mechanisms; and

9. U.S. EPA's "Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program" (Vision) allows for flexibility in addressing impairments by letting states use alternative strategies that may be more practicable in achieving water quality standards; and
10. Consistent with the Vision, the Water Board developed a Water Quality Improvement Plan (Plan) as an alternative to a TMDL to address FIB impairment in San Vicente Creek. The Plan describes FIB sources in the Creek, proposes high-priority implementation actions to reduce FIB loading, and identifies the existing regulatory mechanisms pursuant to which these actions may be undertaken; and
11. The Plan identifies horse waste, dog waste, human waste from onsite wastewater treatment systems, and stormwater runoff as high priority sources of FIB in the San Vicente Creek watershed and outlines actions to restore and protect the Creek's water contact beneficial use. The Plan also includes ongoing water quality monitoring to assess effectiveness of the corrective actions and verify attainment of designated water quality objectives; and
12. The Plan identifies the following existing regulatory mechanisms under which such actions to reduce FIB loading may be undertaken:
 - California regulations governing discharges from confined animal facilities (Cal. Code Regs., tit. 27, § 22560 et seq.);
 - The Water Board's existing or updated General Waste Discharge Requirements (WDR) Order for Confined Animal Facilities (Order No. R2-2003-0093 or updated order);
 - The Municipal Regional Stormwater NPDES Permit (Order No. R2-2015-0049; NPDES Permit No. CAS612008);
 - Enforcement of Basin Plan Discharge Prohibition No. 15, which states: "it shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin;"
 - The State Water Board's Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems;
 - The provisions of Water Code section 13267, which authorizes the Water Board's Executive Officer to require technical or monitoring program reports from dischargers; and
 - The provisions of Water Code section 13263, which authorizes the Water Board to issue individual WDR orders to regulate discharges of waste from both point and nonpoint sources; and
13. Water Board staff has conducted outreach to stakeholders in the San Vicente Creek watershed during the past year, and some parties have already begun voluntary implementation efforts. Thus, this non-TMDL alternative approach is appropriate for addressing the FIB impairment in the San Vicente Creek watershed; and
14. Development and implementation of the Plan does not eliminate the requirement to develop a TMDL. If water quality objectives for FIB are not attained within 10 years, the

Water Board will consider development of a TMDL. Staff will provide an annual review of the status of implementation to the Water Board; and

15. Whereas U.S. EPA is required to approve a TMDL, it is not required to approve this Plan; and
16. The Water Board's support for the Water Quality Improvement Plan for San Vicente Creek is not a "project" as defined in the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21065) because the Plan is not an "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code § 21065). The Plan identifies and discusses existing regulatory programs expected to remedy the impairment in San Vicente Creek but does not mandate additional compliance activities.

RECOMMENDATION TO DELIST FITZGERALD MARINE RESERVE

17. Data used to evaluate FIB impairment for delisting meet the Listing Policy requirements for delisting. Section 4.3 and Table 4.2 of the Listing Policy specify that, for bacterial measurements, a water body may be delisted when bacterial water quality objective exceedances occur in effectively fewer than or equal to approximately 16 percent of analyzed samples. In the Fitzgerald Marine Reserve, exceedances of bacteriological water quality objectives occurred in 0.2 to 9.4% of analyzed samples; and
18. Therefore, the Fitzgerald Marine Reserve should be removed from the 303d list; and
19. The Listing Policy requires that the Water Board consider and approve each proposed change to the 303d list; and
20. U.S. EPA is required to review and either approve or disapprove modifications to the 303d list and would have to approve the recommendation to delist the Fitzgerald Marine Reserve; and
21. The Water Board's recommendation to modify the 303d list to delist the Fitzgerald Marine Reserve is not a "project" as defined in the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21065) and the CEQA Guidelines (Cal. Code Regs., tit. 14, §15378). The Water Board's approval of the recommended delisting is not an "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code § 21065); and
22. Water Board staff provided advance notice of the Water Board meeting and an opportunity for public comment on the tentative resolution and associated staff report during a 30-day public comment period commencing on March 4, 2016; and
23. The Water Board has carefully considered all comments and testimony received, including responses thereto, on the tentative resolution.

THEREFORE, BE IT RESOLVED that the Water Board:

1. Supports implementation of the Water Quality Improvement Plan to achieve water quality objectives for bacteria in San Vicente Creek, as documented in the Staff Report; and
2. Recommends removing the Fitzgerald Marine Reserve from California's Clean Water Act section 303(d) list as being impaired for fecal indicator bacteria, as documented in the Staff Report.

BE IT FURTHER RESOLVED that the Water Board, in fulfillment of the requirements described in section 303(d) of the Clean Water Act, hereby authorizes the Executive Officer to transmit the Water Board's recommended modifications to California's Clean Water Act section 303(d) list for the Fitzgerald Marine Reserve to the State Water Resources Control Board for approval and for submission to U.S. EPA for approval.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 11, 2016.

Bruce H. Wolfe
Executive Officer