



August 16, 2016

Via Electronic Mail

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

SUBJECT: Comment Letter – Bacteria Provisions

Dear Ms. Townsend:

On behalf of our client, Centennial Livestock, we submit comments on the State Water Resources Control Board's (State Water Board) Proposed Part 3 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Bacteria Provisions and a Water Quality Standards Variance Policy (Draft Bacteria Provisions), and associated Draft Staff Report. In summary, Centennial Livestock requests that the State Water Board adopt reasonable bacteria water quality objectives which supersede the fecal coliform bacteria objectives applicable throughout the Lahontan Region (i.e., replace fecal coliform with *E. coli*). It is inappropriate to establish new bacteria water quality objectives for all inland waters that exclude waters in the Lahontan Region.

I. Background

Centennial Livestock operates a cattle grazing operation in the Bridgeport Valley and is subject to regulatory requirements adopted by the Lahontan Regional Water Quality Control Board (Lahontan Water Board). Specifically, Centennial Livestock is subject to the terms and conditions contained in Order R6T-2017-0033, Renewal of General Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the East Walker River Watershed (Bridgeport Valley and Tributaries) of the Lahontan Region (Grazing Conditional Waiver). This Grazing Conditional Waiver includes many stringent requirements on private grazing operations in this watershed, and focuses directly on issues related to bacteria and compliance with the region's fecal coliform objective.

Notably, the Lahontan region's fecal coliform objective of 20 colonies per 100 ml was adopted to protect Lake Tahoe. However, when the Water Quality Control Plans for the Lake Tahoe Basin and the rest of the region were combined, this objective was inappropriately applied to all waters within the Lahontan region. In the Grazing Conditional Waiver, grazing operations

are required to reduce fecal coliform concentrations in an effort to meet an interim goal of 200 colony-forming units per 100 milliliters (cfu/100ml) by 2022, and are being asked to comply by 2028 with the “State-wide or Basin Plan indicator bacteria water quality objectives in effect at that time.” (Grazing Conditional Waiver, p. 9.) If the Lahontan region’s fecal coliform objective is not replaced, Centennial Livestock and other grazing operations in the Bridgeport Valley will be subject to this extremely stringent standard of 20 colonies per 100 ml, which is well below the level necessary to protect public health. It also puts grazing operations in the Lahontan region at a severe disadvantage as compared to grazing operations in other parts of California.

In conjunction and cooperation with the University of California Davis Rangelands program, Centennial Livestock and other grazing operations have been monitoring for fecal coliform and *E. coli* in the Bridgeport Valley for a number of years. The monitoring locations have been selected to identify contributions from the various sources of bacteria within the Bridgeport Valley: grazing, recreational (e.g., campers), and residential. That data show that it is near impossible for waters downstream of all of these uses to meet the Lahontan region standard of 20 colonies. More importantly, and as noted above, it is not necessary to meet this standard to protect public health.

With respect to Centennial Livestock’s operation, the grazing lands are private and the public has limited to no access to the water bodies within Centennial’s property boundaries. Further, there are very limited opportunities for REC1 beneficial uses (i.e., ingestion), and most recreational uses are more aligned with REC2 (i.e., fishing), or are limited water contact recreational uses. Thus, again, application of the Lahontan region’s fecal coliform objective is inappropriate, unreasonable, and unnecessary to protect beneficial uses in the Bridgeport Valley.

II. State’s Draft Bacteria Provisions Should Supersede Lahontan’s Standard

The State’s Draft Bacteria Provisions propose to exclude waters within the Lahontan region from being subject to the newly proposed, statewide standards. Rather, the Draft Bacteria Provisions would retain the Lahontan region’s fecal coliform objective. Ironically, the Draft Bacteria Provisions propose a new *E. coli* standard for Lake Tahoe (17 cfu/100 ml and 55 cfu/100 ml), the body of water for which the Lahontan region’s fecal coliform objective was originally adopted to protect. Considering the history of the Lahontan region’s fecal coliform objective, and the fact that the objective is more protective than necessary, it is inappropriate to maintain application of this objective and to exclude Lahontan region waterbodies from a newly proposed statewide standard.

Moreover, the Lahontan region’s Executive Officer has anticipated the State Water Board’s adoption of a new standard and has made accommodations for a new applicable standard within the Grazing Conditional Waiver. Specifically, the Grazing Conditional Waiver includes findings that acknowledge a potential change in the region’s existing fecal coliform objective. For example, the Grazing Conditional Waiver states: “[t]he Water Board shall amend the Waiver to accommodate the Statewide *E. coli* standard once it is adopted and amended into the Lahontan Basin Plan or supersedes the current fecal coliform water quality objective.” (Grazing

Conditional Waiver, p. 5.) Moreover, because of this anticipated change, the Grazing Conditional Waiver requires monitoring for both fecal coliform and *E. coli*.

Conversely, nothing in the Draft Bacteria Provisions supports maintaining the fecal coliform objectives that apply throughout the Lahontan region. Rather, the Draft Staff Report identifies use of *E. coli* as the appropriate indicator organism for freshwater bacteria objectives because it is the most effective method for protecting recreational beneficial uses. (See Draft Bacteria Provisions, p. 64.) The Draft Staff Report further notes that total and fecal coliform are outdated indicators, and that fiscal resources should not be wasted in sampling for multiple indicators. (Id.)

The Draft Bacteria Provisions attempt to rationalize maintaining the Lahontan region's fecal coliform water quality objective by implying that it is not related to protecting the recreational beneficial uses. However, the Grazing Conditional Waiver includes evidence to the contrary. Specifically, the Grazing Conditional Waiver states that the Lahontan Water Board set the fecal coliform objective of 20 colonies per 100 ml because of the importance of protecting surface waters for recreational uses. (Grazing Conditional Waiver, p. 5.) Accordingly, the intent and purpose of the fecal coliform objective is related to recreational uses, and as such, it should be replaced with the state's proposed *E. coli* objective. In other words, footnote 2 of the State Water Board's proposed objective for inland surface waters should be deleted.

III. State Water Board Should Adopt Use Illness Rate of 36 illnesses per 1,000 Recreators

The Draft Staff Report includes Option 2, which would be adoption of an *E. coli* standard based on a rate of 36 illnesses per 1,000 recreators. (Draft Staff Report, p. 70.) This rate is considered to be protective of public health, and equates to an *E. coli* standard of 126 cfu/100 mL as a geometric mean, and 410 cfu/100 mL as a Statistical Threshold Value. However, rather than recommending this protective standard, the Draft Staff Report recommends that the State Water Board adopt a more stringent standard that equates to an *E. coli* standard of 100 and 320 cfu/mL, respectively. The rationale for using this more stringent standard is merely that it would provide "better protection of public health." No other reasoning or justification is provided. (Draft Staff Report, p. 71.)

Further, the Draft Staff Report comments that the lower *E. coli* standard of 100 and 320 cfu/100mL would increase the frequency of storm water permit violations. This statement is incomplete, in that this lower standard would also make it more difficult for grazing operations in the Bridgeport Valley to comply with the Grazing Conditional Waiver in the event that the State Water Board's objective supersedes the Lahontan region's fecal coliform objective, which we support. (See comments above in Section II.)

Considering that the *E. coli* standards of 126 and 410 cfu/100 mL are protective of public health, we recommend that the State Water Board adopt Option 2 for freshwaters, rather than Option 3.

IV. Comments on Implementation Provisions

We also comment that the Natural Sources of Bacteria implementation provisions should not be limited to circumstances and application only when there is a total maximum daily load (TMDL) being developed. Grazing operations such as Centennial Livestock are required to comply with bacteria objectives regardless of the existence of a TMDL, and there should be the ability to identify and exclude natural sources of bacteria regardless of the existence of a TMDL. Notably, TMDLs are often developed based upon the availability of resources. Thus, these implementation approaches may have limited availability if limited only in circumstances of TMDLs. Moreover, degradation of existing water quality should be allowed, as long as a regional board or the State Water Board can make the necessary findings as required by Resolution 68-16. It is inappropriate to eliminate agency discretion with regard to allowing degradation within the context of the Draft Bacteria Provisions.

V. Conclusion

On behalf of Centennial Livestock, we recommend that the Draft Bacteria Provisions supersede the existing Lahontan region fecal coliform objective for the reasons stated, and that the State Water Board adopt Option 2, which is an *E. coli* standard of 126 and 410 cfu/100mL. We further request that the Natural Sources of Bacteria implementation provisions be available outside of the context of a TMDL. Thank you for this opportunity to comment. Please contact me at (916)446-7979, or tdunham@somachlaw.com if you have questions regarding the above comments.

Sincerely,



Theresa A. Dunham

cc: Patty Kouyoumdjian, Executive Officer
Lahontan Regional Water Quality Control Board
Marcus Bunn
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