

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 17 2005

Reply to:
WTR-5

Ms. Celeste Cantú, Executive Director
California State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Dear Ms. Cantú:

The U.S. Environmental Protection Agency ("EPA") has reviewed an amendment to the *Water Quality Control Plan, Los Angeles Region* ("Basin Plan") for the coastal watersheds of Los Angeles and Ventura Counties. This amendment was adopted on its own motion by the State Water Resources Control Board ("State Board") on January 20, 2005 (Resolution No. 2005-0015) and approved by the State Office of Administrative Law on May 23, 2005. Section 303(c) of the Clean Water Act ("CWA") requires EPA to approve or disapprove new or revised State-adopted water quality standards. By this letter, EPA is approving the 2005 amendment to Chapter 2, *Beneficial Uses*, and Chapter 3, *Water Quality Objectives*, of the Basin Plan, as detailed below. Since the 2005 amendment results in the removal of components of a CWA section 101(a)(2) water use in Ballona Creek, the State must re-examine Ballona Creek every three years to determine if any new information has become available (40 CFR 131.20). If such new information indicates that the removed components of the REC-1 use are attainable, the State shall revise its standards accordingly.

Scope of EPA's Approval

Today's action applies in whole to the 2005 amendment that is subject to EPA's water quality standards approval authority under CWA section 303(c). Section 303(c) requires EPA to approve or disapprove new or revised water quality standards submitted by a State. For purposes of section 303(c), water quality standards generally include designated uses and water quality criteria (or "beneficial uses" and "water quality objectives," respectively, under California law), and antidegradation policies. The 2005 amendment revises water contact recreation ("REC-1") beneficial use designations and companion bacteria water quality objectives associated with the protection of water contact recreational activities for two reaches of Ballona Creek: Reach 1, "Ballona Creek", and Reach 2, "Ballona Creek to Estuary". However, the 2005 amendment does not alter Basin Plan non-contact water recreation ("REC-2") beneficial use designations and companion bacteria water quality objectives, nor other State or Federal water quality objectives or criteria set to protect other REC-1 activities associated with the "fishable" goal expressed in CWA section 101(a)(2). These water quality standards remain in effect for Reach 1 and Reach 2 of Ballona Creek and are not changed by today's action.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the Endangered Species Act ("ESA") states 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 federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that today's action will have no effect on any federally listed endangered or threatened species or critical habitat since the 2005 amendment is a human health water quality standard expressly designed to protect uses of water for body contact and non-body contact recreational activities.

Discussion and EPA's Approval

Water quality standards regulations at 40 CFR 131.10 describe States' responsibilities for designating and protecting water uses. This regulation requires that States specify the water uses to be protected; requires protection of downstream uses; allows for sub-categorization and seasonal uses; sets out minimum attainability criteria; lists six factors of which at least one must be satisfied to justify removal of designated uses which are not existing uses; prohibits removal of existing uses; establishes a mandatory upgrading of uses which are existing but not designated; and establishes conditions and requirements for conducting use attainability analyses. These requirements establish a high threshold to ensure that CWA section 101(a)(2) interim goals (protection and propagation of fish, shellfish and wildlife and recreation in and on the water) and CWA section 303(c) uses (public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial, and other purposes, including navigation) are not abandoned without appropriate cause. *Attachment 1* to State Board Resolution No. 2005-0015 contains the new beneficial use subcategory of "Limited Water Contact Recreation (LREC-1)" and the bacteria water quality objectives ("bacteria objectives") established to protect this subcategory, as well as the amended water contact recreation beneficial use designations and companion bacteria water quality objectives for Reach 1 and Reach 2 of Ballona Creek, all of which are subject to EPA's review and approval. The following paragraphs summarize the amendments from *Attachment 1*.

- (1) The amendment introduces the new beneficial use subcategory of Limited Water Contact Recreation ("LREC-1") and the bacteria objectives established to protect this subcategory. The LREC-1 is defined as: "Uses of water for recreational activities involving body contact with water, where full REC-1 use is limited by physical conditions such as very shallow water depth and restricted access and, as a result, ingestion of water is incidental and infrequent."

The associated bacteria objectives are:

Geometric Mean Limits

E. coli density shall not exceed 126/100 ml.

Fecal coliform density shall not exceed 200/100 ml.

Single Sample Maximum Limits

E. coli density shall not exceed 576/100 ml.

Fecal coliform density shall not apply.

- (2) The amendment defines the dividing line between Reach 1, "Ballona Creek", and Reach 2, "Ballona Creek to Estuary", as the point at which the vertical channel walls transition to sloping walls.
- (3) For Reach 1, "Ballona Creek", and Reach 2, "Ballona Creek to Estuary", the "potential REC-1" use for water contact recreation is amended by adding the following footnote "ac" beside the "Ps" in the REC-1 column in Table 2-1 of the Basin Plan: "The REC-1 use designation does not apply to recreational activities associated with the swimmable goal as expressed in the Federal Clean Water Act section 101(a)(2) and regulated under the REC-1 use in the Basin Plan, or the associated bacteriological objectives set to protect those activities. However, water quality objectives set to protect other REC-1 uses associated with the fishable goal as expressed in the Federal Clean Water Act section 101(a)(2) shall remain in effect for waters where the (ac) footnote appears".
- (4) For Reach 2, "Ballona Creek to Estuary", the water quality standards for water contact recreation are further amended by adding both the designated beneficial use of "existing LREC-1" and the geometric mean and single sample maximum bacteria objectives for *E. coli* and the geometric mean bacteria objective for fecal coliform which protect this beneficial use.

Under EPA's water quality standards regulations, States may remove a designated use that is not an existing use, if they can demonstrate that attaining the designated use is infeasible due to at least one of six factors specified at 40 CFR 131.10(g)¹. Furthermore, 40 CFR 131.10(j) establishes the specific requirement that a use attainability analysis ("UAA") be conducted when: (1) States designate or have designated uses that do not include CWA section 101(a)(2) uses; or (2) States wish to remove a designated use specified in CWA section 101(a)(2), or to adopt subcategories of CWA section 101(a)(2) uses which require less stringent criteria. Defined at 40 CFR 131.3(g), a UAA is a structured scientific assessment of the factors affecting the attainment of uses which may include the physical, chemical, biological, and economic factors described in 40 CFR 131.10(g)(1) thru (6).

¹ As explained in the water quality standards regulation, existing uses, by definition, are attainable and must be protected by designated uses in water quality standards (40 CFR 131.3(e), 131.10(h) - (i)).

Upon review of the Administrative Record for the 2005 amendment, EPA has determined that the State correctly followed federal water quality standards regulatory requirements for:

- (1) Modifying the CWA section 101(a)(2) beneficial use designation "potential REC-1" for Reaches 1 and 2 of Ballona Creek;
- (2) Introducing the new CWA section 101(a)(2) beneficial use subcategory of LREC-1 and the new, less stringent bacteria water quality objectives which protect this use; and
- (3) Adding the new CWA section 101(a)(2) beneficial use subcategory designation "existing LREC-1" to Reach 2 of Ballona Creek.

Since incidental recreational use may occur in waters that do not appear to be physically suited for recreational use, the physical features of a waterbody are not sufficient, in and of themselves, to warrant dedesignation of recreational uses. Therefore, in deciding whether recreational uses can be dedesignated, EPA encourages States to take a holistic perspective, analyzing, in addition to the physical features of the waterbody, issues such as controls on access, the existence of recreational facilities, flow, and evidence of actual use. The record developed by the State demonstrates that it has carefully considered this array of factors in determining that: (1) the full potential REC-1 beneficial use is not attainable in Reach 1 and Reach 2 of Ballona Creek; and (2) the LREC-1 beneficial use is existing in Reach 2 of Ballona Creek. This determination is based on factors which together include public safety and access, low flow conditions or water levels, and flood control modifications which are currently technologically infeasible to alter in a manner that will attain the full REC-1 beneficial use. EPA believes this determination is consistent with 40 CFR 131.10(g)(2) and (4) requirements for removing or subcategorizing a CWA section 101(a)(2) use designation. See 63 *Federal Register* 36742 (July 7, 1998); *Water Quality Standards Handbook*, EPA-823-B-94-005a, August 1994. In addition, where "wading and dabbling" in water may occur and ingestion of water is incidental and infrequent, e.g., Reach 2, "Ballona Creek to Estuary", EPA believes that the State's decision to protect water contact recreation activities using the LREC-1 beneficial use and companion full body contact bacteria water quality objectives for infrequent bathing is consistent with the CWA interim goal for protection of recreation in and on the water, and strikes an appropriate balance for public health protection.

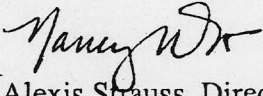
We now return to the new bacteria water quality objectives which protect the LREC-1 beneficial use. In 1986, EPA published CWA section 304(a) water quality criteria guidance recommending the use of *E. coli* as a bacteria indicator in fresh water. See *Ambient Water Quality Criteria for Bacteria-1986*, EPA 440/5-84-002, January 1986. We believe the adoption of *E. coli* water quality objectives based on EPA's 1986 criteria guidance for both the geometric mean and the single sample maximum for infrequent bathing will fully protect the LREC-1 beneficial use designated for Reach 2 of Ballona Creek, since the epidemiological data upon which the 1986 criteria guidance are based correlate *E. coli* levels to health effects related to the frequency of full body water contact recreation. Moreover, EPA notes that the Basin Plan geometric mean objectives for *E. coli* and fecal coliform used

to protect the REC-1 beneficial use and the new LREC-1 beneficial use designation are identical.

EPA hereby approves the 2005 amendment because it is consistent with the CWA requirements and implementing regulations described above. We note that 40 CFR 131.20 requires the State to review the basis of the 2005 amendment in subsequent triennial reviews to determine whether or not circumstances have changed in a way that would alter the State's original decision on the amendment. Should new information indicate that a use specified in CWA section 101(a)(2) is attainable, the State shall revise its standards accordingly.

If there are any questions regarding our approval action, please contact Mr. Doug Eberhardt, Chief of the CWA Standards and Permits Office, at (415) 972-3420. As always, we look forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,


Alexis Strauss, Director
Water Division

cc: Jonathan Bishop, Los Angeles Regional Water Quality Control Board
Ken Harris, State Water Resources Control Board, Division of Water Quality
Caroline Whitehead, U.S. Environmental Protection Agency, Office of Water (4305)