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Subject: Draft Amendment to the Water Quality Control Plan for Ocean Waters of California – Bacterial Provisions and a Water Quality Standards Variance Policy

Dear Sir/Madam:

Thank you for the opportunity to provide comment on the Proposed Part 3 of the Water Quality Congrol Plan for Inland Surface Awters, Enclosed Bays and Estuaries of California and the Variance Policy.

Generally, this policy will be an improvement over existing provisions. The switch to E.coli as a standard is more likely to indicate true risk than previous reliance on Total coliform or Fecal coliform standards. A statewide policy that provides guidance on development of bacterial TMDLs is useful. Likewise, the creation of a limited REC1 beneficial use for waters where there is restricted and/or limited human exposure from swimming or wading provides a more reasonable standard. However, many questions were generated when reading draft materials. Comments will largely be confined to these quesitons:

- 1) It is my understanding that the EPA E. coli standards were generated based upon research performed in the Great Lakes?
  - Could Staff elaborate on the source of research used to develop EPA standards that are now the basis for proposed California standards?
  - If the standards are based upon research conducted in termperate climates, rather than the semi-arid West, how can Staff justify the use of these standards?
  - Please comment on how those standards might be improved for use in the West?
  - In general, shouldn't California develop standards based upon geography-driven research?

2) TMDLs:

Draft Part 3 states that “a Regional Water Qualtiy Control Board may convene a public meeting to evaluate the effectiveness of [a] TMDL in attaining the BACTERIA WATER QUALITY OBJECTIVES.

- How can the regions be allowed discretion on revisiting previous TMDLs? For example, the Central Coast has adopted 15 pathogen, bacteria, Fecal coliform, and/or Fecal indicator bacteria TMDLs since 2003. Throughout the adoption of these TMDLs, there were many concerns expressed about sufficiency of data and/or analysis. What if existing pathogen, bacteria, and/or Fecal coliform TMDLs are listed based upon only one line of evidence or seasonally-influence data, or lack appropriate calculations of natural (non-controllable) background sources, or do not contain appropriate reference sites?

The proposed Policy should provide firmer guidance to the Regional Water Boards to correct TMDLs that may have been improperly listed in the past or do not conform to adopted Statewide Policy implementation requirements. Without a concerted effort to correct listed TMDL deficiencies, adopted standards and TMDLs in Regional Basin Plans will not be aligned.

3) The new policy relies heavily on Natural Sources of Bacteria and Reference Watershed or Reference Sites:

*Reference Sites:*

Often, reference sites are not available. For example, in the Lower Salinas Fecal coliform TMDL, Staff were not able to identify monitoring sites in Monterey County that fit their reference site criteria. Therefore, sites from other parts of the Central Coast Region were used. This might or might not have been appropriate depending the definition of a reference site in this Statewide Policy.

- Will the state provide guidance on the use of reference sites?
- What if no appropriate reference sites are available for a watershed?
- What if TMDLs were adopted using inappropriate reference sites?
- What is the recourse under this statewide policy?

*Natural Backgrounds:*

“Federal regulations (40 D.F.R section 130.7) require that TMDLs include waste load allocations for point sources and load allocations for non-point sources and natural background levels and that the individual sources for each must be identified and enumerated.”

- How can the Natural Source Exclusion, as described in this statewide policy, be implemented if natural background has not been calculated as part of an existing TMDL?

4) Use Attainability Analysis:

Could Staff comment on the Use Attainability Analysis (UAA) method for suspending REC-1 use during high flows and during a specific season?

- Who performs the UAA?
- Will the state adhere to the EPA requirements for performing a UAA or will requirements be tweaked by the states making this tool either easier or more difficult for the state to use?
- What is the anticipated timeframe from the time of initiating an UAA to EPA approval of an UAA?

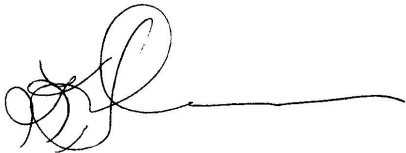
5) Limited REC-1 beneficial uses:

- What is the process to re-evaluate waterbodies to determine if a Limited REC-1 beneficial use would be more appropriate for a waterbody or reach of a waterbody?
- Will this beneficial use be restricted to urban waterbodies or will it also apply to grazed areas?
- How can a private landowner request to application of a Limited REC-1 beneficial use designation to a waterbody or reach of waterbody that flow through or is adjacent to his property?

In closing, while this proposed policy may improve existing bacteria provisions, it leaves much uncertainty regarding implementation, particularly with respect to existing TMDLs that may fall short of implementation requirements within the statewide policy and/or implementation by Non-Point Source regulated communities.

Thank you for consideration of my comments.

Most Sincerely,

A handwritten signature in black ink, appearing to read 'Kay Mercer', with a long horizontal line extending to the right.

Kay Mercer  
President  
KMI