UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 23 2011

Betty Yee
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

Dear Ms. Yee:

This letter responds to the Regional Board's solicitation of public comments regarding issues to be considered in the 2011 Triennial Review of the Water Quality Control Plan for the Central Valley Region, Sacramento River and San Joaquin River Basins (Basin Plan). We appreciate the opportunity to provide input to the Triennial Review process. We also appreciate that you incorporated a number of issues from our comment letter of July 23, 2009 in the latest draft of the Work Plan.

We would like to provide comments on the following high priority issues.

Protection of Central Valley Fisheries and other Aquatic Life

In November 2010, EPA partially disapproved California's 2008-2010 list of water quality limited segments still requiring a TMDL. Several of the water body pollutant combinations that EPA added to the State's list fall under the Central Valley Board's jurisdiction. EPA found that the numeric standards in the Basin Plan for temperature are difficult to assess and not tied to the resource they are intended to protect. EPA recommends that the Regional Board replace the criteria: "At no time or place shall the temperature of COLD or WARM intrastate waters be increased more than 5°F above natural receiving water temperature." with criteria intended to protect the species present in the water bodies. In areas where salmon and anadromous trout are present EPA recommends the criteria in EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards, EPA 910-B-03-002(2003). Both the Regional Board and EPA have used these values to assess impairment in the Central Valley and they are based on a robust analysis of salmonid temperature requirements throughout their range.

Beneficial Use Designations for Surface and Ground Waters

Issues 2, 3, and 4 of the Work Plan all deal with potential adjustments to current beneficial use designations, especially for effluent and agricultural dominated waters. While we agree about the importance of assigning appropriate designated uses to a

number of water bodies, we do have some concerns about the approach proposed in the Work Plan. The work plan contemplates developing a logical system of grouping some of the water bodies and assigning beneficial uses to the groups in order to make the most efficient use of staff resources. We do understand the expediency of such an approach. However, we are concerned about the effects such a policy would have on beneficial uses of the larger system in downstream waters. At a time when a large amount of Federal and State resources are focused on restoration of the San Joaquin River and the Delta, we would hope that any effort to remove designated uses on a group or large scale basis would prevent any potential degradation of downstream uses. EPA would like to work closely with the Board on any new policy to change a group or large number of designated uses for these types of water bodies. We will continue to work with the Board on the pending site-specific actions to change designated uses and develop site-specific water quality objectives for individual water bodies.

Resolve Disapproved Amendments re: Tributary Rule and Delta Dissolved Oxygen

On May 26, 2000, EPA disapproved three previous amendments to the Basin Plan concerning the tributary rule, dissolved oxygen (DO) objectives for the Delta, and language regarding the federal antidegradation policy. The Regional Board adopted, and on January 6, 2004, EPA approved, an amendment to resolve the disapproval regarding the antidegradation language. The tributary rule and Delta DO disapprovals remain outstanding. The basis for these disapprovals is provided in our correspondence of May 26, 2000 (see items 1 and 2 of Attachment A to that letter). The Delta DO disapproval is discussed further in our letter of July 1, 2002 regarding the 2002 triennial review.

On September 6, 2002, the Regional Board adopted an amendment that would have resolved the tributary rule disapproval by clarifying the Regional Board's use designation process; however, that amendment was withdrawn from State Board consideration in 2003 due to ongoing litigation and, therefore, has never been submitted to EPA for approval. We appreciate that the Regional Board intends to consider this amendment once the ongoing litigation is settled.

EPA and Regional Board staff have discussed options for resolving the Delta DO disapproval. That disapproval could be resolved by deleting the exemption from DO objectives that is currently in the Basin Plan for Delta water bodies "which are constructed for special purposes and from which fish have been excluded or where the fishery is not important as a beneficial use." To our knowledge, no such waters have been identified. We appreciate that the re-evaluation of the dissolved oxygen objectives has been included in Work Plan Issue No. 10

Designate Recreational Uses for Grassland Wetland Water Supply Channels

In EPA's May 24, 2000 action on the 1996 "Grassland amendments" to the Basin Plan, we reserved action on the omission of REC-1 and REC-2 uses for the Grassland wetland water supply channels, pending the Regional Board's submission of additional information from the administrative record to justify this omission, consistent with the

requirements of 40 CFR 131.10(j). Since then, Regional Board staff have informed us that a search of the administrative record did not yield the necessary information. "Recreation in and on the water" are goal uses identified in section 101(a)(2) of the Clean Water Act (CWA). Federal regulations at 40 CFR 131.20(a) require States to re-examine, every three years, any water bodies for which goal uses of the CWA have not been designated to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State must revise its standards accordingly. During the upcoming triennial review, the Regional Board should either submit the necessary information to EPA to justify omission of the REC-1 and REC-2 uses or amend the Basin Plan to designate these uses for the Grassland wetland water supply channels. We appreciate that the Regional Board has included the evaluation of REC-1 and REC-2 beneficial uses for the Grasslands wetland water supply channels in Work Plan Issue No. 4.

Update Numeric Objectives for Toxic Pollutants

On August 24, 2007, EPA completed a Reasonable and Prudent Measure (RPM) required by the California Toxics Rule (CTR) Biological Opinion after consultation with the US Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The RPM required us to determine appropriate pentachlorophenol (PCP) water quality criteria for waters in which early life stages of salmonids were present, and further, under conditions of low DO and high temperatures. As a result of the RPM, EPA determined that Site Specific Criteria (SSC) should be adopted in waters in CA where early life stages (ELSs) of salmonids are present, and a lower SSC where they may be under conditions of low DO and high temperatures. EPA promulgated freshwater chronic criteria for PCP of 15 ug/l in the CTR for all inland surface waters. EPA is in agreement with FWS and NMFS that more stringent SSC should be adopted in waters containing ELSs of salmonids: 10 ug/l where ELSs of salmonids are present and 5 ug/l in those waters that also have low DO and high temperatures. We recommend that the Regional Board identify freshwaters in which ELSs of salmonids may be present and includes the updated freshwater PCP criteria for those waters. We appreciate the inclusion of this item in Work Plan Issue No. 13. We also pleased that the Regional Board has noted that most water bodies with ELSs of salmonids are already protected by the MUN use and the corresponding CTR criteria of 0.28 ug/l.

Complete Development of Drinking Water Policy

Development of policies for maintaining water quality for drinking water was identified as a high priority in the Regional Board's 2005 Work Plan, and in the interim a number of excellent reports have advanced this important subject. The Regional Board should continue its work on development of a Central Valley drinking water policy as a high priority as noted in Issue No. 9.

Coordination with NPDES Program

We are pleased to see that the planning staff regularly coordinates with the permitting staff to identify and address planning issues. We recommend that you continue to work with Regional Board NPDES staff to see if any new Basin Plan activities may be needed to facilitate permits issuance.

Thank you for the opportunity to comment on the scope of the 2011 Triennial Review. Please contact me at (415) 972-3508, or via email at mitchell.matthew@epa.gov if you have any questions. I look forward to working with you as the Triennial Review progresses.

Sincerely,

Matthew Mitchell

Matthew Mitchell
Standards & TMDL Office (WTR-2)