To: CN=Kathleen Goforth/OU=R9/O=USEPA/C=US@EPA[]
Cc: []
From: CN=Gary Wolinsky/OU=R9/O=USEPA/C=US
Sent: Thur 5/18/2000 3:34:06 PM
Subject: Re: DO objectives; revised Sac/San Joaquin '89-'95 draft letter
Action ltr 1989-95 DRAFT7.wpd
Gary Wolinsky
Database 'Kathleen Goforth 's Mail', View 'Regional Board 5·Sac/San J Basin Plan·'89-'95 Amendments'
Database 'Kathleen Goforth 's Mail', View '($Inbox)'
(embedded image)

Kathy, I don't have any language to add here. My point on schedule is more a recognition that the 90 day fix is likely to be difficult for us to expect.

Kathleen Goforth
05/17/2000 04:17 PM
To: Gary Wolinsky/R9/USEPA/US@EPA
cc:
Fax to:
Subject: Re: DO objectives; revised Sac/San Joaquin '89-'95 draft letter

Gary -
I thought about your suggestion that we ask RB5 for a schedule for fixing the DO standards, but wasn't sure where to include such a request, since the disapproval item already says that they must resolve the immediate problem within 90 days, and updating the DO standards for consistency with EPA guidance is discussed as something that should be done in the next triennial review. Unless there is something other than the disapproval fix that we want them to do before the next triennial, and we are willing to take some sort of follow-up action if they do not do it by a certain time, I am hesitant to request a schedule simply for the sake of requesting a schedule. If I am missing something here, and you feel strongly about the need for a schedule, feel free to insert some appropriate language into the latest draft of the letter, which I emailed to you a few minutes ago.
Thanks,
-Kathy

Gary Wolinsky
05/15/2000 02:29 PM
To: Kathleen Goforth/R9/USEPA/US@EPA
cc:
Subject: Re: DO objectives; revised Sac/San Joaquin '89-'95 draft letter

Kathy, I'm comfortable with the first option you've laid out. I would ask RB 5 for a schedule for fixing the DO standards. As to your last point, at this late date, I'd figure we're likely to have to do a follow-up letter laying out some of the revisions we we'd like the RB to take-on in future amendments . . .

Kathleen Goforth

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05/12/2000 08:58 AM
To: Terry Oda/R9/USEPA/US@EPA, Gary Wolinsky/R9/USEPA/US@EPA
cc:
Fax to:
Subject: Re: DO objectives; revised Sac/San Joaquin '89-'95 draft letter

Here are Jessica's thoughts on the DO issue. I think her "flip side" idea is an option that would be open to the Regional Board under the current wording of the letter. If not, we can certainly tweak the wording to make it an option.

I also received a voice mail message from Jennifer Wigal saying that she thinks the letter "looks good" and my approach to the DO issue "looks ok". She had no other comments. Jennifer forwarded the letter to Maryellen Levine (OGC), but I have not received any feedback from Maryellen yet.

-Kathy
---------- Forwarded by Kathleen Goforth/R9/USEPA/US on 05/12/2000 08:43 AM ----------

Jessica Kao
05/11/2000 02:55 PM
To: Kathleen Goforth/R9/USEPA/US@EPA
cc:
Subject: Re: DO objectives; revised Sac/San Joaquin '89-'95 draft letter

My take on the DO options:

Option 1 (revision) lookes like the the cleaner & more long-term solution.

I'm okey with option 2 (reinstatement). (The flip side of reinstating application is for the RB to stay the effect of the portion of the language restricting the application to waters outside Delta. They are really one and the same but the RB may have different procedures for reinstating as vs. staying that make one option administratively easier to do than the other.)

I don't like option 3 (letter in support of understanding). If there is no ambiguity in the Basin Plan language itself to really trigger the need for further clarification, the RB letter may simply end up directly contradicting the plain language of the Basin Plan.

Re. option 4 (reservation), my recommendation is that it be considered only if (i) there are potential disapproval or promulgation issues that warrant additional parsing at this time, (ii) the RB has clearly indicated its desire to rectify the situation to our satisfaction, (iii) the RB is further committed to doing so (i.e. deliver the final product) in a very short time frame (within date certain), & (iv) EPA is prepared to take action if the RB fails to deliver the end product w/in the set time frame.

Kathleen Goforth
05/10/2000 12:30 PM
To: Terry Oda/R9/USEPA/US@EPA, Gary Wolinsky/R9/USEPA/US@EPA, Jessica Kao/R9/USEPA/US@EPA, Jennifer Wigal
cc:
Fax to:
Subject: DO objectives; revised Sac/San Joaquin '89-'95 draft letter

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Terry, Gary, Jessica, Jennifer -

As you know, our draft letter for the 1989-94 amendments to the Sac/San Joaquin basin plan includes disapproval of the rearrangement of the DO objectives that resulted in removal of the general DO objectives from the Delta. The general objectives are based on percent saturation. Concentration-based objectives remain in place for some, but not all, Delta waters. I reviewed the national criteria guidance for DO yesterday to see whether those concentration-based objectives might be sufficient to protect the uses in those waters without the percent saturation objectives, and found, on the contrary, that the basin plan's DO objectives, as a whole, appear to be woefully inadequate. The criteria guidance basically rejects the percent saturation approach to setting DO criteria, and recommends, instead, concentration-based criteria expressed as 7- and 30-day means as well as single sample minimum values. The Basin Plan does not include any mean concentration values (only the percent saturation objectives are expressed as a monthly median of mean daily values), and the single sample minimum values are inadequate to protect early life stages of coldwater fishes in many water bodies. In short, the DO objectives in the Basin Plan are out of date. They were approved in 1975, and have not been updated for consistency with the criteria guidance, which was published in 1986.

To address this, I have (1) revised the disapproval item to say that the State must EITHER adopt new DO objectives for Delta waters to make them consistent with the 1986 guidance OR restore the applicability of the general (percent saturation) objectives to all Delta waters (which would not do anything to improve the Basin Plan's consistency with the guidance, but would, at least, address the antidegradation aspect of the situation until such time as the objectives are updated); and (2) I have added a recommendation (on the "Issues for the Next Triennial" attachment) that the DO objectives for all waters be updated to be consistent with the 1986 guidance. (I also moved our recommendation regarding the "unimportant fishery" exclusion from the disapproval attachment to the "Issues for the Next Triennial" attachment.) Given that the guidance recommends against the percent saturation approach, one might question the logic of suggesting that the Regional Board restore the applicability of the saturation-based general objectives to the Delta; however, since those same objectives were previously approved by EPA and currently apply to all other waters in the Sac/San Joaquin Basins, and since their removal from the Delta was inadvertent and inconsistent with the antidegradation policy, and since the development of new objectives is not likely to be something that the Regional Board would be willing/able to tackle within 90 days, I think it makes sense to allow this option as an immediate fix for the disapproval. That said, I also think it is important to simultaneously put the State on notice that we expect the DO objectives to be updated in the next triennial, just as we have put them on notice about the need to update the bacteria criteria (only in this case, we are stopping short of committing to promulgate by a certain date). Please let me know if you are comfortable with this approach.

As an alternative to disapproving the removal of the general DO objectives from the Delta, we could try asking the Regional Board to write us a letter stating that the removal of those objectives from the Delta was inadvertent, and stating that the general objectives still apply to the Delta. We could then include an "understanding" in our letter that the general objectives still apply to the Delta, despite the explicit wording of the Basin Plan to the contrary; however, this approach might look a little flaky, since the Basin Plan, as amended, very clearly says that the general objectives only apply "[f]or surface water bodies outside the legal boundaries of the Delta". As was proposed for the REC issue in the Grassland letter, I suppose we could also reserve action on this amendment until such time as the Regional Board restores the general objectives' applicability to the Delta or adopts new DO objectives, but we might find ourselves reserving for a long time or having to fall back on a disapproval in the end, so I'm not sure that that would buy us much, and, in the meantime, we would have yet another loose end to keep track of.

Here's the latest draft of the 1989-95 letter. Changes since the last draft are highlighted in magenta. Please let me know ASAP if you have any comments on it, as I am now in the process of drafting the BE for this action, and need to know what actions we are taking in order to assess the affects on listed species. I suspect that DO objectives for aquatic life are something the Services will care about, so I especially need to know how we are going to handle that issue. If I can show that we are pro-actively and effectively dealing with both the lack of general DO objectives for the Delta and the overall inadequacy of the DO objectives basin-wide, it might head-off

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some concerns on their part.

One last thing: Based on a quick check with several of the other basin plan reviewers, it appears that no two basin plans have exactly the same DO objectives and that few, if any, are fully consistent with the 1986 guidance. It might be a good idea for everyone to check their basin plan's objectives against the guidance. Also, I noticed that the boilerplate language re: DO that we were originally using in the draft basin plan letters (and which, I think, is still in some of them) says that the guidance provides criteria for a range of protection levels (ranging from "no production impairment" to "severe production impairment") , which is not really accurate. The criteria were based, in part, on a study that produced such a range of values, but the final criteria were not expressed in that manner. In fact, in discussing the findings of that study, the guidance specifically says that "dissolved oxygen concentrations that risk significant loss of fishery production are not consistent with the intent of water quality criteria", so I would recommend reconsideration of the boilerplate language.

-Kathy

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