

EPA Symposium On Designating Attainable Uses For The Nation's Waters
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Abstract Submittal
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"The Lower San Gabriel River Watershed: A Case Study Illustrating the Need for
Subcategories of the Full Contact Recreation Use"

Introduction

Pursuant to the federal Clean Water Act (CWA) and the California Porter-Cologne Water Quality Act (PCA), the Los Angeles Regional Water Quality Control Board (Regional Board) has designated beneficial uses in the Water Quality Control Plan (or Basin Plan) for the Los Angeles Region. As the Basin Plan itself notes, beneficial uses "form the cornerstone of water quality protection under the Basin Plan." Once uses are designated, water quality objectives are established and programs implemented to ensure the protection of the uses. The designated beneficial uses, together with narrative or numeric water quality objectives, comprise the "water quality standards" for the region's waterways. The Regional Board utilizes 24 beneficial use categories to designate uses, these include: municipal and domestic drinking water supply, contact recreation, non-contact recreation, coldwater aquatic life habitat, and warmwater aquatic life habitat.

The Regional Board distinguishes between "existing" uses, "intermittent" uses, and "potential" uses. Existing uses are defined in federal regulations as those uses that have been attained in the waterbody on or after November 28, 1975 (whether or not they have been explicitly included in the State's water quality standards). Intermittent uses are designated for streams that have intermittent flows, according to the Basin Plan. Potential uses are broadly defined, and reasons for potential use designation include implementation of the State Sources of Drinking Water Policy, plans to put the water to such future use, potential to put the water to such future use, designation as a regional water quality goal, and public desire to put the water to such future use. It is important to note that the term "potential" is not defined in either state or federal law, or in regulations other than the Basin Plan, nor is it mandated that the Regional Board designate "potential" uses. The PCA in fact directs Regional Boards to adopt water quality objectives to reasonably protect "the past, present and *probable* future uses of water." (emphasis added)

Designated Beneficial Uses Within the Lower San Gabriel River Watershed

The water bodies within the portion of this watershed that is the focus of this talk include both fully concrete-lined channels and channelized unlined (i.e., soft-bottom) channels with rip-rap sides. Most of the waterbodies in the region were modified hydrologically for flood control purposes in the 1960s. The lower San Gabriel River and its tributaries have been designated with a variety of existing, intermittent and potential beneficial uses. Virtually all waters include existing, potential or intermittent contact recreation (REC-1), non-contact recreation (REC-2), warmwater aquatic life habitat (WARM), municipal and domestic water supply (MUN (P*)¹), and Wildlife Habitat use designations. Unlined channels also typically include groundwater recharge (GWR), Industrial Service Supply (IND), Industrial Process Supply (PROC), and in some cases, rare, threatened or endangered species (RARE) use designations. The San Gabriel River Estuary also includes Commercial and Sport Fishing (COMM), Spawning (SPWN), and Estuarine and Marine Habitat (EST and MAR), as well as Shellfish Harvesting (SHELL).

REC-1 Use For All Channels

The REC-1 use is defined in the Basin Plan as "uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing,

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¹ The P* MUN use designations are conditional uses that have no legal effect at this time.

white water activities, fishing, or use of natural hot springs.” Non-contact recreation (REC-2) includes things such as picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, and aesthetic enjoyment. The definition notes that “ingestion of water is reasonably possible.” It is our contention that the REC-1 use is inappropriate in most (if not all) of the waterbodies in the lower San Gabriel River watershed, either due to access restrictions or the simple fact that the waterbodies are dry. Instead, the Regional Board should simply designate the REC-2 use, or else should refine the use categories and develop additional subcategories. However, we believe such a course of action is unlikely due to the national policy that strongly favors designation of all waters as fishable and swimmable.

As it turns out, Los Angeles County, which is responsible for flood management in the region, prohibits access to dozens of waterbodies to protect public safety. The County’s position is that contact recreation and flood control are incompatible uses. In response, for many of the county’s waterbodies, the Basin Plan contains a footnote to the REC-1 use designation, stating, “Access prohibited by Los Angeles County DPW [*Department of Public Works*] in concrete-channelized areas.” So, the Regional Board’s solution to EPA’s requirement to designate all waterbodies as “fishable & swimmable” and the County’s prohibition on access has been to try to have it both ways.

As for the other extreme, absent POTW or other discharges (e.g. from groundwater dewatering) or managed releases of imported water, many of the region’s waterbodies are dry except during wet weather. It is hard to imagine how swimming, boating, fishing or any of the other body contact activities could possibly occur in these waters. The Regional Board has addressed this situation by designating an “intermittent” REC-1 use.

When the sole basis for regulation was technology-based requirements, these designations were not too problematic. However, POTWs and municipal stormwater permittees in the region are very concerned about the implications in this time of water quality-based effluent limits for toxic pollutants, as well as 303(d) listings and Total Maximum Daily Loads. For instance, the Regional Board is now applying human health criteria for toxic pollutants for organisms to point sources that discharge to waters that carry the REC-1 use. We believe that this is inappropriate because the assumptions upon which the criteria are based have no basis in reality. The human health criteria for organisms are based on consuming 6.5 grams of fish per day for 70 years. Although fishing (illegally) is occasionally observed in portions of the San Gabriel River, this occurs on a limited basis. Even if you ignored the prohibition on fishing, one might question whether the physical conditions of the receiving waters limit the natural habitat so much that it is infeasible to support fish populations sufficient to support fishing and subsequent consumption of locally-caught fish at the level assumed in the risk calculations for the criteria.

What Should EPA Do?

EPA should provide guidance to the States to assist them in refining their use categories and in taking the steps necessary to apply new use designations or subcategories of uses. The Use Attainability Analysis process must be made more workable, and the stigma of “downgrading” a use must be removed when doing so is simply a reflection of reality. EPA should also adopt a policy to allow “potential” and “existing” uses to be protected differently if that is appropriate for local conditions. Lastly, EPA should develop guidance to address situations where flood control (or another use such as water conveyance) is an actual use of the channel and is in conflict with other mandated beneficial use designations (i.e., fishable/swimmable).