

March 30, 2017

Electronic Submission: [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov)

California Regional Water Quality Control Board  
Los Angeles Region  
Attn: Jun Zhu  
320 W 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Central Services Department  
J. Tabin Cosio, Director

Engineering Services Department  
Christopher E. Cooper, Director

Transportation Department  
David L. Fleisch, Director

Water & Sanitation Department  
Michaela Brown, Director

Watershed Protection District  
Glenn Shephard, Director

**Subject: Comment Letter – Revisions to the Los Angeles Region 303(d) List**

Dear Dr. Zhu:

The County of Ventura (County) appreciates the opportunity to provide comments on the proposed revisions to the Clean Water Act Section 303(d) list of impaired waterbodies in the Los Angeles Region [hereinafter referred to as 303(d) list] which was distributed for public review on February 8, 2017.

The County understands that the California Regional Water Quality Control Board - Los Angeles Region (Los Angeles Water Board) is proposing over 200 new waterbody segment-pollutant combination 303(d) listings. The development and implementation of Total Maximum Daily Loads (TMDLs) is a significant investment of resources and it is critical that the 303(d) list be based on sound science and methodologies. The County participates in the implementation of many TMDLs in the Calleguas Creek, Santa Clara River, and Ventura River Watersheds addressing a diverse set of pollutants.

The County and the other stakeholders implementing TMDLs in the Calleguas Creek Watershed (CCW TMDL Stakeholders), as well as the Ventura County Agricultural Irrigated Lands Group (VCAILG) will be submitting separate comment letters regarding the proposed listing changes in the Calleguas Creek Watershed and VCAILG-affected waterbody segments. The County supports comments from both CCW TMDL Stakeholders and VCAILG and requests that the Los Angeles Water Board address all identified errors and issues therein.

The County has a number of concerns regarding the draft 2016 Los Angeles Water Board's proposed revisions to the 303(d) list of impaired waterbodies and believes that it requires significant review and modification before adoption. The County requests that the issues identified in this letter be addressed and the proposed 303(d) list be released for another 60-day comment period prior to adoption. Several of the issues identified herein have resulted in the inability of the proposed 303(d) list to be fully vetted and reviewed.



Requested modifications fall into three broad categories:

1. New Category 5 listings should not be listed due to incorrect thresholds applied to the beneficial use, incorrect sample locations, and incorrect interpretation of the data (e.g., mismatched units or lack of temporal representation).
2. Delistings requested previously by the County that have not been incorporated.
3. Errors in the listing information that make it difficult to fully evaluate the listings. Examples include inconsistencies between the Category 5 list (Appendix B) and the proposed updates to the 303(d) list (Appendix A), incorrect HUC/Calwater designations, incorrect beneficial uses listed for the applicable water quality objectives (WQOs), and inconsistent use of thresholds for interpreting narrative objectives.

The remaining sections of this letter provide a detailed summary of requested changes to the 303(d) list and the rationale for the requested actions. In summary, the County requests that all waterbody pollutant combinations in **Table 1** not be listed on the 303(d) list, nitrogen compounds in Santa Clara River Reach 3 be delisted, and the errors and inconsistencies identified in the CCW TMDL Stakeholders Letter be addressed.

## I. REQUESTED MODIFICATIONS TO THE LISTING STATUS

Based on a review of the proposed Category 5 waterbody segment-pollutant combinations, the County has identified a number of waterbodies that should be either delisted based on available data or for which proposed new listings should not be listed based on errors in the data evaluation. The requested modifications are shown in **Table 1**, below, with a summary of the justifications for the requested changes. A detailed discussion of each of the justifications follows the table.

**Table 1. Waterbody-pollutant combinations that should not be listed**

| Waterbody Segment                 | Pollutant         | Justification for Not Listing  |
|-----------------------------------|-------------------|--|
| Boulder Creek<br>(Ventura County) | Chlordane         | <ul style="list-style-type: none"><li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li><li>• J-flagged data incorrectly used in assessment (WARM).</li></ul> |
|                                   | Nitrogen, Nitrate | <ul style="list-style-type: none"><li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li></ul>   |



**Table 1. Waterbody-pollutant combinations that should not be listed**

| Waterbody Segment                                 | Pollutant                 | Justification for Not Listing   |
|---|---------------------------|---|
| Boulder Creek (Ventura County) - continued        | Specific Conductivity     | <ul style="list-style-type: none"> <li>Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> </ul>  |
|   | Toxicity                  | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> </ul>   |
| Ellsworth Barranca                                | DDE                       | <ul style="list-style-type: none"> <li>Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> <li>J-flagged data incorrectly used in assessment.</li> </ul>  |
| Javon Canyon                                      | Benthic Community Effects | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> <li>Benthic Community Effects listing is based on flawed analyses.</li> </ul>   |
|   | Selenium                  | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> </ul>   |
| Los Sauces Creek                                  | Selenium                  | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> </ul>   |
| Madrano Canyon                                    | Benthic Community Effects | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> <li>Benthic Community Effects listing is based on flawed analyses</li> </ul>  |
|   | Copper                    | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> </ul>   |
|   | Selenium                  | <ul style="list-style-type: none"> <li>Data does not include proper temporal representation.</li> </ul>   |
| Medea Creek Reach 1 (Lake to Confl. with Lindero) | Benthic Community Effects | <ul style="list-style-type: none"> <li>Benthic Community Effects listing is based on flawed analyses.</li> <li>Data does not include proper temporal representation.</li> </ul>   |
| Padre Juan Canyon                                 | Benthic Community Effects | <ul style="list-style-type: none"> <li>Benthic Community Effects listing is based on flawed analyses.</li> <li>Benthic Community Effects data do not support listing.</li> <li>Data does not include proper temporal representation.</li> </ul> |



**Table 1. Waterbody-pollutant combinations that should not be listed**

| Waterbody Segment   | Pollutant                               | Justification for Not Listing  |
|---|---|--|
| Padre Juan Canyon   | Selenium                                | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>  |
| Port Hueneme Harbor (Back Basins)                         | Arsenic                                 | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>  |
|   | Cadmium                                 | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>  |
|   | Dieldrin                                | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>  |
|   | PAHs (Polycyclic Aromatic Hydrocarbons) | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>  |
| Santa Clara River Estuary                                 | pH                                      | <ul style="list-style-type: none"> <li>• No demonstration high pH is a result of waste discharge.</li> </ul>   |
| Santa Clara River Reach 1 (Estuary to Hwy 101 Bridge)     | pH                                      | <ul style="list-style-type: none"> <li>• No demonstration high pH is a result of waste discharge.</li> </ul>   |
| Santa Clara River Reach 3 (Freeman Diversion to A Street) | Chlordane                               | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> </ul>   |
|   | Chlorpyrifos                            | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> </ul>   |
|   | Cyfluthrin                              | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> </ul>   |
|   | Cypermethrin                            | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> </ul>   |
|   | DDD                                     | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> </ul> |





**Table 1. Waterbody-pollutant combinations that should not be listed**

| Waterbody Segment   | Pollutant                 | Justification for Not Listing   |
|---|---------------------------|---|
| Santa Clara River Reach 3 (Freeman Diversion to A Street) - continued | DDE                       | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> </ul>  |
|   | DDT                       | <ul style="list-style-type: none"> <li>• Data from agricultural drain rather than waterbody used as basis for listing decision.</li> </ul>  |
|   | Mercury                   | <ul style="list-style-type: none"> <li>• Data and objectives have different units (ng/L vs. µg/L); data do not exceed objectives.</li> </ul>  |
| Tapo Canyon   | DDD                       | <ul style="list-style-type: none"> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> <li>• Includes LOE for toxicity to support the listing. This LOE should be removed since there is a separate LOE specifically for toxicity.</li> </ul> |
|   | DDE                       | <ul style="list-style-type: none"> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> <li>• Includes LOE for toxicity to support the listing. This LOE should be removed since there is a separate LOE specifically for toxicity.</li> </ul> |
|   | Nitrogen, Nitrate         | <ul style="list-style-type: none"> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> </ul>  |
|   | Specific Conductivity     | <ul style="list-style-type: none"> <li>• Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.</li> </ul>  |
| Triunfo Canyon Creek Reach 1  | Benthic Community Effects | <ul style="list-style-type: none"> <li>• Benthic Community Effects listing is based on flawed analyses.</li> </ul>  |
| Ventura Harbor: Ventura Keys  | Arsenic                   | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>   |
|   | Cadmium                   | <ul style="list-style-type: none"> <li>• Data does not include proper temporal representation.</li> </ul>   |



**Table 1. Waterbody-pollutant combinations that should not be listed**

| Waterbody Segment   | Pollutant                           | Justification for Not Listing   |
|---|-------------------------------------|---|
| Ventura Harbor:<br>Ventura Keys -<br>continued                  | Chlordane                           | • Data does not include proper temporal representation.   |
|   | DDT                                 | • Data does not include proper temporal representation.   |
|   | Dieldrin                            | • Data does not include proper temporal representation.   |
|   | PCBs<br>(Polychlorinated biphenyls) | • Data does not include proper temporal representation.   |
| Ventura River<br>Reach 1 and 2<br>(Estuary to Weldon Canyon)    | Benthic Community Effects           | • Benthic Community Effects listing is based on flawed analyses.  |
|   | Temperature, water                  | • Analysis does not demonstrate temperature is above natural temperature.   |
| Ventura River<br>Reach 3 (Weldon Canyon to Confl. w/ Coyote Cr) | Benthic Community Effects           | • Benthic Community Effects listing is based on flawed analyses.  |
|   | Mercury                             | • Data and objectives have different units (ng/L vs. µg/L); data do not exceed objectives.                                  |
|   | Toxicity                            | • Toxicity data from prior to pesticide use restrictions used for listings. More recent data does not show toxicity.        |
| Ventura River<br>Reach 4 (Coyote Creek to Camino Cielo Rd)      | Benthic Community Effects           | • Benthic Community Effects listing is based on flawed analyses.<br>• Data does not include proper temporal representation. |
|   | Temperature, water                  | • Analysis does not demonstrate temperature is above natural temperature.   |
| Wheeler Canyon/Todd Barranca                                    | Specific Conductivity               | • Incorrectly listed using guideline for MUN beneficial use that is not applicable to waterbody.                            |



***Listing data lacks proper temporal representation.***

There are many instances where the data to support the listed pollutant lacks proper temporal representation. Section 6.1.5.3 of the State Water Resources Control Board (SWRCB) Listing Policy<sup>1</sup> states that:

*"Samples should be representative of the critical timing that the pollutant is expected to impact the water body. Samples used in the assessment must be temporally independent. If the majority of samples were collected on a single day or during a single short-term natural event (e.g., a storm, flood, or wildfire), the data shall not be used as the primary data set supporting the listing decision."*

Many of the pollutants listed in **Table 1** included data collected from a single sampling date. This violates the Listing Policy. For instance, all the newly proposed pollutants for the Ventura Harbor: Ventura Keys (i.e., arsenic, cadmium, chlordane, DDT, dieldrin, and PCBs) were collected on a single day – February 28, 2007. Because there is no temporal resolution provided for these pollutants they should not be listed.

**Requested Action:**

**Remove all listings shown in Table 1 that were based on a single sample collection date.**

**1. *Benthic Community Effects Listing are based on flawed analyses and should be removed.***

The benthic community effects listings are based on a metric which has since been deemed arbitrary and inappropriate. The Index of Biotic Integrity (IBI) stream assessment was a commonly used metric to determine benthic community effects. The threshold used to distinguish an impaired reach was a value of 39 and below. However, this threshold value was arbitrarily assigned as a statistical cut-off value. The state has since endorsed the use of the California Stream Condition Index (CSCI), as stated in the Appendix G Fact Sheets, *"The CSCI is applicable statewide, accounts for a much wider range of natural variability, and provides equivalent scoring thresholds in all regions of the state. The CSCI will be used in the future for water quality assessment purposes statewide over the regional indices of biologic integrity (IBIs)."* Despite this, all of the newly listed benthic community effects in Table 1 utilize the IBI to assess the waterbodies. Therefore, the County is requesting that these flawed listings be removed until the waterbodies can be assessed with a more representative metric such as the CSCI.

In addition, a number of water segments are listed as an exceedance for benthic community effects citing a low CSCI score, however, the original data shows only IBI scores. The Water Board should clearly note whether a CSCI or IBI assessment was

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<sup>1</sup> State of California State Water Resources Control Board (SWRCB) Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. Amended February 3, 2015. [Referred to hereinafter as Listing Policy]



performed. For instance, the Fact Sheets show that Padre Juan Canyon has 2/2 samples which exceed for benthic community effects using a CSCI score of 0.35 and 0.52 which is below the 0.79 CSCI threshold. However, the raw data shows that an IBI was performed resulting in scores of 40 and 39, which would only represent one exceedance which would not support listing the water body. The Water Board should clearly state where the CSCI scores are that they are referring to. This issue applies to all new benthic community effects listings. More detailed information can be provided upon request.

In addition, many of the benthic community effects listings rely on a single day of sampling which does not provide proper temporal representation as discussed in the previous comment.

**Requested Action:**

- **Update the Appendix G Fact Sheets to clearly state that an IBI metric was used not the CSCI for all pollutants noted in Table 1.**
- **Remove all listings shown in Table 1 for benthic community effect that use the IBI listing.**

**2. *There is no demonstration that high pH is a result of waste discharge.***

The waterbodies listed for high pH do not appropriately demonstrate that the high pH was a result of waste discharge as required in the Basin Plan. The Santa Clara River Estuary and Santa Clara River Reach 1 are both listed for high pH. As stated in the Fact Sheet and according to the Los Angeles Region Basin Plan<sup>2</sup> "*The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges*" [emphasis added]. However, it was not demonstrated for either of these waterbodies that the elevated pH levels were a result of waste discharge as opposed to natural causes. Therefore, the Los Angeles Water Board should either provide evidence that the elevated pH was a result of waste discharge and detail that in the Fact Sheets, or, if no such evidence exists, the Los Angeles Water Board should remove these proposed listings.

**Requested Action:**

**Remove the pH listings for Santa Clara River Estuary and Santa Clara River Reach 1 as there is no data provided in the Fact Sheet that demonstrate that these high pH values are the result of waste discharge.**

**3. *Remove any pollutant listing based on municipal drinking water objectives where the MUN beneficial use does not apply.***

Numerous listings were made using WQOs for the protection of the municipal drinking for waterbodies that do not have applicable municipal drinking water beneficial uses. Many of the waterbodies listed are waterbodies for which no beneficial uses are designated or waterbodies designated for the municipal beneficial use with an asterisk (i.e., P\*) in the Basin Plan. The asterisked MUN beneficial use should not be used to propose new 303(d)

<sup>2</sup> Water Quality Control Plan Los Angeles Region R4 Basin Plan.





listings. Fact Sheets for previous 303(d) listing cycles have clearly noted that the asterisked MUN beneficial uses should not be used for 303(d) listing purposes.

State Board Resolution No. 88-63 (Sources of Drinking Water) and Regional Board Resolution 89-03 (Incorporation of Sources of Drinking Water Policy into the Water Quality Control Plans (Basin Plans)), state that "All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic waters supply and should be so designated by Regional Boards [with certain exceptions which must be adopted by the Regional Board]." The Regional Board adopted a Water Quality Control Plan for the Los Angeles Region (Basin Plan) on June 4, 1994, that included provisions to implement State Water Board Resolution 88-63. On May 26, 2000, the USEPA approved the revised Basin Plan except for the implementation plan for potential MUN-designated water bodies. On August 22, 2000, the City of Los Angeles, City of Burbank, City of Simi Valley, and the County Sanitation Districts of Los Angeles County challenged USEPA's water quality standards action in the U. S. District Court. On December 18, 2001, the court issued an order remanding the matter to USEPA to take further action on the 1994 Basin Plan consistent with the court's decision. On February 15, 2002, USEPA revised its decision and approved the 1994 Basin Plan in whole. In its February 15, 2002 letter, USEPA stated:

*"EPA bases its approval on the court's finding that the Regional Board's identification of waters with an asterisk ("\*") in conjunction with the implementation language at page 2-4 of the 1994 Basin Plan, was intended "to only conditionally designate and not finally designate as MUN those water bodies identified by an (\*) for the MUN use in Table 2-1 of the Basin Plan, without further action." Court Order at p. 4. Thus, the waters identified with an (\*) in Table 2-1 do not have MUN as a designated use until such time as the State undertakes additional study and modifies its Basin Plan. Because this conditional use designation has no legal effect, it does not constitute a new water quality standard subject to EPA review under section 303(c)(3) of the Clean Water Act ("CWA"). 33 U. S. C. § 1313(c)(3)."*<sup>3</sup>

In addition to the above decision, the Basin Plan states that until the additional study is undertaken and the Basin Plan is modified "no new effluent limitations will be placed in Waste Discharge Requirements as a result of these designations". The Regional Board has also determined that WQOs applicable to the MUN beneficial use will not be used to assess impairments under the 303(d) listing programs. For constituents that only have objectives that are applicable to the MUN beneficial use, the decision Fact Sheets for the 303(d) listing process state that there are no applicable WQOs in waterbodies designated with an asterisk (\*). In the 2010 listing cycle, a number of 303(d) listings were actually removed based on this determination. Below is an example of the language from a listing

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<sup>3</sup> Language adapted from the 2014 National Pollutant Discharge Elimination System permit findings for wastewater treatment plants in the Calleguas Creek Watershed.



decision for Los Angeles River Reach 1:

*"The listing for aluminum in this water body was originally based on data assessed using the MCL for aluminum. Since MUN is a "potential" beneficial use, it is not appropriate to use the MCL to evaluate aluminum data from this reach. Thus, there is no aluminum objective for this reach and the original listing is faulty. "*

Based on this evidence, it is clear that for waterbodies with a MUN designation that includes an asterisk ("\*"), WQOs specific to the MUN beneficial use are not applicable. As such, water quality data collected in these receiving waters should not be compared to WQOs applicable to the MUN beneficial use.

**Requested Action:**

**Revise all the new listings in the Fact Sheets to ensure none are based on municipal drinking water objectives when the MUN beneficial use does not apply.**

**4. *Agricultural Drain and MS4 outfall monitoring data incorrectly used as basis for listing decisions.***

There are some instances where listing decisions are based on data from the Agricultural VCAILG Monitoring Program which include monitoring data from agricultural drains. Santa Clara River Reach 3 (Freeman Diversion to A Street) listings (i.e., chlordane, chlorpyrifos, cyfluthrin, cypermethrin, DDD, DDE, and DDT) were based on multiple lines of evidence, but were primarily listed based on exceedances at VCAILG sample site "S03D\_Bards" which is an agricultural drain that drains to Santa Clara River Reach 3. This site was selected to be representative of agricultural discharges to Reach 3 and it is not representative of receiving water conditions. Therefore, any data collected from "S03D\_Bard" and other agricultural drain sites cannot be used to list the downstream reach. All listings should be evaluated to ensure that the monitoring locations were in receiving waters rather than agricultural drains.

In some cases, other lines of evidence cite location "Santa Clara River at Freeman Diversion at 11th Street Drain (tributary to Santa Clara River) at sample location Santa Paula-1" ("Santa Paula-1"). This location is an MS4 outfall location that is designed to characterize urban discharges from City of Santa Paula and is not located in the Santa Clara River's receiving waters. As a result, the data from "Santa Paula-1" location should not be used for listing receiving waters. However, it should be noted that the data linked to the Fact Sheet did not include any data from "Santa Paula-1" so it is unclear what data were evaluated for these listings. Unless receiving water data contain exceedances, none of the constituents for Santa Clara River Reach 3 should be listed.

**Requested Action:**

**Remove all listings shown in Table 1 that were based on Agricultural and MS4 discharge monitoring data not representative of the listed waterbody and**



**evaluate remaining listings to ensure no other listings are based on agricultural drain or MS4 outfall monitoring rather than receiving water monitoring.**

**5. *Remove toxicity Lines of Evidence (LOE) from pollutant Fact Sheets when a LOE specifically for toxicity already exists.***

Numerous pollutants listed for Tapo Canyon (chlordane, DDD, and DDE) include a toxicity LOE to support the pollutant listing, when a toxicity LOE already exists for the waterbody. These pollutant-specific toxicity LOEs include no scientific evidence that the specific pollutant was the cause of observed toxicity and so should be removed from the Fact Sheet.

**Requested Action:**

**Remove the Lines of Evidence for toxicity for Tapo Canyon in Table because no evidence was provided that these constituents were the cause of toxicity.**

**6. *Reassess mercury listings using correct objective and correct units.***

The data used to assess mercury for Santa Clara River Reach 3 and Ventura River Reach 3 are in ng/L (nanograms per liter) and the objective is µg/L (micrograms per liter). The data need to be converted into the same units as the objective before an exceedance can be determined. The County expects that after this calculation has been performed the waterbodies will no longer meet the listing guidelines. Additionally, although a California Toxics Rule objective exists for mercury, an USEPA nationally recommended criteria was used for the assessment. An explanation for the use of a recommended criteria when an established WQO exists should be provided.

**Requested Action:**

**Repeat the mercury analysis after correcting the unit error and clarify the objective used.**

**7. *Correct the proposed temperature listings which are based on incorrect criteria.***

The temperature listing for Ventura River Reaches 1 and 2 (Estuary to Weldon Canyon) and Ventura River Reach 4 (Coyote Creek to Camino Cielo Rd) uses an evaluation guideline of 13-21 degrees Celsius (°C) as the optimum growth range for rainbow trout. However, the applicable Basin Plan objective for waterbodies designated as COLD is "*For waters designated as COLD, water temperature shall not be altered by more than 5 degrees F above the natural temperature.*" The Fact Sheets provide no discussion of natural temperatures or a demonstration that the temperature was raised above natural temperatures in order to exceed the objectives.

Notwithstanding that a deviation from natural temperatures has not been demonstrated, the manner in which the evaluation guideline is applied is also inappropriate. Moyle 1976 is referenced as the source of the evaluation guideline. Moyle 1976 was revised and



expanded by Moyle 2002<sup>4</sup>. Moyle 2002 states: "Rainbows are found where daytime temperatures range from nearly 0°C in winter to 26-27°C in summer", although extremely low (<4°C) or extremely high (>23°C) temperatures can be lethal if the fish have not previously been gradually acclimated. Even when acclimation temperatures are high, temperatures of 24-27°C are invariably lethal to trout, except for very short exposures (25, 26). " As such, while temperatures above 21°C may not be optimal according to Moyle 1976, Moyle 2002 clearly states that lethal temperatures are those greater than 23°C which indicates that the evaluation guideline of 21°C is more appropriately applied as a chronic guideline (necessitating the establishment of an averaging period) and 23°C is the more appropriate "not-to-exceed" guideline if used for listing.

Using the threshold of 23°C, no samples would exceed the threshold in Ventura River Reach 4 and only 2 samples would exceed the threshold in Ventura River Reaches 1 and 2. Neither of these number of exceedances would meet the listing thresholds.

**Requested Action:**

**Remove the temperature listing for Ventura River Reach 1 and 2 as well as Ventura River Reach 4.**

**8. *The toxicity listing for Ventura River Reach 3 (Weldon Canyon to Confl. w/ Coyote Cr) relies on outdated data***

Based on a review of the available data, all the observed toxic samples occurred prior to 2009. Of the 8 exceedances, 3 occurred in 2000/2001 and the rest were in 2006, 2007 and 2008. In the 2006-2008 time period, toxicity was commonly observed due to chlorpyrifos and diazinon which were subsequently restricted. Toxicity in many watersheds has been significantly reduced as a result of these use modifications. The available data shows that no samples exceeded after 2008, indicating that those pesticides or another cause that is no longer present, were the cause of the toxicity. Because of the transient nature of toxicity and the potential that the causes of the toxicity are no longer present, exceedances from prior to the pesticide use bans should not be used as the basis for a listing. The more recent samples since the pesticide use restrictions should be used as a basis for evaluation.

**Requested Action:**

**Do not list Ventura River Reach 3 for toxicity based on exceedances from outdated data.**

**9. *Ensure no J-flagged data were used in the assessment.***

The listing policy specifically prohibits the use of J-flagged ("estimated") data that fall below the quantitation limit but above the water quality standard. Section 6.1.5.5 of the Listing Policy specifically states:

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<sup>4</sup> Moyle, Peter B. *Inland fishes of California: revised and expanded*. University of California Press, 2002.





*"When the sample value is less than the quantitation limit and the quantitation limit is greater than the water quality standard, objective, criterion, or evaluation guideline, the result shall not be used in the analysis. The quantitation limit includes the minimum level, practical quantitation level, or reporting limit. "*

All listings based on the use of J-flagged data should, therefore, be removed from the draft 303(d) list. Specific instances are included in **Table 1**, but this list is by no means inclusive; this significant error will have to be addressed by a thorough review of all listing data to confirm that no J-flagged data were used to justify listings.

For example, the line of evidence for the Boulder Creek chlordane listing erroneously states that three out of five samples exceed the objectives. . A review of the data shows that only 1 out of 5 samples exceed indicated criteria. The remaining 4 results were (1) not detected and (2) "estimated" (J-flagged) by the laboratory because results were below the reporting limit. Because only 1 sample showed an exceedance, this listing should be removed as it does not meet the binomial test limits set forth in the Listing Policy. A similar situation also occurred in the Ellsworth Barranca DDE listing.

Both the Boulder Creek and Ellsworth Barranca listings should be removed based on the incorrect assignment of the beneficial use MUN (as discussed earlier) in addition to the use of J-flagged data.

**Requested Action:**

- **Review all Fact Sheets and Lines of Evidence for the use of J-flagged data and remove any instances where J-flagged data were used.**
- **Delist chlordane for Boulder Creek and DDE for Ellsworth Barranca as well as any other pollutants that lack the minimum number of exceedances required to justify a listing.**

## **II. REQUESTED DELISTINGS**

In June 2015, the County and the Cities of Fillmore and Santa Paula submitted a letter with data and analysis that supported delisting of the Santa Clara River for ammonia. In the November 10, 2016 letter, Los Angeles Water Board staff responded with plans to recommend delisting of ammonia from Santa Clara River Reach 3 in the 2016 California Integrated Report. The letter is provided as an attachment to this letter. The County requests that the delistings provided in the attached letter be included in the 303(d) list scheduled for adoption on May 4, 2017.

**Requested Action:**

**Delist Ammonia in Santa Clara River Reach 3.**



### III. CORRECT OTHER ERRORS AND INCONSISTENCIES IN APPENDICES AND FACT SHEETS

Appendix A, Appendix B, Appendix C, and Appendix G have many inconsistencies which make the analysis of new additions very difficult since it is unclear which segment-pollutant combinations actually are new listings. As a result, there is concern that not all changes to the 303(d) list that may be considered for adoption were identified in the review. The lack of clarity comes from the following inconsistencies:

- Not all new listings are summarized in Appendix A.
- Appendix B was found to be missing some new and old listings based on a comparison to Appendix G. B
- Appendix G has fact sheets for some listings noted as new in Appendix A or B identified as old fact sheets from the last listing cycle (e. g. benthic community listings in Javon Canyon). This indicates they were old listings, but a comparison to the 2010 303(d) list identified that they were in fact new listings and the fact sheets were incorrect or located in the wrong location.

Additionally, in many cases, data and Quality Assurance Project Plan references in the Fact Sheets are inconsistent with the data provided for review. Examples of these inconsistencies and errors were detailed in the CCW TMDL Stakeholders' comment letter. The County asks that the Los Angeles Water Board do a thorough review of all appendices to ensure that the Proposed 303(d) List is internally consistent, the correct data were used for the assessment, and the other errors identified in the CCW TMDL Stakeholders' comment letter are addressed.

#### **Requested Action:**

**Correct the numerous errors and inconsistencies in the report and ensure that all the proposed 303(d) list appendices are internally consistent.**

The County appreciates the opportunity to comment on the 303(d) list and looks forward to continuing to work with the Los Angeles Water Board to address these concerns.

Thank you for your time and consideration of these comments. If you have questions or need additional information, please contact Ewelina Mutkowska at (805) 645-1382 or [Ewelina.Mutkowska@ventura.org](mailto:Ewelina.Mutkowska@ventura.org).

Sincerely,



Glenn Shephard, PE  
Director  
Ventura County Watershed Protection District



LARWQCB  
Mr. Zhu  
March 30, 2017  
Page 15 of 15

Enclosure: *Request for Delisting of Ammonia in Santa Clara River Reach 3*, Los Angeles Regional Water Quality Control Board Letter dated November 10, 2016

Cc: Ashli Desai, Larry Walker Associates  
Jeff Pratt, Ventura County Public Works Agency  
Arne Anselm, Ventura County Watershed Protection District  
Ewelina Mutkowska, Ventura County Watershed Protection District

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EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Los Angeles Regional Water Quality Control Board**

November 10, 2016

RECEIVED  
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WATERSHED PROTECTION

Mr. Peter Sheydai, Interim Director  
Ventura County Watershed Protection District  
800 South Victoria Avenue  
Ventura, CA 93009

Ms. Roxanne Hughes, City Engineer  
City of Fillmore  
Central Park Plaza, 250 Central Ave.  
Fillmore, CA 93015

Mr. Brian Yanez, Public Works Director  
City of Santa Paula Public Works Department  
866 E Main St.  
Santa Paula, CA 93060

**Subject: REQUEST FOR DELISTING OF AMMONIA IN SANTA CLARA RIVER REACH 3**

Dear Mr. Clifford, Ms. Hughes and Mr. Yanez:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) is in receipt of the letter from the Ventura County Watershed Protection District and the cities of Fillmore and Santa Paula dated June 4, 2015, with the subject "Reassessment and Delisting of Ammonia and Absence of Impairment for Other Nitrogen Compounds in the Santa Clara River Reach 3" (June 2015 letter), which requested delisting of Santa Clara River Reach 3 for ammonia. In the June 2015 letter, water quality data spanning the period from April 2014 to December 2014 were provided in support of the request for delisting. The Los Angeles Water Board responded to the June 2015 letter by email on October 5, 2015.

The Los Angeles Water Board is in receipt of the subsequent letter from the Ventura County Watershed Protection District and the cities of Fillmore and Santa Paula dated February 16, 2016, with the subject "Request for Official Regional Board Response" (February 2016 letter). The February 2016 letter reiterated the request for delisting and expressed concerns about the scope and timing of the upcoming 2016 listing decisions and, more generally, the implications of delisting decisions relative to regulatory requirements.

The Los Angeles Water Board provides this response to the request for delisting in both the June 2015 and the February 2016 letters and to address the concerns expressed in the February 2016 letter.



### Response to Request for Delisting of Santa Clara River Reach 3 for Ammonia

The Los Angeles Water Board assessed the existing Lines of Evidence (LOEs) in the California Water Quality Assessment Database (CalWQA) as well as the water quality data provided in the June 2015 letter for the Santa Clara River Reach 3 Ammonia listing. Our data analysis shows that:

- 1) There were a total of 40 water quality data points for Santa Clara River Reach 3 during the time period of April 14, 2004 to August 30, 2010, the deadline for submittal of data for the 2012 California Integrated Report. The water quality data came from three data sources:
  - a. Thirty-seven water samples were collected at the mass emission station ME-SCR by the Ventura Countywide NPDES Stormwater Monitoring Program.
  - b. Two water samples were collected at the monitoring site S03D\_Bards along Bardsdale Avenue on January 24, 2008 and February 6, 2009 by the Ventura County Agricultural Irrigated Lands Group pursuant to Order No. R4-2005-0080.
  - c. One water sample was collected approximately 4 miles upstream of South Mountain Road in Santa Paula by the Southern California Stormwater Monitoring Coalition on June 1, 2010.
- 2) Water sample collection by these three programs, a through c, above, occurred after March 18, 2004 when the Santa Clara River Nitrogen Compounds TMDL became effective, following which the Fillmore and Santa Paula POTWs ceased discharging to Santa Clara River Reach 3.
- 3) Per the *Water Quality Control Plan, Los Angeles Region* (1994) as amended (Basin Plan), Santa Clara River Reach 3 is subject to the Early Life Stage (ELS) Provision for determination of the ammonia as nitrogen objective. Therefore, a 30-day average concentration of ammonia was calculated as a function of pH and temperature (°C) as follows:

$$\text{30-day Average Concentration} = \left( \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right) * \text{MIN} \left( 2.85, 1.45 * 10^{0.028 * (25 - T)} \right)$$

- 4) Based on Board staff's calculation, one of the 40 ammonia data points (13.5 mg/L, sampled on December 18, 2007) was found to have exceeded the numeric target for the 30-day average concentration of total ammonia as nitrogen (1.7 mg/L) set by the Santa Clara River Nitrogen Compounds TMDL.
- 5) Pursuant to the State's Listing Policy Section 4.1, the maximum number of measured exceedances allowed to remove a water segment from the section 303(d) list for toxicants (including priority pollutants, metals, chlorine and ammonia) is three when the sample size is between 37 and 47.

Based on the findings described above, the requirement for delisting has been met. Therefore, Los Angeles Water Board staff plans to recommend delisting of ammonia from Santa Clara River Reach 3 in the 2016 California Integrated Report.

We anticipate that the listing and delisting decisions for the 2016 California Integrated Report will be issued for public comment in early 2017. All interested persons will be able to provide comments at that time. The 2016 California Integrated Report would then be presented for approval at a Los Angeles Water Board meeting and/or State Water Board meeting in spring 2017.

However, we note that even once Santa Clara Reach 3 is delisted for ammonia through the 303(d) listing process, the Santa Clara River Nitrogen Compounds TMDL, including the established numeric targets and allocations, are part of the Basin Plan and remain in effect. Please see our additional discussion, below, under "Response to Concerns Regarding Implications of 303(d) Listings."

### **Response to Concerns Regarding Scope and Schedule for 2016 Integrated Report and Review of Previous Listing Decisions**

The State Water Resources Control Board (State Water Board) solicited water quality data for the current California Integrated Report, including the Clean Water Act Section 305(b) report and the 303(d) list, with an original deadline of June 30, 2010, which was extended to August 30, 2010. On November 12, 2013, the State Water Board announced in a memorandum distributed to interested persons via the Board's Lyrus subscription list a new strategy for the development of the state's Integrated Report including establishing three groups of Regional Water Boards and submitting an Integrated Report for one group per listing cycle (i.e. every two years). On February 3, 2015, the State Water Board amended the Listing Policy to reflect this and other changes.

As determined by the State Water Board after consultation with the USEPA, the 2012 Integrated Report addressed data in Regions 1, 6 and 7. The 2014 Integrated Report is addressing Regions 3, 5 and 9, and the 2016 Integrated Report will address Regions 2, 4 (Los Angeles) and 8. Despite the new strategy, the State Water Board decided that it would not solicit additional data for the 2014 and 2016 Integrated Reports; instead data submitted for the 2012 Integrated Report (i.e., data prior to August 30, 2010) would be used to develop the 2014 and 2016 Integrated Reports.

In addition, while the Listing Policy changes allow for a Regional Water Board to make decisions "off-cycle" (i.e., not in their assigned Integrated Report year), the State Water Board's November 2013 memorandum states that the Integrated Report process will allow for the "off cycle" decisions "beginning with the next data solicitation."

We recognize that the 2013 procedural changes (as incorporated into the 2015 amendment to the State's Listing Policy) represent a change from previous procedures and from the procedure that was anticipated during the 2010 data solicitation. We also understand stakeholder concerns that the data now being assessed by the Los Angeles Water Board for the 2016 303(d) list will only include data through August 2010.

However, we anticipate that the changes to the procedures included in the 2015 amendment to the Listing Policy, including the grouping of the Regional Water Boards and the requirement that all data be submitted via the California Environmental Data Exchange Network (CEDEN), will significantly improve the efficiency of the listing and delisting process so that even with regional updates only once every six years, California will have a more comprehensive assessment and 303(d) list than in the past.

The Los Angeles Water Board is currently reviewing LOEs and preparing to make decision recommendations for the 2016 303(d) list. The usefulness and appropriateness of making off-cycle listing decisions for the 2018 303(d) list can be considered on a case-by-case basis after we have completed the 2016 303(d) list.

In addition, we note that while listings established prior to the 2004 Listing Policy were not re-assessed in their entirety for the 2006 or 2010 303(d) lists, many re-assessments were made in both lists, as shown in the table below.

**Numbers of “do not delist” and “delist” decisions in 2006 and 2010 in the Los Angeles Region**

| Decisions that included re-assessment of previous listings | Listing Year |      |
|--|--------------|------|
|  | 2006         | 2010 |
| Do not delist  | 85           | 33   |
| Delist   | 110          | 22   |

**Response to Concerns Regarding the Implications of 303(d) Listings and TMDLs**

The Los Angeles Water Board agrees that 303(d) listings have important implications in terms of requirements that they are addressed through TMDLs or other programs of water quality improvement and in discharge permits and other Board orders.

The Clean Water Act and implementing regulations require that impairments included on the 303(d) list are addressed in a timely manner through TMDLs or other programs of water quality improvement. TMDLs are a technical regulatory tool to identify the loading capacity of a waterbody for a particular pollutant and allocate that allowable load among the sources of the pollutant in order to restore a waterbody to a condition that fully supports beneficial uses. TMDLs may also be relied upon to ensure ongoing protection of beneficial uses. As such, a waterbody does not need to remain impaired to be addressed by a TMDL in the Basin Plan.

That notwithstanding, the Los Angeles Water Board can, if it deems appropriate based on the weight of the evidence regarding receiving water conditions throughout the waterbody and the water quality of point and nonpoint source discharges, remove targets and allocations from an existing TMDL during a reconsideration of the TMDL. The Los Angeles Water Board can reconsider a TMDL that it has established at any time. In the case of the Santa Clara River Nitrogen Compounds TMDL, the Los Angeles Water Board could, in the future, withdraw or reconsider and modify the TMDL if it deemed appropriate. However, these potential actions would require a more comprehensive analysis than a 303(d) listing decision. A reconsideration of the Santa Clara River Nitrogen Compounds TMDL would require a reassessment of all the available ammonia and nitrate+nitrite data in the Santa Clara River, its tributaries and estuary, and also an evaluation of the eutrophic status and other related effects of nitrogen compounds on the River. Finally, it would require an evaluation of the discharge quality of the various sources of nitrogen compounds to the River relative to their wasteload and load allocations in the TMDL.

In addition, the Los Angeles Water Board would consider the utility of keeping the TMDL, or a revised TMDL, in place in order to ensure the continued progress toward, or maintenance of, attainment of water quality standards in the River. The USEPA's draft March 22, 2012

"Considerations for Revising and Withdrawing TMDLs" recommends keeping effective TMDLs in place:

EPA recommends that existing TMDLs not be withdrawn simply because the load and wasteload allocations have been implemented successfully and the water is now attaining water quality standards. EPA recommends that such "successful" TMDLs remain in place to ensure that WQS [water quality standards] continue to be maintained in the future, and that their water quality analyses and allocation targets continue to inform permit writers' and stakeholders' efforts to maintain those water quality standards.

### **Response to Concerns Regarding Implications of 303(d) Listings in Permitting**

NPDES permits and other Board orders may include specific requirements for actions that will be taken when the permitted discharge is to a 303(d) listed waterbody. These specific requirements are identified during the development of the permit and are subject to stakeholder comment and Board consideration.

As you anticipate and we have been discussing with you through our MS4 program, the Los Angeles County MS4 Permit will be a model for the upcoming Ventura County MS4 Permit renewal, so municipalities in Ventura County will have the opportunity to develop watershed management programs (WMP) or enhanced watershed management programs (EWMP). WMPs and EWMPs under a renewed Ventura County MS4 Permit will also likely have to consider waterbody-pollutant combinations on the 303(d) list within their watershed when prioritizing water quality issues and identifying watershed control measures. It is appropriate to conduct a reasonable assurance analysis (RAA) for 303(d) listed constituents (directly or through a limiting pollutant analysis) or otherwise provide a justification for how these pollutants are adequately addressed in the WMP/EWMP.


Although the 303(d) list does not reflect more recent data at this time, it remains an informative list based on a comprehensive evaluation of data per the Listing Policy criteria, which was subject to public review and comment and final approval by USEPA. Further, as indicated above, based on the findings of our analysis of data from 2004-2010, Los Angeles Water Board staff plans to recommend delisting of ammonia from Santa Clara River Reach 3 in the 2016 California Integrated Report.

Whether a renewed Ventura County MS4 Permit includes provisions to adjust requirements due to improvements in waterbodies that remain on the 303(d) list during the term of the permit can be addressed during development of the permit. The Ventura County MS4 Permit may well allow for the same compliance demonstration pathways as those in the Los Angeles County MS4 Permit, including demonstrating that receiving water limitations are being met in the adjacent and downstream waterbody. Monitoring requirements can also be addressed during permit development.



In closing, we acknowledge and appreciate the hard work and the resources committed by the Ventura County Watershed Protection District and the cities of Fillmore and Santa Paula to improve the water quality in the Santa Clara River and look forward to even more water quality improvement in the future. If you have any questions, please contact Dr. L.B. Nye at (213) 576-6785 or Dr. Jun Zhu at (213) 576-6681.

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

cc: Nick Martorano, State Water Resources Control Board  
Ewelina Mutkowska, Ventura County Watershed Protection District  
Caesar Hernandez, City of Santa Paula  
David Burkhart, City of Fillmore  
Ashli Desai, Larry Walker Associates