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March 30, 2017

Mr. Samuel Unger
Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Attn: Ms. Jun Zhu

Dear Mr. Unger:

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

The Los Angeles Department of Water and Power (LADWP) would like to thank the Los Angeles Regional Water Quality Control Board (LARWQCB) for the opportunity to comment on the Revisions to the Los Angeles Region 303(d) List (Revisions).

LADWP is the largest municipally-owned utility in the nation, which serves a 465 square-mile area in Los Angeles with approximately four million residents and a portion of the Eastern Sierras in Owens Valley. Its mission is to provide essential public services (water and power) for grid reliability and public health and safety in an efficient and environmentally responsible manner. LADWP owns its electrical generation, distribution, and transmission systems as well as its 233-mile, gravity fed Los Angeles Aqueduct, which brings water to the City of Los Angeles (City). LADWP's Power System supplies more than 23 million megawatt hours of electricity a year, and LADWP is responsible for maintaining and replacing 3,507 miles of overhead transmission circuits spanning five western states. LADWP's Water System supplies approximately 177 billion gallons of water annually and an average of 446 million gallons per day to its residential and business customers.

LADWP has comments in several areas, as follows:

1. Elderberry Forebay should not be listed for dieldrin or PCBs.
2. The 303d listing recommendations should be updated to include current data and information.
3. The proposed listings for "benthic community effects" are premature at this time, particularly for proposed listings in modified channels.

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LADWP's detailed comments can be found below.

1. Elderberry Forebay should not be listed for dieldrin or PCBs.

LADWP's largest hydroelectric facility is the Castaic Power Plant, which is critical to the reliability of the electrical grid in the Los Angeles Basin. This facility along with the Elderberry Forebay was built in 1960 as part of a Federal Energy Regulatory Commission (FERC) project with the Department of Water Resources, and is operated under a FERC license. The Elderberry Forebay was built strictly for the operation of the plant as a storage component for the water that passes through the plant to generate electricity. This hydroelectric plant is known as a pass-through facility. Water from Pyramid Lake flows down a gradient through the Los Angeles Tunnel and seven penstocks to turn seven turbines in order to produce electricity. The water enters Elderberry Forebay after the turbines where it is then either discharged to Castaic Lake or pumped back to Pyramid Lake.

LADWP has noted that the LARWQCB has proposed to add Elderberry Forebay to the revised 303(d) list for dieldrin and PCBs. However, activities at the plant do not use or add products that would contribute dieldrin or PCBs to its discharges into Elderberry. In fact, Elderberry Forebay is not open to the public and therefore does not have any beneficial uses beyond being an operating body of water for the hydro plant. Its only use is for the pushing of the turbine blades to generate electricity. In 2008 the United States Environmental Protection Agency (USEPA) released its final version of its "National Pollutant Discharge Elimination System (NPDES) Water Transfers Rule" (Water Transfer Rule) codifying (40 CFR 122.3(i)) that water transfers are excluded from the regulation of the Clean Water Act (CWA). The 40 CFR 122.3 (i) expressly states "Water transfers mean an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. USEPA's legal interpretation of the CWA concluded that Congress did not intend to subject water transfers where there is "no addition" of pollutants to the NPDES permit process because the pollutants were already in the waters being transferred and are not added. This ruling was put in place precisely for hydroelectric plants like the Castaic Power Plant that are considered pass-through facilities. Since this body of water is isolated from all public recreation and access and the water that passes through the Castaic Power Plant is used only to generate electricity, it seems inappropriate to include the Elderberry Forebay in the new 303(d) listing.

With respect to Dieldrin, as stated in LADWP's Castaic Dieldrin Source Control Study sent to the LARWQCB in May 2010, LADWP contends that since the Castaic Power Plant has never used nor ever had a use for dieldrin, it cannot be the source of dieldrin in Elderberry Forebay. The source study points out that many of the tributaries that flow into the State Water Project, specifically those in the San Joaquin Valley, are agricultural areas where for years traditional pesticides (including dieldrin) have been used. Dieldrin was also an ingredient in several types of vector control measures used to mitigate vectors residing subsurface. These components, termed "legacy pesticides," primarily reside in the sediment/soil and are believed to be periodically liberated into the

surrounding waterways. *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA (Catskill III)* (2nd Cir. 2017), states that a water being transferred through a hydroelectric plant is not a discharge of a pollutant. In addition, as has been mentioned earlier, the Elderberry Forebay is only used for the operations of the plant, and therefore discharges from the Forebay would not be considered a discharge of a pollutant.

Additionally, LADWP ceased the use of PCBs in the electrical equipment at Castaic Power Plant in the 1980s, and thus the hydroelectric plant is not a source. Furthermore, the NPDES Annual Monitoring Reports for Castaic Power Plant have shown “non-detect” for all PCB sampling over the last 20 years.

Since the Elderberry Forebay is used and was built solely for the operation of the Castaic Power Plant hydroelectric facility, and since it is a pass-through that transfers water without any addition of pollutants, it would seem appropriate to remove the Elderberry Forebay from this 303(d) list. Therefore, LADWP respectfully requests that the Elderberry Forebay be removed from the current 303(d) list.

2. The 303(d) listing recommendations should be updated to include current data and information.

The LARWQCB Staff Report supporting the current listing recommendations notes that “Due to the volume of data received during the 2010 data solicitation period, the State Water Board determined that no additional data would be solicited or analyzed until all the 2010 data are assessed. [...] Los Angeles Water Board staff estimates that the 2022 303(d) list will include data submitted through 2021.” (Staff Report at p. 6)

LADWP is concerned that many of the data upon which proposed listings are based are more than ten (10) years old. However, some of the proposed listings are based on only two or three data points. Although LADWP understands and recognizes the resource limitations faced by the LARWQCB, we respectfully suggest that basing listings on datasets that do not include the most recent information, particularly when only a couple of samples are available to describe conditions in the region’s water bodies, does not seem to be effective. Such limited data cannot be considered to describe current conditions appropriately.

3. The proposed listings for “benthic community effects” are premature at this time, particularly for proposed listings in modified channels.

LADWP notes that several of the proposed listings for “benthic community effects” are based upon limited data (2 or 3 samples) that were collected nine or more years ago, and that some of the proposed listings are based upon “index of biotic integrity” (IBI) scores. More importantly, many of the water bodies proposed for listing for benthic community effects are engineered or modified channels, and it is not scientifically or technically appropriate to expect that modified channels will achieve the CSCI or IBI scores that are observed in reference channels. The proposed listings do not

consistently or clearly establish a link between the biological condition and the pollutant(s) that may be responsible for the biological condition; in fact, it is not clear that the pollutant measurements (available only for some proposed listings) were collected at the same time as the biological data. Finally, some of the samples upon which the proposed listings are based were collected downstream of and shortly after major wildfires; these data are likely representative of temporary disturbed conditions and may not be representative of typical conditions.

State Water Board staff are currently working on developing a statewide policy or plan for biological integrity. This process has moved away from using the IBI and is now developing metrics for the California Stream Condition Index (CSCI) and an Algae Stream Condition Index (ASCI). This process has not reached consensus on how engineered or modified channels should be assessed, or what appropriate expectations for these channels should be. In fact, the State Water Board is currently convening a Science Advisory Panel to address this issue and many others, and the State Water Board's "Wadeable Stream Biostimulatory and Biointegrity Science Plan," dated February 2017, acknowledges that "Developed landscapes are associated with an increase of many stressors in streams, such as elevated contaminant and nutrient concentrations, altered flow regimes, sedimentation, and habitat degradation. Often, these stressors are difficult to mitigate or remove under the traditional mechanisms available to the Water Boards. In these circumstances, the range of CSCI or ASCI scores may be constrained in channels in developed landscapes."

Because the State's policy is in development, no longer uses the IBI, has not clearly established a link between the presence of pollutant(s) and the biological condition, and has not produced direction regarding how benthic integrity should be assessed in modified streams, LADWP respectfully suggests that it is premature to list the region's water bodies for "benthic community effects". LADWP therefore requests that the LARWQCB decline to list the region's water bodies for benthic community effects at this time.

LADWP appreciates the opportunity to provide comments on the Revisions and looks forward to working with LARWQCB staff in this process. Should you have any questions regarding this letter, please contact me at (213) 367-0436 or Ms. Chloé Grison of the Wastewater Quality and Compliance Group at (213) 367-1339.

Sincerely,



Katherine Rubin
Manager of Wastewater Quality and Compliance

CG:vf
c: Ms. Chloé Grison