



LOS ANGELES OFFICE

Protecting endangered species and wild places through science, policy, education, and environmental law

September 22, 2006

Mr. Dave Woelfel
Staff Environmental Scientist
Santa Ana Regional Water quality Control Board
3737 Main Street, Suite 500
Riverside CA 92501

Re: Comments on Initial Draft 2006 Basin Plan Triennial Review Priority List Revised September 7, 2006 for the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan).

Dear Mr. Woelfel,

The following comments on Initial Draft 2006 Basin Plan Triennial Review Priority List Revised September 7, 2006 for the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) are submitted on behalf members and staff of the Center for Biological Diversity (the "Center"). We look forward to your updating the Basin Plan and incorporating our scientifically documented additions to beneficial uses. The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats in the Western Hemisphere through science, policy, and environmental law. The Center has over 25,000 members throughout California and the western United States, including residents in the watershed of the Santa Ana River.

Our primary concerns with the Basin Plan is the document's recognition of the importance of aquatic, riparian and floodplain systems as habitat for plants and animals, including rare species. Our comments are therefore focused on how the proposed 2006 Basin Plan Triennial Review Priority List will affect those resources. We provide comments in four areas: 1) specific to Mill Creek, 2) opposition to changes proposed in the Triennial Review Priority List, 3) in support of the changes proposed in the Triennial Review Priority List and 4) suggestions for additional beneficial use designations supported by scientific data.

I. The Center specifically supports retaining the COLD designation for the Mill Creek reaches.

On Issue No. 11 as it pertains to Mill Creek, the Center strongly supports the addition of new reaches and the designation of appropriate beneficial uses. We support the designation of (c) Mill Creek from SAR to Highway 38 as Reach 1 and keeping it I-

Tucson • Phoenix • Joshua Tree • Los Angeles • San Diego • San Francisco • Pinos Altos • Portland • Washington, DC

Ileene Anderson, Ecologist
PMB 447, 8033 Sunset Blvd • Los Angeles, CA 90046
Phone: 323-654-5943 • Fax: 323-650-4620
ianderson@biologicaldiversity.org • www.biologicaldiversity.org

COLD. Currently the intermittent flow is essential to maintain alluvial floodplain habitat. The COLD designation is essential to provide continued intermittent uses to salmonids and the adjacent riparian habitats that could be enhanced through decreased diversions.

We support the designation of (d) Mill Creek from Highway 38 to Mountain Home Creek confluence as Reach 2 and keep COLD. This reach and the COLD designation is essential to providing habitat for salmonids and adjacent riparian habitats for numerous rare species, including the state and federally listed endangered Southwestern Willow Flycatcher (*Empidonax traillii extimus*). Additionally maintaining the upstream hydrology is essential to maintaining the downstream habitats.

We support the designation of (e) Mill Creek from Mountain Home Creek confluence to upper diversion in Forest Falls as Reach 3 and I-COLD. The COLD designation is essential for this reach in its ability to support wildlife habitat. While we recognize that the artificial hydrology due to water diversion upstream of Forest Falls currently imposes an I (intermittent) designation, we would also support a non-intermittent designation for this reach, which reflects the original and potential future hydrology of this important reach for numerous rare species including salmonids and avian species such as the Southwestern Willow Flycatcher and the state and federally listed endangered Least Bell's Vireo (*Vireo bellii pusillus*).

We support the designation of (f) Mill Creek from upper diversion to headwaters as Reach 4 and keep COLD. This reach currently supports salmonids. Additionally it is designated as Critical Habitat for the Southwestern Willow Flycatcher (see below comments on additional beneficial uses in Section IV).

II. The Center Opposes the Following Component of the 2006 Triennial Review Priority List.

Issue 32. The Center opposes revision of fluoride WQO for consistency with the Department of Health Service's MCL's. Recent scientific research indicates that these elevated levels of fluoride are detrimental to a host of freshwater aquatic organisms (Camargo 2003). We request that staff re-consider the effects of elevated fluoride on aquatic organisms based on the best available science.

III. The Center Supports the Following Components of the 2006 Triennial Review Priority List.

Issue No. 3. The Center supports the incorporation of newly adopted or revised TMDL Basin Plan amendments. We also support the development of TMDL's for the listed water bodies (Newport Bay and San Diego Creek [for toxic substances], Lake Elsinore [for toxics], Canyon Lake [for pathogens] and Big Bear Lake [for toxicity]).

Issue No. 7. The Center supports developing/revising nutrient objectives for 303(d) listed waters including San Diego Creek, Lake Elsinore, Canyon Lake, Big Bear Lake and its tributaries.

Issue No. 8. The Center supports adding a water quality objective narrative regarding excessive growth of macrophyte aquatic plants or combine with existing algae narrative objectives.

Issue No. 9. The Center strongly supports the development of criteria for mitigation wetland impact mitigation and the revision of narrative to expand wetland definition and description of the 401 process.

Issue No. 10. The Center supports the addition of the water bodies (a-c.) to Tables 3-1 and 4-1 and assign WQS.

Issue No. 11. In addition to the Mill Creek issues addressed in Section 1., the Center also supports the designation of (a) Lytle Creek from 1-15 to Korean Christian Camp Bridge as Reach 1 and I-COLD; (b) Lytle Creek from Korean Christian Camp Bridge to headwaters of South, Middle, and North Forks as Reach 2 and keep COLD; (g) SAR from Seven Oaks Dam to SCE Power House 1 as Reach 4 and I-COLD; and (h) Santa Ana River from SCE Power House 1 to headwaters as Reach 7.

Issue No. 12. The Center supports the addition of the waters (a.-d.) to Tables 3-1 and 4-1 and the assignment of WQS as proposed.

Issue No. 13. The Center strongly supports the updates (a.-g.) to the Beneficial Use Table 3-1 and the Water Quality Objective Table 4-1.

Issue No. 15. The Center supports the addition of water in Goodhart Canyon watershed to the Santa Ana region and the assignment of water quality standards.

Issue No. 16. The Center supports republishing the Basin Plan in an updated format as proposed.

Issue No. 18. The Center supports evaluation of the chlorine objective, based on the best available science to sufficiently protect aquatic and wildlife habitat beneficial uses.

Issue No. 20. The Center supports additional narrative as proposed on implementation procedures for turbidity and toxicity objectives.

Issue No. 21. The Center supports revising Chapter 5 to include prohibitions on discharges of acids, caustics or excessively saline wastes to surface waters.

Issue No. 22. The Center supports revising Chapter 3 Beneficial Use tables' narrative to incorporate the Tributary Rule.

Issue No. 23. The Center supports revising and clarifying that water quality standards apply to intermittent surface waters, as well as perennial waters.

Issue No. 24. The Center supports recognition of the importance of headwaters as a separate class or category of waters and of protecting their WQS.

Issue No. 25. The Center supports developing waste discharge prohibitions for excessive sedimentation resulting from controllable water quality factors.

Issue No. 29. The Center supports reevaluation of the temperature criteria to ensure full protection of aquatic life.

Issue No. 30. While the Center supports establishing dissolved oxygen objectives in waters for beneficial uses, we support objectives that would restore salmonid waters throughout the watershed. Historically, salmonids ran throughout the reaches of the Santa Ana River. By establishing “non-salmonid waters” criteria, the Regional Board would effectively be precluding future re-establishment of salmonid runs in those areas, preventing recovery. Salmonids in southern California are at less than 10% of their historic range in southern California and occur only in fragmented habitats (Nielson 1999). Additionally, other rare aquatic species, including the federally threatened Santa Ana Sucker which currently occurs in Reaches 3 and 4 of the Santa Ana, would benefit from dissolved oxygen objectives, as would Speckled Dace in the various tributaries of the upper Santa Ana River watershed.

Issue 33. The Center supports the development and adoption of biological criteria for managing water quality.

Issues 34. The Center supports establishing a Total Organic Carbon (TOC) objective in Reach 3, as this reach is known to support the federally listed Santa Ana Sucker.

Issue 35. The Center supports a water quality objective that is updated to meet the new Department of Health Standards for Methylene blue-Activated Substances (MBAS) in order to support good water quality in the watershed.

IV. Additional research and revision of the 2006 Triennial Review Priority List is Necessary to Meet the Needs of Rare, Sensitive, Threatened, or Endangered Species

The Center provides scientific evidence for additional beneficial uses for streams and reaches within the Santa Ana River Basin Plan Area. Numerous Critical Habitat Designations have occurred between the last Triennial Review and today. Critical Habitat is a federal designation of habitat that is essential to the persistence and recovery of species. We support the recognition of these important areas as a Beneficial Use in the Basin Plan. Based on the fact that the Basin Plan describes the BIOL beneficial use as:

“Preservation of Biological Habitats of Special Significance (BIOL) waters support designated areas or habitats, including, but not limited to, established refuges, parks, sanctuaries, ecological reserves or preserves, and Areas of Special Biological Significance (ASBS), where the preservation and enhancement of natural resources requires special protection.”,

we support the recognition of these vital areas as under a BIOL Beneficial Use designation. However, they could also be included under a RARE Beneficial Use designation as well. Our concern is that these areas are part of a regulatory framework to recover species perched on the brink of extinction and they need to be recognized and addresses as a beneficial use. Therefore, we request that all federal Critical Habitat Designations be included as a beneficial use in the following Inland Surface Streams:

- Santa Ana River Reaches 4, 5 and 6 for Southwestern Willow Flycatcher (70 FR 60886);
- Mill Creek old Reach 2 or proposed Reaches 2, 3 and 4 for Southwestern Willow Flycatcher;
- Waterman Creek for Southwestern Willow Flycatcher;
- Upper reach of Oak Glen Creek for Southwestern Willow Flycatcher;

- Bear Creek from Big Bear Lake to its confluence with the Santa Ana River for Southwestern Willow Flycatcher;
- East Etiwanda Creek for San Bernardino Kangaroo Rat (67 FR 19812);
- San Jacinto River Reaches 4, 5, 6 and 7 for San Bernardino Kangaroo Rat;
- Cajon and Lytle Creeks for San Bernardino Kangaroo Rat;
- Santa Ana River Reach 5 for San Bernardino Kangaroo Rat;
- Mill Creek old Reach 1 or proposed Reach 1 for San Bernardino Kangaroo Rat;
- City Creek for San Bernardino Kangaroo Rat;
- Santa Ana River Reach 3 for Least Bell's Vireo (59 FR 4845)
- San Jacinto River Reaches 5 (including Bautista Creek) and 6 for Arroyo Toad (70 FR 19562), including those areas designated as Essential Habitat.
- Cajon Creek for Arroyo Toad.

In addition, Critical Habitat was recently designated (September 14, 2006) for the Mountain Yellow Legged Frog (*Rana mucosa*), and goes into effect on October 16, 2006, presumably prior to the Regional Board's adoption of the Triennial Review Plan. Mountain Yellow Legged Frog Critical Habitat has been designated on the following reaches:

- Reach 7 - Cranston Bridge to Lake Hemet along the North Fork of the San Jacinto River and tributaries for Mountain Yellow-legged Frog;
- Barton Creek for Mountain Yellow-legged Frog;
- City Creek for Mountain Yellow-legged Frog.

We also bring to your attention the occurrence of a number of federally or state listed threatened or endangered species that occur along reaches of the Santa Ana River Watershed. The Basin Plan describes the RARE beneficial use as:

"Rare, Threatened or Endangered Species (RARE) waters support habitats necessary for the survival and successful maintenance of plant or animal species designated under state or federal law as rare, threatened or endangered."

Based on that description, we believe that that certain reaches need to have the RARE Beneficial Use designated and request that the following reaches have a designated RARE beneficial use due to the presence of threatened or endangered Species. We have also included appropriate historical populations locations within this designation, because habitat is still present for the species in these reaches, and they desperately need habitat for recovery.

- Santa Ana River Reach 4 not only supports federally threatened Santa Ana Sucker, but Least Bell's vireo and the Santa Ana River Woolly Star (*Eriastrum densiflorum* var. *sanctorum*).
- Santa Ana River Reach 6 supports Southwestern Willow Flycatcher and historically the Mountain Yellow Legged Frog (Element Occurrence 75, CNDDB 2006).
- Mill Creek Reach 1 supports constant populations of the federally listed threatened San Bernardino Kangaroo Rat (Element Occurrence 14, CNDDB 2006)

- Mill Creek Reach 2 supports Southwestern Willow Flycatcher (and designated Critical Habitat) and historically the Mountain Yellow Legged Frog (Element Occurrence 78, CNDDDB 2006)
- Waterman Canyon Creek historically supported Mountain Yellow Legged Frog (Element Occurrence 64, CNDDDB 2006)
- Fish Creek supports the California Threatened Southern Rubber Boa (Element Occurrence 24, CNDDDB 2006)
- Barton Creek supports Mountain Yellow Legged Frog (Element Occurrence 120, CNDDDB 2006)
- Sand Canyon supports Least Bell's Vireo (Element Occurrence 264, CNDDDB 2006)
- Day Creek supports Mountain Yellow Legged Frog (Element Occurrence 70, CNDDDB 2006)
- City Creek supports Mountain Yellow Legged Frog (Element Occurrence 65, CNDDDB 2006)

The San Jacinto River floodplain hosts a number of federally listed plant species that are ecologically bound to the hydrological regime of the river, and therefore these reaches need to have a RARE beneficial use designation based on those species populations.

- San Jacinto River – Reach 3 supports the federally listed threatened San Jacinto Crownscale (*Atriplex coronata* var. *notatior*) (Element Occurrence 01).
- San Jacinto River – Reach 4 supports the federally listed threatened San Jacinto Crownscale (Element Occurrence 07, CNDDDB 2006).
- San Jacinto River – Reach 5 supports the federally listed threatened San Jacinto Crownscale (Element Occurrence 20, CNDDDB 2006).

Much effort has been focused on San Timoteo Creek regarding habitat restoration efforts. Several reaches support rare species including:

- Reach 1 supports Southwestern Willow Flycatcher (Element Occurrence 29, CNDDDB 2006) and Least Bell's Vireo (Element Occurrence 268, CNDDDB 2006).
- Reach 3 supports Least Bell's Vireo (SAWA 2005).
- Reach 4 supports Southwestern Willow Flycatcher and Least Bell's Vireo (SAWA 2005).

The Center contends that inclusion of these scientifically based comments into the Triennial Review Priority List will enable the staff of the Santa Ana River Regional Board to better evaluate impacts to water quality and quantity for the benefit of wildlife and rare species. If you have further questions or need additional information, please feel free to contact me.

Sincerely,



Ilene Anderson
Ecologist
Center for Biological Diversity

References:

CNDDDB (California Natural Diversity Database) 2006 electronic edition.

Camargo, J.A. 2003, Fluoride toxicity to aquatic organisms: a review. *Chemosphere* 50(3): 251-264.

Nielson, J.L. 1999. The Evolutionary History of Steelhead (*Oncorhynchus mykiss*) along the US Pacific Coast: Developing a Conservation Strategy Using Genetic Diversity. *ICES Journal of Marine Science* 56(4): 449-458.

SAWA (Santa Ana Watershed Association) 2005. Annual Report. Pgs 64.