



March 16, 2009

Danny McClure  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200,  
Rancho Cordova, CA 95670

**Subject: Comments regarding the proposed revisions to the Clean Water Act Section 303(d) List of Water Quality Limited Segments**

Dear Mr. McClure,

The Contra Costa Clean Water Program (Program) appreciates the opportunity to provide written comments on the Central Valley Regional Water Quality Control Board's (Water Board's) proposed 2008 revisions to the 303(d) list contained in the Water Board's *Clean Water Act Sections 305(b) and 303(d) Integrated Report for the Central Valley Region*, dated January 2009. The Program's comments are provided on behalf of its 21 Co-permittees<sup>1</sup>.

The Program's comments are restricted to only those listings that are new in 2008 and are located within Contra Costa County. To the best of our knowledge, this encompasses the following water bodies: Marsh Creek (Marsh Creek Reservoir to San Joaquin River partly in Delta Waterways, western portion), Kellogg Creek (tributary to Clifton Court Forebay, Contra Costa County; partly in Delta Waterways, central and western portion), and Sand Creek (tributary to Marsh Creek, Contra Costa County; partly in Delta Waterways, western portion).

### **General Comments**

Our first general comment relates to the determination of exactly which waterbodies are officially considered receiving waterbodies for Contra Costa County and which are not. The ambiguity is partially a result of the fact that our county is bifurcated by two different Water Boards, Central Valley and San Francisco Bay Regions, and exacerbated by the fact that waterbody boundaries get muddled in the complexity of the Delta region.

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<sup>1</sup> Contra Costa County, City of Antioch, City of Brentwood, City of Clayton, City of Concord, Town of Danville, City of El Cerrito, City of Hercules, City of Lafayette, City of Martinez, Town of Moraga, City of Oakley, City of Orinda, City of Pinole, City of Pittsburg, City of Pleasant Hill, City of Richmond, City of San Pablo, City of San Ramon, City of Walnut Creek and Contra Costa County Flood Control and Water Conservation District.

During discussions with you and Jerry Bruns at the March 10<sup>th</sup> hearing, you provided some clarity to this issue. For example, it was previously unclear to us whether the San Joaquin River (Stanislaus to Delta Boundary) would be considered our receiving water. You provided the clarification that for the purposes of that listing the "Delta Boundary" is defined as Vernalis, which is located near Stockton. Since Vernalis is east of Contra Costa County, this added clarification makes it clear that the San Joaquin River (Stanislaus to Delta Boundary) would NOT be considered a receiving water for our county.

However, you also pointed out that "Delta Waterways, central portion" and "Delta Waterways, western portion" ARE considered our receiving waters. Our comment to this would simply be you provide a map to show the exact boundaries of the "Delta Waterways, central portion" and "Delta Waterways, western portion" and which waterbodies are encompassed therein. The handout you provided at the March 10<sup>th</sup> entitled "2008 Integrated Report Waterbody Names" and appurtenant maps, lists the Delta Waterways as Map ID No. 88 through 95. However, none of these numbers were actually shown on the maps. It is clear from the name of the listings for Marsh and Sand Creeks that portions of them are considered within Delta Waterways, but it is critical to know exactly what other creeks, areas or waterways would be included in that legal definition.

Since the inception of the Contra Costa Clean Water Program in 1991, we have repeatedly asked staff from the Central Valley and San Francisco Bay RWQCBs for information and mapping which would clearly delineate the Central Valley RWQCB's boundaries, the Delta boundaries, etc. The reasoning being as a regulatory agency you would know what is in or out of your jurisdiction. The final responses to our requests came from previous Executive Officers for Regions 2 and 5 stating their agencies did not have the information, but would definitely develop it for general public use. That was almost fourteen years ago.

Our second general comment involves the lack of evidence and information provided for a listing decision encompassing an entire creek when the evidence and listing factors suggest only a segment of the creek length may be impaired. This is most pertinent in the case of trash, but also applies to the pyrethroids and toxicity listing decisions. Listing Policy 6.1.5 contained in the State Water Resources Control Board's **Water Quality Policy For Developing California's Clean Water Act Section 303(d) List adopted September 2004** (State's Listing Policy) states: "Before determining if water quality standards are exceeded, RWQCBs have wide discretion establishing how data and information are to be evaluated, *including the flexibility to establish water segmentation...*" Listing Policy 6.1.5.4 states: "In the absence of a Basin Plan segmentation system, *the RWQCBs should define distinct reaches based on hydrology and relatively homogeneous land use.*" The Listing Policy recognizes that an impact to one or several reaches of the stream does not necessarily constitute a problem in the entire stream; and, listings should be confined to those segments or reaches where the evidence supports a listing decision. By limiting listings to the impacted creek segments, local governments will be better able to focus their efforts and resources on actual impairments resulting in faster attainment of water quality standards.

## **Waterbody-Specific Comments**

Marsh Creek (Marsh Creek Reservoir to San Joaquin River partly in Delta Waterways, western portion) – This segment of Marsh Creek is listed for Unknown Toxicity and Sediment Toxicity (in addition to several other constituents). Our comment regarding the toxicity listings is in the designation of Cold Freshwater Habitat as the beneficial use for this stream segment. It is our belief the Cold Freshwater Habitat beneficial use is not appropriate and the Warm Freshwater Habitat is more appropriate given the downstream, lower elevation nature of this segment of the creek.

This rationale appears to be supported by the Water Board's own listing of Marsh Creek (Dunn Creek to Reservoir) for metals in its original listing in 1994. In the Water Board's listing of Marsh Creek (Dunn Creek to the Reservoir), the beneficial use designation was Warm Freshwater Habitat. Since that particular creek segment is upstream of the segment newly listed in 2008 for toxicity, it seems logical Marsh (from the Reservoir to the San Joaquin River) also be designated as WARM. It is illogical to list the upper portion for WARM and the lower portions for COLD.

Sand Creek (tributary to Marsh Creek, Contra Costa County; partly in Delta Waterways, western portion) – This segment of creek is newly listed for unknown toxicity (in addition to several other constituents). The beneficial use is designated as Cold Freshwater Habitat but we believe this is inappropriate for the downstream portions of the creek where the samples were taken (Sand Creek at Highway 4 bypass). As we indicated in our general comments, it seems **inappropriate** to list the entire length of Sand Creek for pollutants based on samples taken only at the far downstream end. We would request you change the beneficial use designation to Warm Freshwater Habitat and consider breaking this creek into segments so only those portions that have actually been sampled and found to contain pollutants above allowable levels be listed.

Kellogg Creek (tributary to Clifton Court Forebay, Contra Costa County; partly in Delta Waterways, central and western portion) - This segment of creek is newly listed for unknown toxicity and sediment toxicity (in addition to several other constituents). The beneficial use is designated as Cold Freshwater Habitat but we believe this is inappropriate for the downstream portions of the creek where the samples were taken (Kellogg Creek at Highway 4 and along Hoffman Lane). As we indicated in our general comments, it seems **inappropriate** to list the entire length of Kellogg Creek for pollutants based on samples taken only at the far downstream end. We would request you change the beneficial use designation to Warm Freshwater Habitat and consider breaking this creek into segments so only those portions that have actually been sampled and found to contain pollutants above allowable levels be listed.

Furthermore, our mapping indicates that Kellogg is NOT a tributary to Clifton Court Forebay. Contra Costa County and Contra Costa Clean Water Program produced an extensive collection of watershed maps known as the Contra Costa Watershed Atlas in 2003 <http://cocowaterweb.org/resources/ccwf-publications/watershed-atlas>.

Our maps show Upper Kellogg Creek flows into Los Vaqueros Reservoir which in turn discharges to Kellogg Creek which in turn flows into Discovery Bay, downstream of Clifton Court Forebay. If your mapping shows something different, we would like to see it.

### **Conclusion**

The Program recommends Water Board staff revise their draft 303(d) list and appurtenant Draft Integrated Report to reflect the changes we've suggested. We appreciate the opportunity to comment on the proposed revision of the Clean Water Act Section 303(d) list of water quality impaired segments and look forward to reviewing your response to our comments.

Sincerely,

Donald P. Freitas  
Program Manager  
Contra Costa Clean Water Program

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Enclosures  
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