



January 31, 2006

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Craig J. Wilson, Chief
Water Quality Assessment Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Subject: Comments on Draft Staff Report on Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments, September 2005, Prepared by the State Water Resources Control Board

Dear Mr. Wilson:

The Sacramento Regional County Sanitation District (SRCSD) appreciates the opportunity to provide written comments on the State Water Resources Control Board's draft Staff Report regarding preparation of the 2006 303(d) List. SRCSD is a regional sanitation district that serves over a million customers in the Sacramento metropolitan area and owns and operates the Sacramento Regional Wastewater Treatment Plant (SRWTP). The SRWTP discharges directly into the Sacramento River downstream of Freeport, which in this latest revision of the 303(d) list is now part of a new water quality limited segment titled the Delta Waterways (northern portion), in Region 5.

We commend you and your staff for the obvious effort that has gone into the documentation for the proposed 2006 listings. The draft Staff Report contains a much more detailed description and analysis of the basis and information used for listing recommendations than past processes. However, SRCSD has four major areas of disagreement with the proposed 303(d) list, as described below. SRCSD also agrees with both the decisions to delete water quality segments from the 2002 list, and not to add four segments to the previous list.

MAJOR AREAS OF DISAGREEMENT WITH THE PROPOSED REVISED 2006 LIST

One of the four points of disagreement is a continuing concern from past listing and policy preparation products. The other three are new issues from the September 2005 documents. In summary, our major concerns are:

1. Use of un-adopted numeric "criteria" and other bases identified in the Listing Policy that are not water quality standards.
2. Listing of Exotic Species as a pollutant in many water quality limited segments.
3. Adding DDT as a pollutant in the Delta Waterways (northern portion) water quality limited segment.
4. Adding polychlorinated biphenyls (PCBs) as a pollutant in the Delta Waterways (northern portion) water quality limited segment.

1. Use of Un-adopted Numeric Values as Surrogates for Numeric Water Quality Objectives in the 303(d) Listing Process

SRCSO has continuously pointed out that the use of un-adopted numeric values as surrogate water quality objectives without formally adopting these values through the process defined in the California Water Code is inconsistent with State Law, specifically the Porter Cologne Act and the Administrative Procedures Act. As previously noted, the California Water Code establishes a clear process for the adoption of water quality objectives as part of the standard-setting process in Sections 13000, 13241 and 13242.

- In SRCSD's letter of November 2, 2001 to the Central Valley Regional Water Quality Control Board (Regional Board), we stated that the Regional Board was using numeric surrogate values for fish tissue criteria, USEPA 304(a) advisory criteria or guidelines, un-adopted California Department of Fish and Game or Department of Health Services guidelines, and health advisories imposed outside the Clean Water Act process. In that letter we also stated that SRCSD had cited this inconsistency in previous letters to the Regional Board (January 20, 1998) and the State Board (March 17 and May 26, 1998) regarding the 1998 303 (d) list.
- Similarly in SRCSD's letter to Rik Rasmussen of the State Board on February 18, 2004 we indicated that the proposed Listing Policy, Regulatory Structure and Options and the S.B. 469 TMDL Guidance were flawed because they were not using water quality standards. The 303(d) listing process and Total Maximum Daily Loads (TMDLs) that result from them are necessary to correct impairments to the standards, and if the standards are not appropriate the TMDLs also will be inappropriate. The letter to Mr. Rasmussen also explained that current standards need to be reevaluated because it is well documented that standards contained in the Regional Board's Water Quality Control Plan for the Sacramento-San Joaquin Delta and the San Joaquin River were not adopted in accordance with state law requirements. (see *A Review of the Administrative Record for the Central Valley Water Quality Control Plan, 1973-1994*, by the California Resources Management Institute, September 2003.) Consequently, that letter strongly recommended that all new policy and guidance documents advise the Regional Boards to conduct standards reviews where appropriate, and not just rely on developing Use Attainability Analyses or Site-Specific Objectives.

2. Listing of Exotic Species as a Pollutant

State Board staff have included Exotic Species as a pollutant in the 2006 303(d) listing process for the first time. While SRCSD agrees that invasive species have caused detrimental aquatic use impacts in some areas of the state, we recommend that consideration of Exotic Species as pollutants, as defined in the draft Staff Report should be deleted from this revision. SRCSD has reached this recommendation based on the following four facts:

- We agree with the Central Valley Regional Board that there are legal issues with the pollutant definition as included in this Staff Report. The draft Staff Report cites a recent court ruling (Northwest Environmental Advocates et al. vs. USEPA, 2005) regarding discharges from vessels. In the ruling, the Court specifically referred to invasive species discharged from ballast water as being pollutants. However, the State Board proposed listing would expand the applicability of this ruling to any established "non-native" species (e.g. striped bass) when there is no ongoing discharge of these non-native species. The Regional Board has reviewed this ruling and found that it does not have the authority to regulate the distribution and population of established non-native species (Executive Officer's Report – 28/29 November 2005).
- We also agree with the Central Valley Regional Board that there are technical issues with the description of the term pollutant. Specifically, a portion of the discussion in the draft Staff Report suggests that hydromodification and changes in flow regime are primarily responsible for the decline in native fish species. The Regional Board reviewed this portion of the listing discussion and finds that causes of declines of native fishes for these reasons are also outside their jurisdiction (Executive Officer's Report – 28/29 November 2005).

- The draft Staff Report admits that “no evaluation guidelines are available that can be used to assess the potential for impact from exotic species.”
- The Fact Sheets on the use of Exotic Species present a confusing array of criteria, guidelines, impacts and locations. In addition, some non-native species may be beneficial.

3. Adding DDT as a Pollutant in the Delta Waterways (northern portion) Segment

State Board staff have added DDT as a pollutant in this water quality limited segment based on the fact that four of six samples exceeded in the OEHHA Screening Value for fish tissue, a frequency that exceeds the allowable level in the Listing Policy. The Evaluation Guideline used in the Fact Sheet is 100 ng/g, the OEHHA Screening Value set in 1999. SRCSD strongly disagrees with this conclusion for the following reasons:

- The use of OEHHA screening values for fish tissue is not appropriate from a technical or legal standpoint. Please refer to the comments made by Central Valley Clean Water Agencies on this point, positions which SRCSD endorses.
- The last sample of fish tissue taken in the analysis that exceeded the Screening Value was in 1998, eight years ago. Smallmouth bass collected in 2001 did not exceed the Screening Value. Therefore the most recent sample taken did not exceed the Screening Value.
- Four types of fish were sampled between 1992 and 1998, smallmouth bass, largemouth bass, channel catfish and white catfish. While all of the catfish sampled exceeded the Screening Value, none of the bass exceeded the value.
- SRCSD has been collecting effluent data on DDT since 1983. All 194 samples of effluent have been non-detects over that time period, with a detection limit of <0.15 ug/L for DDT.
- Significant changes have occurred in the Sacramento River and its watershed since 1998. DDT should not be listed unless data within the last five years are available.

4. Adding PCBs as a Pollutant in the Delta Waterways (northern portion) Segment

State Board staff have added PCBs as a pollutant in this water quality limited segment based on the fact that two of six sample exceeded the OEHHA Screening Value for fish tissue, because this exceeds the allowable frequency in the Listing Policy. The Evaluation Guideline used in the Fact Sheet for PCBs is 20 ng/g, the Screening Value set in 1999. SRCSD also strongly disagrees with this conclusion for the following reasons:

- The use of OEHHA screening values for fish tissue is not appropriate from a technical or legal standpoint. Please refer to the comments made by Central Valley Clean Water Agencies on this point, positions which SRCSD endorses.
- Fish tissue samples that exceeded the Screening Value were in catfish, as long ago as 1992 and only as recent as 1998, 14 years ago and eight years ago, respectively. Smallmouth bass collected in 2001 did not exceed the Screening Value. Therefore the most recent sample did not exceed the Screening value.
- Four types of fish were sampled and analyzed between 1992 and 1998, white catfish, channel catfish, smallmouth bass and largemouth bass. Only one type of the four, white catfish, exceeded the Screening Value.
- SRCSD has been collecting effluent data on PCBs since 1983. All 194 samples of effluent have been non-detects over that time period, with a detection limit of <0.5 ug/L for PCBs.
- Significant changes have occurred in the Sacramento River and its watershed since 1998. PCBs should not be added to the list unless data within the last five years are used.

POINTS OF AGREEMENT WITH THE PROPOSED REVISED 2006 303(d) LIST

SRCSO has reviewed the Fact Sheets for water segments and pollutants of interest to, or geographically near, our service area. Our review finds several points of agreement with State Board staff both on deleting water quality segments from the 2002 list, and on not adding further segments to the 303(d) list in Region 5.

Deleting Diazinon as a Pollutant in Four Segments in Region 5

State Board staff have removed diazinon as a pollutant from four water quality segments in Region 5. SRCSD agrees with and supports these deletions based on a combination of water quality data analyses and the completion and implementation of a TMDL program. The four segments cited are:

- The Feather River, Lower (Lake Oroville Dam to Confluence with Sacramento River)
- Morrison Creek
- Sacramento River (Knights Landing to the Delta)
- Sutter Bypass

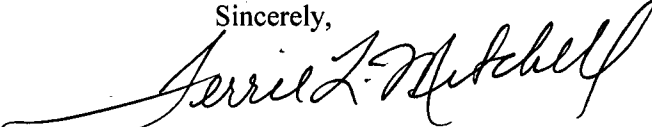
Not Adding to Four Water Quality Segments in Region 5

State Board staff have reviewed and decided not to add a number of segments to the 303(d) list in Region 5. Among those of particular interest to SRCSD, we agree and support the decisions not to list the following combinations of water quality segments and pollutants:

- Diazinon in the American River, Lower (Nimbus Dam to Confluence with Sacramento River)
- Mercury in the Bear River, Lower (below Camp Far West Reservoir)
- Chlorpyrifos and Diazinon in the Sacramento River (Red Bluff to Knights Landing)
- Chlorpyrifos in the Sacramento River (Knights Landing to the Delta)

In summary, SRCSD has reviewed the State Board staff report and supporting documents regarding proposed revisions to the 2002 303(d) list for implementation in 2006. SRCSD appreciates the opportunity to review these documents and requests that the SWRCB make changes in the proposed 303(d) list as specifically stated above. Our staff is available to discuss these requested changes and/or the basis for these requests in greater detail at your convenience.

Sincerely,


for

Robert F. Shanks
District Engineer

RFS/TM:jc

cc: Members, State Water Resources Control Board
Celeste Cantú, Executive Officer, State Water Resources Control Board
Wendell Kido, SRCSD
Terrie Mitchell, SRCSD