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October 20, 2006

Song Her, Clerk to the Board
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, California 95814

RE: Proposed 2006 Clean Water Act (CWA) Section 303(d) List and Revision of the CWA Section 303(d) List of Water Quality Limited Segments Response to Comments

Dear Ms. Her:

The County of Orange, Resources and Development Management Department is pleased to submit comments on the Proposed 2006 CWA Section 303(d) list and Revision of the CWA Section 303(d) List of Water Quality Limited Segments Response to Comments. The comments in this letter focus on all Orange County waterbodies except those in the Newport Bay/San Diego Creek watershed. A separate letter will be sent on the specific Newport Bay/San Diego Creek watershed listings.

We would like to commend the State Board for the improvement in this year's listing process through the implementation of the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. The new policy has resulted in a more transparent process to develop a 303(d) list based on a clearly defined review of data of defined quality and quantity and the application of identified water quality standards and evaluation levels. In a number of instances, however, we have identified misapplications of the policy. Outlined below are our general policy and listing-specific technical issues, and recommendations for changes to the proposed 2006 303(d) list.

General Policy Issues:

1. **Listings based on data that is not spatially representative (responses to comments 17.1, 17.7 and 17.10):** This issue applies to listings for English Canyon (benzo[b]fluoranthene, dieldrin, sediment toxicity); and Laguna Canyon Channel (sediment toxicity). These listings apply to the water bodies in their entirety and are based on a very limited number samples taken from only one sampling location. Section 6.1.5.2 of the Listing Policy states that "Samples should be representative of the water body segment. To the extent possible, samples should represent statistically or in a consistent targeted manner the

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segment of the water body." The SWRCB responses to these comments do not address the issue of the lack of spatial representation from samples taken from one location. The responses to comments states that under Sections 6.1.5.2 and 6.1.5.3 of the Listing Policy, data from one location collected over a period of 8 months can be used to support a listing recommendation. This is erroneous. Sections 6.1.5.2 and 6.1.5.3 address separate issues regarding the representativeness of data (6.1.5.2 addresses spatial representation and 6.1.5.3 addresses temporal representation), and do not relate to each other. The Listing Policy does not designate specific time periods for sample collection which would make one sampling location justified. Additionally, the temporal representation of samples has no bearing on whether one sampling location is spatially representative of the entire waterbody. Samples taken from only one sampling location are not generally representative of the water body segment and should not be the sole basis for placement of the entire waterbody on the 303(d) list. In such cases, we recommend:

- a. Re-evaluating the water body for listing in future cycles after additional data from samples which represent statistically or in a consistent targeted manner, as the Listing Policy calls for, the segment of the water body have been collected; or
- b. Limiting the listing to the area of the waterbody of which the one sampling location is representative and the fact sheet should provide information that justifies the water segmentation. The fact sheets for Laguna Canyon Channel and English Canyon provide no information that indicates that the one sampling location is representative of the entire water body. Other listings in the Region that are based on one sampling location are limited to 1 mile (San Juan Creek for DDE, Oso Creek for Chloride, Sulfates and Total Dissolved Solids).

For example: Limit the listing area of Laguna Canyon Channel to 1.6 miles. Fact Sheet Justification: The sampling site is characterized by a semi-natural soft sediment creek bed, vegetation along the stream banks and low density residential development. This sampling site lies at the downstream end of a 1.6 mile segment of the stream which shares similar physical characteristics. The middle segment lies between Highway 73 and the culvert just south of Dog Park. The remainder of the creek may be delineated into two additional, distinct segments which significantly differ from this segment. The upper 2.7 miles of the creek is largely undeveloped open space with a road running alongside the stream. Runoff from the road is mitigated by detention basins and wetlands restoration projects. The lower 2.6 miles of creek is entirely confined within manmade structures including pipes, culverts and concrete lined flood control channels. Given the distinct nature of the three segments which comprise this creek, it is unlikely that data collected at the single sampling point is characteristic of the entire watercourse.

2. **Fish Tissue Data:** The application of fish tissue data in the 303(d) listing process has several areas of concern.
 - a. We reiterate our opposition to the use of the OEHHA screening values from the 1999 paper "Prevalence of Selected Target Chemical Contaminants in Sport Fish from Two California Lakes: Public Health Designed Screening Study" by Brodberg and Pollock. The paper states: "The SVs (Screening Values) are not intended as levels at which consumption advisories should be issued but are useful as a guide to identify fish species and chemicals from a limited data set, such as this one, for which more intensive sampling, analysis or health evaluation are to be recommended." (Brodberg, 4) Additionally, the screening values were calculated specifically for the California Lakes Study and were not intended to be used to determine beneficial use impairment in the lakes or other water bodies throughout the state. (Comment applies to listings for Anaheim Bay (PCBs), Balboa Beach (Dieldrin, PCBs), Huntington Beach State Park (PCBs), Seal Beach (PCBs) and Upper Newport Bay (PCBs)).
 - b. We also reiterate our opposition to the use National Academy of Science (NAS) Guideline as an evaluation guideline for protection of aquatic life from bioaccumulation of toxic substances. We disagree with the SWRCB Response to Comment 17.13 which states that the NAS guidelines are "scientifically defensible for the protection of aquatic life." The NAS guidelines were published in 1973 and are based on information and data collected in the 1960s. Comparing the NAS guidelines to more recent evaluations of concentrations of chemicals in aquatic organism tissue and their apparent effects on aquatic life by the US Army Corps of Engineers and the US Environmental Protection Agency, show wide discrepancies between the NAS values and more recent information. We do not feel that the NAS guidelines are reliable values for evaluating the potential impacts of chemicals on aquatic life. Again, we recommend the SWRCB evaluate the USACOE Environmental Residue-Effects Database and the paper "Linkage of effects to Tissue Residue: Development of a Comprehensive Database for Aquatic Organisms Exposed to Inorganic and Organic Chemicals" by Jarvinen and Ankley, 1999. These sources provide more recent data collection and analysis efforts to develop guidelines for the protection of aquatic life from bioaccumulation of toxic substances.
 - c. A response from the SWRCB was not provided for following comment submitted on January 17, 2006: We feel that fish tissue data alone should not be used for listing without corresponding water column and/or sediment data confirming the presence of the contaminant. Due to the migratory nature of most fish, particularly sport fish, the presence of contaminants in fish tissue caught at a particular location does not necessarily indicate that the exposure to the contaminant occurred at that location. In such cases, we recommend re-evaluating the water body for listing in future cycles after additional data has been collected. (Comment applies to: Anaheim Bay (PCBs), Balboa Beach (DDT, Dieldrin, PCBs),

Huntington Beach State Park (PCBs), Lower Newport Bay (DDT, PCBs), Upper Newport Bay (PCBs), Peters Canyon Channel (DDT, Toxaphene), and Seal Beach (PCBs)).

Water Body-Specific Technical Issues:

1. **Anaheim Bay PCB Listing Region 8, Response to Comment 17.4:** The response indicates a revised fact sheet for the Anaheim Bay PCB listing has been developed. It is not included in Volume III: Water Body Fact Sheets Supporting the Listing and Delisting Recommendations.

2. **Anaheim Bay Copper Listing Region 8:** In the September 2005 Fact Sheets Supporting "Do Not List" Recommendations, the Anaheim Bay Copper listing was assigned a "Do Not List" decision. No comments or responses to comments regarding this recommendation were included in the Response to Comments. However, the Anaheim Bay Copper listing remains on the Proposed 2006 CWA Section 303(d) list. This listing should be removed based on the following SWRCB Staff Report "Evaluation of Data and Information Related to the Clean Water Act Section 303(d) List of Water Quality Limited Segments Water Body Fact Sheets Supporting "Do Not List" Recommendations:
 - a. Toxicity is observed but none of the samples exceeded the sediment quality guidelines:
 - i. A new listing for sediment toxicity has been added to address the observed toxicity.

 - b. Based on the readily available data and information, the weight of evidence indicates there is sufficient justification against placing this water segment-pollutant combination on the section 303(d) list in the Water Quality Limited Segments category.

3. **Pacific Ocean Shoreline, Aliso HSA, Pacific Ocean Shoreline, Dana Point HSA, Pacific Ocean Shoreline, Laguna Beach HSA, Pacific Ocean Shoreline, San Joaquin Hills HSA Listings Region 9:** The City of Laguna Beach submitted a statistical evaluation of data collected by the Orange County Health Care Agency and the South Orange County Wastewater Authority at the above beach locations from 1999-2004 for de-listing consideration to the San Diego RWQCB in September 2005. The SDRWQCB provided the statistical evaluation to the SWRCB on January 31, 2005. The data and analysis provided clearly show that the locations listed below meet the delisting criteria. According to Response to Comment 31.8, etc. these comments addressed new data and information that was not readily available to the SWRCB staff before the draft recommendations were released or focus on previous listings where data and information are not yet summarized. As a result, the completion of fact sheets for these data and information are being delayed until the next listing cycle to avoid further delay in completion of the 2006 303(d) List. It is also asserted that for waters where new data shows the water body should be removed from the list, the only consequence of delay is that the delisting status would possibly be identified during TMDL problem statement development. In the

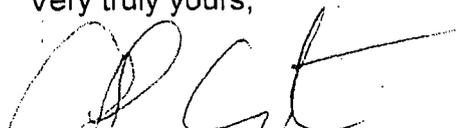
case of the above named listings, this response is erroneous. The SDRWQCB is in the final review process for adopting the TMDL for Indicator Bacteria Project I - Beaches and Creeks in the San Diego Region, and has not assessed any data past 2002 to verify if impairment still exists at the areas despite multiple requests and formal comments from stakeholders. If the locations listed below are not removed from the 2006 303(d) list, they will be erroneously included in the TMDL adopted by the SDRWQCB.

Additionally, SDRWQCB staff has stated in meetings with stakeholders that the data used for the original listings of these areas is unknown and not verifiable. This is additional justification for the re-evaluation of the above listings using the complete data set provided by the City of Laguna Beach.

Specific Location	303(d) Listing
Laguna Beach at Lagunita Place/Blue Lagoon Place	Aliso HSA
1000 Steps Beach at Pacific Coast Hwy. (Hospital, 9th Avenue)	Dana Point HSA
Aliso Beach at Table Rock Drive	Dana Point HSA
Aliso Beach at West Street	Dana Point HSA
Laguna Beach at Ocean Ave	Laguna Beach HSA
Laguna Beach at Laguna Ave.	Laguna Beach HSA
Laguna Beach at Dumond Drive	Laguna Beach HSA
Heisler Park - North	San Joaquin Hills HSA

Thank you for the opportunity to provide comments on the 2006 proposed revisions to the California Clean Water Act Section 303(d) List. We look forward to working with the SWRCB in resolving these issues and producing an accurate and comprehensive list of impaired water bodies in the state of California. Please contact Amanda Carr at (714) 567-6367 if you have any questions regarding these comments.

Very truly yours,


Chris Crompton, Manager
Environmental Resources