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CENTRAL COAST FOREST WATCH

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State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Submitted via email: commentletters@waterboards.ca.gov

Re: 2010 Integrated Report: Federal Clean Water Act Section 303(d) -
Proposal to Delist San Vicente Creek

Dear Chair and Members of the Board:

Please accept these comments regarding Decision ID 4717, the proposed delisting of San Vicente Creek for Sedimentation/Siltation. There are two significant issues that we would like to address.

1. Process

In July 2009, the Regional Water Board Staff presented a last minute proposal to delist San Vicente Creek for Sedimentation/Siltation based on data they had received from members of the public 10 days prior to the hearing. The public comment period had closed on May 26th, but the data and request to delist was submitted on June 29th, for the July 10, 2009 Public Hearing.

Even though we are on the Lyris email notification list, we first learned of the proposal to delist San Vicente Creek that morning at the hearing. In fact, the data that staff was relying on for their recommendation was not even available for review at the hearing. The legally required 45-day review period had not occurred and the Board, correctly, rejected the proposal based solely on process. Instead, the Board recommended that the delisting proposal be brought back during the 2012 listing cycle. Some Board members noted that the time lag would not provide a hardship to those asking for the delisting.

From the July 10, 2009 Minutes:

*"Board member Shallcross asked when the data supporting the delisting recommendation for San Vicente Creek was submitted. Staff stated that the data was submitted on June 29th, 2009, 10 days prior to the Public Hearing. Board member Shallcross asked when the next update is scheduled to begin and staff stated this fall. Board member Shallcross asked when the next update should come to the Board and staff stated in two years for the 2010 List update. Board member Shallcross asked what the public comment period requirement is and when it ended for this list. Staff stated that the public comment period requirement is 45 days and the public comment period ended on May 26th, 2009. Board member Shallcross stated that therefore there had not been a 45-day public comment period for this data. Staff confirmed that to be true. Board member Shallcross asked if the recommendation to delist was based solely on this data submitted on June 29th, 2009. Staff confirmed that to be true."*¹

The Board then voted to approve Resolution No. R3-2009-0053 with two modifications. The first was, *"do not de-list San Vicente Creek because this decision was not made prior to the 45-day public comment period."* The Board never reviewed the merits of the 11th hour delisting request, because due process had not been followed. This is not reflected in the 2008 Integrated Report submitted to your Board.

We assumed that the matter was settled for the time being and that we would have plenty of opportunity to review the data provided to support delisting and to provide additional data in support of the continued listing, during the 2012 cycle. Only by accident did we learn on May 25, 2010, that the delisting proposal was back on the table for the current cycle. We continue to object that the correct process has not been followed. The public has not had sufficient time to review and respond to the data provided. We believe that violation of the State's own review process, which is a violation of CEQA, is a serious matter and should not occur.

We would also like to correct an error in the staff report. I, J. Frediani, submitted the original turbidity data 2004 used for listing San Vicente Creek for Sedimentation. This is correctly noted under LOE 1835. I also submitted the Department of Fish and Game Habitat Assessment, which demonstrates serious embeddedness of a large portion of pools in the stream as well as other deficiencies in stream habitat for salmonids.

However, your report also shows J. Frediani as submitting the recent data (2002-2007) (LOE 30273) provided to the Regional Waterboard in support of *delisting* San Vicente Creek. This is incorrect. I, J. Frediani, continue to maintain that San Vicente Creek remain 303(d) listed as impaired for sediment and turbidity. That 2002-2007 data and delist request was submitted by other parties, specifically members of the timber industry. Most of the upper watershed is in timber and is actively logged. According to the Draft Coho Recovery Plan for the Central Coast Coho² 28% of the watershed was under a Timber

¹ http://www.waterboards.ca.gov/centralcoast/board_info/minutes/2009/JUL09mins.pdf (Item 12)

² http://swr.nmfs.noaa.gov/recovery/coho/Appendices/Appendix%20F/Appendix_F-San_Vicente_Watershed.pdf

Harvest Plan between 1994 and 2006. A portion of the upper watershed was burned in the 2009 Lockheed Fire and is currently being salvage logged.³ To date, the listing of San Vicente Creek has had no impact on logging operations in that watershed. However, all logging along San Vicente Creek comes under the Anadromous Salmonid Protection Rules of the Forest Practice Act due to the presence of coho salmon.

2. Merits of the Data

Turbidity is a simple surrogate for sediment. Determining actual sediment levels is much more difficult to properly monitor. However, we know that sediment levels are high on San Vicente Creek from the Department of Fish and Game Habitat Assessment, which provided data showing that 57 of 70 pools had high levels of embeddedness (high sediment). In addition, the August, 2009 Lockheed Fire, which burned significant acreage in the upper, forested watershed, has the potential to release large amounts of sediment into the watercourse.⁴

Turbidity levels are also directly connected to precipitation levels. During periods of no rainfall (i.e. most summer months and many fall months in this area), turbidity levels will be low unless there is some active geologic process inputting sediment into the watercourse. To include data from months of no rainfall is to simply cloud the issue. Just because there is no turbidity evident in the water during non-rain periods, does not mean that sediment has been flushed out of the system or that sediment levels in the stream have dropped. In fact, the data submitted (see below) continues to show high turbidity levels during the winter period, a surrogate of additional sediment input. Habitat conditions for endangered coho salmon likely continue to be significantly impaired from sediment. According to NMFS, San Vicente Creek is lacking in sufficient large woody debris, which helps meter sediment, create turbulence to clear gravel, while creating pools needed by salmonids.

In 2004 we submitted three winter months of turbidity data gathered by the Davenport Sanitation District (County of Santa Cruz Public Works) at their intake on San Vicente Creek. The Sanitation District utilizes San Vicente Creek as the sole water source for the town of Davenport. This water is collected, treated and provided to residents of Davenport. During periods of high turbidity, the County must purchase and haul water to meet their obligation to the citizens of Davenport for clean drinking water. The data submitted in 2004 included 22 days out of 91 (LOE 1835), (24%) with turbidity levels exceeding the drinking water standard.

The data submitted on June 29, 2009 includes many summer months during which no rainfall was recorded. Submitted data included February 2002 and December 2002 -

³ "The Lockheed Fire, which ignited on August 12, 2009, burned approximately 1611 acres of RMC Pacific Materials (Cemex) property in the Davenport area." per 1-10EM-005 SCR. Most of that ownership is in the San Vicente Creek Watershed.

⁴Actual and potential future impacts to San Vicente Creek from the Lockheed Fire have not been taken into account in staff's recommendation to delist the creek.

December 2006, minus July 03, December 2003, April 2004, October 2006 and December 2006.

We did some brief calculations using the data from December 2004-April 2005 and December 2005-April 2006 (10 months in all), the two winter periods with all months accounted for. During that time, turbidity exceeded state standards of 5NTUs 112 of 302 days, or a total of 37% of the period. Rather than contradict the data we submitted previously, this shows a continuing trend (even greater) of high turbidity levels during the rainy season. According to the NULL hypothesis the number of exceedences required to place a water body on the 303(d) list has to be greater than 10%.

We have also submitted some rainfall data for the portions of the periods during which the turbidity data in questions was collected. You will see that measurable turbidity is related to amount of precipitation, duration of precipitation and most likely to saturated soil conditions. Appendix A data was collected by the Santa Cruz County Alert System automated rain gauges. Station ID 1981 is located at low elevation at Davenport (near the Cemex plant). Station ID 1985 is located at high elevation in Scott Ck. Watershed at Lockheed. Appendix B data was collected by Balance Hydrologic for the City of Santa Cruz Water Department at Liddell Springs, near the Cemex quarry. Appendix C includes a graph of rainfall data between 10/1/03 and 9/29/04. Interestingly, the highest peak rainfall recorded was in December 2003. The turbidity data sheets for 2003 were missing from the submission to delist.

In addition to providing the sole source of drinking water for the town of Davenport⁵, San Vicente Creek is occupied by steelhead trout and coho salmon. Steelhead are federally listed as Threatened. Coho are state and federally listed as Endangered and are on the verge of extirpation. San Vicente Creek is considered a key recovery stream for coho salmon as noted in NMFS 2010 Draft Central California Coast Coho Recovery Plan.⁶

If your Board proceeds to delist San Vicente Creek at this time, you run the risk of assuming vicarious liability for 'take' of steelhead and/or coho salmon.

We urge you to respect process and not accept your Staff's recommendation to delist San Vicente Creek at this time. If desired, the issue can be considered during the 2012 cycle.

Sincerely,



Jodi Frediani

⁵ Outside of trucked in water when turbidity counts exceed state allowable concentrations

⁶ http://swr.nmfs.noaa.gov/recovery/Coho_Recovery_Plan_031810.htm