



File Code: 2520
Date: October 20, 2016

Jay Simi
Water Quality Control Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Dear Mr. Simi:

National Forest System lands in California provides approximately 50% of the state's water supply and provide a source of safe, clean water to Californians. The value of water flowing from the National Forest System lands in California has been estimated to be \$9.5 billion annually. In addition to water National Forests have a responsibility to manage, provide, maintain, and support other related ecological and societal services such as biological diversity; threatened and endangered species and habitats; spawning and rearing habitat for sport and commercial fish species; and agricultural irrigation, navigation, and flood control. National forests and grasslands supply some of the highest quality surface waters in the country, yielding some of the best drinking water and industrial process water sources. Clean water is a very important element provided from National Forest System lands and to that end we, the USFS, want to ensure we meet the intent of the Clean Water Act (CWA).

It has recently been brought to the Stanislaus National Forest's attention that several streams located within the Forest's boundaries are proposed for 303(d) listing.

The US Forest Service (USFS) appreciates the opportunity to comment on the 305(b) Report and the 303(d) Report otherwise referred to as the 2014 Integrated Report, and look forward to working with the Central Valley Regional Water Quality Control Board (CVRWQCB) to address potential water quality impairments on the Stanislaus National Forest (STF).

Proposed listings that would potentially affect US Forest Service programs and projects on the Stanislaus National Forest (STF) include the following water bodies:

- Bell Creek
- Bull Meadow Creek
- Elbow Creek (unnamed tributary below Sheep Meadow)
- Jawbone Creek
- Unnamed Tributary to Jawbone Creek
- Niagara Creek
- Rose Creek

Some of the water bodies proposed for listing are very small high elevation tributaries and stream flow declines dramatically throughout the summer while temperatures rise. In upper watershed segments of some of the water bodies, flow ceases entirely by mid-summer.



Additionally, some of the water bodies flow from or through burned landscapes – landscapes that have changed dramatically since the data was collected in or prior to 2010. Because flow conditions and disturbance events (e.g., wildfire) can affect water sampling results, this information should be included in the analysis or consideration as prescribed by the listing policy.

STAKEHOLDER/PUBLIC INVOLVEMENT

On November 20, 2014, the State Water Board provided notice to the public (Notice of Opportunity to Comment) that the Listing Policy and Listing Policy Amendment (i.e., the process) was available for the public's review and written comment. The actual findings and proposals included in the Integrated Report(s) have not been provided to the public and/or stakeholders for review and written comment. Forest Staff would like to be notified more formally in the future when changes to the 303(d) list are proposed on National Forest System (NFS) lands because these listings have the potential to affect USFS programs and projects. We recommend that the CVRWQCB improve the process by which it notifies and solicits input from all potential stakeholders to include but not limited to land owners, land managers, and land users. More public meetings in different locations would be valuable, because the Central Valley Region covers a large geographic area.

BEST AVAILABLE SCIENCE

Under Section 303(d) of the Act, states are required to evaluate all available water quality-related data and information to develop a list of waters that do not meet established WQS (impaired) and those that currently meet WQS, but may exceed it in the next reporting cycle (threatened). The USFS would like to gain a better understanding of the proposed listings status to assess whether they are deemed impaired or threatened. The data available from the CVRWQCB may not be indicative of actual water quality.

Federal regulations say states must evaluate "all existing and readily available information" in developing their 303(d) lists (40 C.F.R. §130.7(b) (5)). This means that states cannot select what data/information they use and purposely disregard other. The USFS has been working in conjunction with Professor Kenneth W. Tate of University of California, Davis to define water quality and the potential level of impairment and timing (i.e., associated with land management activities and/or is it seasonal), and the extent (i.e., is it localized to a specific area and/or within the entire reach). The USFS would like to request the CVRWQCB to accept this new data set prior to it being published as we feel it is pertinent to the proposed listings of the stream segments located on the STF.

We would like to ask the CVRWQCB to update the Basin Plan to incorporate the most current science and EPA direction with regards to bacteria. EPA released its 2012 Recreational Water Quality Criteria recommendations for protecting human health in all coastal and non-coastal waters designated for primary contact recreation use. These recommendations are intended as guidance to states, territories and authorized tribes in developing water quality standards to protect swimmers from exposure to water that contains organisms that indicate the presence of fecal contamination. The 2012 Recreational Water Quality Criteria rely on the latest research and science, including studies that show a link between illness and fecal contamination in recreational waters. They are based on the use of two bacterial indicators of fecal contamination, *E. coli* and enterococci. The new criteria are designed to protect primary contact recreation, including swimming, bathing, surfing, water skiing, tubing, water play by children, and similar

water contact activities where a high degree of bodily contact with the water, immersion and ingestion are likely. EPA standards may represent on the ground conditions more accurately with regards to public health and safety concerns. Recent studies and available information indicates uncertainty about actual water quality impacts using existing standards.

Lastly, we request that the CVRWQCB should also make provisions for data quality assurances – such as minimum flow for monitoring of streams and rivers and hydrologic connectivity to water bodies proposed for listing – to ensure that data is meaningful and accurately represents water quality. Per the State Water Resources Control Board: Resolution 2015-0005, the State Water Board may adopt sections of the 303(d) List rather than the entire proposed List. With the above considerations in mind we, the USFS, would like to request the CVRWQCB to postpone the 303(d) listing of the reaches on the land we have a responsibility to manage until the best available science issues are resolved.

DISCLOSE POTENTIAL IMPACTS OF LISTINGS

Per the STATE WATER RESOURCES CONTROL BOARD: RESOLUTION 2015-0005, the State Water Board's approval of the section 303(d) List itself is not a "project" subject to CEQA because the list is for informational purposes and such action has no potential to result in a "direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment" (Pub. Res. Code § 21065). "Project" is defined as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [.] If the subject matter does not constitute a "project," then the approval is not subject to CEQA. (14 Cal. Code Regs. § 15061, subd. (b)(3).)

CEQA, or the California Environmental Quality Act, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible (per the CA Natural Resources Agency). We understand this 303(d) List is not deemed a "project" but listing water bodies as 303(d) will potentially affect any land management activity that is associated with the water bodies proposed for listing. Therefore the USFS feels the CVRWQCB should at a minimum analyze and disclose the potential impacts/effects related to listings. The analysis should consider potential changes in land use, direct and indirect social and economic impacts to affected users, consideration of climate change, and cumulative effects. Listings in some areas may present some level of uncertainty associated with the potential effects and may be considered highly controversial by some stakeholders. Additional information about potential impacts of the listing should be considered and disclosed when there is high uncertainty and/or controversy.

In general, once a water body has been added to a state's list of impaired waters it stays there until the state develops a TMDL and EPA approves it. EPA reporting guidance provides a way to keep track of a state's water bodies, from listing as impaired to meeting water quality standards. States then must develop a TMDL for every pollutant/waterbody combination on the list. An essential component of a TMDL is the calculation of the maximum amount of a pollutant that can occur in waterbody and still meet WQS. The Water Quality State Staff indicated in a recent field trip to the STF that TMDLs would not be developed for listed waterbody reaches until 2027. The listing of reaches on the STF would create inefficiencies and potentially an unnecessary workload on both USFS and CVRWQCB staff. Again we would like to request the CVRWQCB to postpone the 303(d) listing of the reaches on the land we have a responsibility to manage until the best available science issues are resolved and potential impacts are disclosed.

2014 INTEGRATED REPORT - INCONSISTENCIES

Several inconsistencies were identified in the 2014 Integrated Report by USFS staff. Appendix B is inconsistent with Appendix A. Appendix B lists several streams on the US Forest Service (Bourland, Cow Creek [Tuolumne County], Herring Creek, Herring Creek unnamed tributary, Reed creek unnamed tributary, and Cottonwood Creek, unnamed tributary at Cottonwood Meadow), which appears to indicate that these streams are listed or are proposed to be listed as Category 5 (a water body segment where at least one beneficial use is not supported and a TMDL is required, but not yet completed, for at least one of the pollutants being listed for this segment on the 303(d) List (Appendix A)). However, these streams do not appear to be listed in Appendix A.

FACTSHEET INFORMATION

USFS staff are unclear as to what criterion was evaluated, and whether this criterion are applied consistently. For example, several of the factsheets list the pollutant as E. coli, but show that the Water Quality Objective or Criterion applied was the Basin Plan narrative objective for toxicity ("The narrative toxicity objective states, 'All waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This objective applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances.'"). Many of the factsheets do not list the evaluation guideline used.

Listing policy 6.1.2 states that each fact sheet should contain information about the effect of seasonality and events or conditions that might influence data (e.g., flow conditions). This information is not provided in the factsheets.

In several of the factsheets, several lines of evidence appear to be duplicated (same water samples, same pollutant, same references, but listed as several lines of evidence in the factsheet). If there was one exceedance that is duplicated several times, it gives the appearance that there were several exceedances, which is deceiving.

Although the initial listing is not intended to identify a source of pollutants, the factsheets and lines of evidence seem to identify a source (cattle grazing, livestock). At this time we believe that this is speculative, especially where other sources and variables have not been identified or controlled. We request that all mention of a possible source should be removed from the factsheets.

At least one fact sheet states that 2 of 6 samples were collected not at the water body proposed for listing (Elbow Creek), but at a stream approximately 40 miles away in a different watershed (Jawbone Creek). This same factsheet indicates that "Zero of the three geomeans exceeded the total coliform objective." The evaluation guideline titled: "The Total Coliform concentration shall not exceed 1000/100 ml. Guidance for fresh water beaches CA Dep. of Public Health, 2006." indicates there is not a beach and no total coliform data is provided. This conflicts with other information found in your factsheets.

In another fact sheet (Rose Creek), one of the lines of evidence shows the "number of exceedances" as 1, yet the narrative for the line of evidence indicates that "the calculated geometric mean did not exceed the evaluation guideline for E. coli).

These errors and inconsistencies should be corrected prior to adoption of the changes to the 303(d) list. This is another reason the USFS requests that the CVRWQCB postpone listing water body segments on the STF until a more thorough evaluation can be conducted.

The US Forest Service committed to maintaining and improving water quality and is invested in working with the State and the Central Valley Regional Water Quality Control Board to identify water quality impacts and to address issues as they are identified. We are committed to working collaboratively with all stakeholders to better understand the problem and take appropriate action when necessary, but it is important we act prudently as we all have limited resources to address issues. We look forward to continued dialogue with regards to this matter.

If you have any further questions regarding this submittal, please contact Ann Denton, Natural Resource Management Program Area Leader at (209) 288-6284 or by email at adenton@fs.fed.us.

Sincerely,


for JEANNE M HIGGINS
Forest Supervisor

cc: Ann Denton, Mary Moore, Dawn Coultrap, Crispin Holland