

Heal the Bay

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March 30, 2017

California Regional Water Quality Control Board
Los Angeles Region
ATTN: Dr. Jun Zhu
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Jun.Zhu@waterboards.ca.gov

VIA EMAIL

Re: Revisions to the Los Angeles Region 303(d) List

Dear Dr. Zhu,

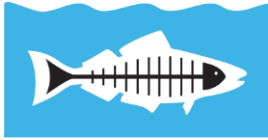
On behalf of Heal the Bay, we submit the following comments on the *Revisions to the Los Angeles Region 303(d) List* (Revised List or 303(d) List). Heal the Bay is an environmental organization with over 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean. We appreciate the opportunity to provide comments on the Revised List.

Data/Information Collection and Timing Delay

In late 2014, Heal the Bay commented on the State Water Resources Control Board's (State Board's) *Proposed Amendment to the Water Quality Control Policy for Developing the Clean Water Act Section 303(d) List*. While we appreciated the chance to comment and the State Board's explanations in their Response to Comments, there are a few concerns that we continue to have regarding the new amendment and its effect on the Revised List.

First, we understand that California is an expansive state and that the State Board's resources are limited in comparison. In this sense we understand but are disappointed that California must implement the "Rotating Basin Approach," when coming into compliance with requests for biennial updates for the federal Clean Water Act's Section 303(d). This will effectively reduce regional updates on impaired waters from every two to every six years.

Compounded on this is the surprising discovery that the State Board is discussing either listing or delisting bodies of water in Region 4 with information and data collected *prior to August 30, 2010* – almost seven years ago. This would be on par with a college admissions officer selecting a prospective student for a university based on their academic performance in 5th Grade. It would have seemed wiser to have at least updated and



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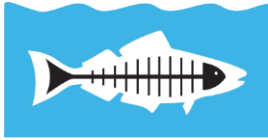
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appended further data and information and possibly re-solicited water quality data from regional stakeholders during the years long interim with respect to whether water bodies are placed on or removed from the Revised List.

Considering this discrepancy in timing from data submittal to listing and delisting proposals, we ask that the State Board and Environmental Protection Agency (EPA) *not* delist any bodies of water that are currently on the *2010 Integrated Report* until more current data is received. This will eliminate the possibility of delisting a water body that is currently impaired, as there is no way to know the condition of the waters in question using data solely from 2010 or before. To err on the side of caution when dealing with our state waters will be in the best interest of our water quality standards and beneficial uses. This seems like a reasonable, precautionary request and is supported by the State Board during the adoption of the policy.

Taken from the State Board Hearing Transcript from Sept. 30, 2004, Board Member Nancy H. Sutley states, "If it's on the list . . . then you have to have some information that says that they [fish] are not dying now and the waterbody is not currently impaired . . ." Though Board Member Sutley is referring to listings that were made by mistake, the principle behind it should still hold true. The intent was to say that information and data on waters should *currently* show that water quality standards are met and that the body of water is not *currently* impaired before being removed from the list. Board Member Sutley goes further to suggest that boards should affirm a lack of *current* impairment before delisting bodies of water by stating she was "Okay with not adding [additional] language [to the Listing Policy] as long as we're all in agreement and that's the direction of the regional boards that you have to look at the current conditions as well [before de-listing]."

This very point is represented in the State Board's *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (State Listing Policy) (Adopted Sept. 30, 2004 and Amended February 3, 2015) in Section 4.11, which states, "When making a delisting decision based on the situation-specific weight of evidence, the Regional Water Board must justify its recommendation by [Bullet 1] Providing any data or information including *current conditions* supporting the decision." We argue that there is no way to demonstrate current conditions with information and data that is aged seven years or more. Because of this it seems in line with State Listing Policy that no waterbodies be delisted for the current 303(d) List. During the next listing/delisting cycle, which will be in 2022, staff will be able to make a more accurate judgement on impairment simply because their information will be more up to date.



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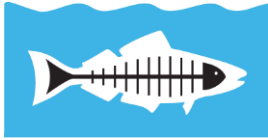
It is Misleading to Entitle this Current Edition the “2016” 303(d) List

It seems off-track and misleading to title this 303(d) list the *2016 Los Angeles Region Clean Water Act Section 303(d) List of Impaired Waters* (Integrated Report) when it only contains information from 2010. Since the State Water Board’s original 2010 solicitation for data was intended for the 2012 list we think it would be much more constructive and accurate to have the current list in question labeled exactly as such and be called the *2012 Los Angeles Region Clean Water Act Section 303(d) List of Impaired Waters*.

If any individual was filing their income taxes using tax information from a certain year, it would remain labeled as the tax return from the original time period, regardless of how long of an extension the individual received. Considering compliance with state and federal law, we could find no mention within the Federal Clean Water Act or the State Listing Policy of how the Integrated Report should be named, only how often it should be submitted. Since the EPA is well aware of the new “rotating basin approach,” and due to the fact that California has successfully amended its own State Listing Policy, we believe there to be no compliance issues for the more accurate renaming.

In addition, it was made clear in the Integrated Report’s “Staff Report” (February 2017) that the 303(d) List for Regions from Group 2 (Regions 3, 5, and 9), which was intended to be passed in 2014, has yet to be approved by the State Board or the EPA. If the State Board were to rename the 2014 Integrated Report the 2012 Integrated Report as well because it has yet to be approved, this would make clear to everyone exactly where the listing’s value lies—by titling both lists from Basin Group 2 and 3, the revised 2012 Integrated Report. This would file nicely with California’s Basin Group 1 (Regions 1, 6, and 7), which would identically be called the 2012 Integrated Report. This is also consistent with the original notice and request for data, titled “Notice of Public Solicitation of Water Quality Data and Information for 2012 California Integrated Report—Surface Water Quality Assessment and List of Impaired Waters.”

Further advantages of this titling would be that future inspection researchers unfamiliar with past reports would know that the listings would correspond much closer to the data from 2010. Looking towards the future, this more accurate labeling will help in clarifying reporting methods. It signifies when agencies made a clean break from when small windows of data were analyzed in favor of the current California Environmental Data Exchange Network (CEDEN) system, which uses a constant, up-to-date stream of information and allows for a more thorough and accurate 303(d) list for Region 4 in 2022. This would also make it crystal clear when the State of California “changed over” to the new “Rotating Basin Approach” in regards to fulfilling their obligations to Section 305(b) of the Clean Water Act.



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The Optimistic Possibilities of CEDEN in 303(d) Listings

As mentioned above, the State Board does have an opportunity going forward with CEDEN concerning water bodies in California. We are heartened to see that despite the fact that Region 4's 303(d) list will not be updated until 2022, that the list will be based on information up until 2021. This reduced lag time will only work to benefit the waters and beneficial uses of California's bodies of water.

Further, as the State Board mentions in its *Comment Summary and Responses for the Proposed Amendment to the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* from January 26, 2015, "Requiring the use of CEDEN will ensure the data used for the 303(d) listing process is of a high quality and includes the necessary information for efficient assessments." It is true that the use of this database is likely to streamline the process for the staff of the Regional Boards, the State Board, the EPA, and any agency that wants to submit pertinent data.

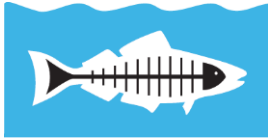
Heal the Bay noticed that the State Board scheduled CEDEN workshops in 2015 to "facilitate greater understanding of the needs of CEDEN users, develop tools to enhance the utility of CEDEN, and provide training on using the CEDEN system." We ask that the State Board provide more workshops now and in the coming years in anticipation of the current and future use of CEDEN by Region 4 Stakeholders. The people and water environment of California only stand to gain from thorough instruction given to invested stakeholders and the data they will provide.

Concerns with Individual Category 4a Delistings from the 303(d) List

Delisting Hermosa Beach and Manhattan Beach for Indicator Bacteria

Beyond our concerns mentioned above with *any* impaired water delistings from the prior 2010 303(d) List, Heal the Bay feels strongly that both Hermosa and Manhattan Beach should remain on the 303(d) List and maintain their current TMDL for Indicator Bacteria. Looking at our past Beach Report Card data, even data solely from the supposed window ending on August 30, 2010 and before, we find it puzzling that either beach would be in consideration for delisting. In 2010 itself, our Hermosa Beach site by Herondo Street outfall was noted for single sample exceedances for *Enterococcus* for 17.6% of samples taken. Averaging exceedances from 2008 to present 2016, the Herondo storm drain outfall has shown *Enterococcus* exceedances 12% of the time. Concerning Manhattan Beach, their 28th Street outfall has shown *Enterococcus* exceedances 10% of the time since 2008.

Both of these beaches are popular swimming and recreation areas and eliminating the TMDL would create the potential for impacts on human health and aquatic life. We would



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highly recommend waiting to remove both beaches from the 303(d) list until data from the past decade can be assessed. Like we discussed above, where uncertainty exists with regards to delisting bodies of water, decisions should be made in favor of protecting water quality, human health and the environment.

Heal the Bay realizes the huge endeavor these 303(d) listings are for all agencies involved. Please be assured that our organization looks forward to working with the Regional Board, the State Board, and the EPA in the future as the 303(d) listing process is further streamlined and more accurate and immediate assessments of our waterways are provided for listings.

Thank you for your consideration of these comments. If you have any questions please feel free to contact us at (310) 451-1500.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven Johnson', followed by a horizontal line.

Steven Johnson
Water Resources Policy Analyst
Heal the Bay