TOWN OF
WINDSOR

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April 18, 2014

Via Electronic Mail and Regular Mail Delivery

Katharine Carter
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403
Katharine.Carter@waterboards.ca.gov

Subject: Public Review Draft Staff Report for the 2012 Integrated Report for the Clean Water Act Section 305(b) Surface Water Quality Assessment and the 303(d) List of Impaired Waters

Dear Ms. Carter:

The Town of Windsor appreciates the opportunity to comment on the North Coast Regional Water Quality Control Board (NCRWQCB's) public review draft list of impaired waters under Section 303(d) of the Clean Water Act ("303(d) list") and the associated documentation. As an NPDES permit holder for the Town's wastewater treatment, reclamation, and disposal facility and as an enrollee in the State's general permits for industrial and municipal storm water discharges, the Town is committed to protecting the quality of surface waters in our watershed. The Town believes that a 303(d) list that is up-to-date and reflective of current water quality conditions in the region is an important tool in prioritizing our combined efforts to improve water quality. The Town especially appreciates the Regional Water Board's attention to correcting the segmentation of Mark West Creek as a separate water body from the Laguna de Santa Rosa. However, as outlined below, the Town is concerned that the draft 303(d) list improperly uses secondary Maximum Contaminant Levels (MCLs) in making a determination regarding the impairment of water bodies.

Secondary MCLs are inappropriate for use as Water Quality Objective

The Town is concerned that the data assessment carried out by the NCRWQCB uses secondary MCLs from Title 22 of the California Code of Regulation, Tables 64449-A (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges). Secondary MCLs apply to treated, finished tap water served to the public for drinking through community water systems. Compliance with these standards was intended to occur "at the tap," not in the receiving waters that serve as the source of supply for municipal drinking water systems. This is especially true for surface waters, where filtration requirements significantly reduce the concentration of total

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suspended solids, including objectionable minerals such as iron, manganese, chloride, sulfate and aluminum, prior to delivery.

The Water Quality Control Plan for the North Coast Region ("Basin Plan," May 2011 edition) clearly establishes the water quality objectives that apply to surface waters in the region, and it does **not** incorporate secondary MCLs as water quality objectives. Clearly, the Basin Plan does refer to the existence of secondary MCLs, stating the following in two footnotes to Table 3-2 (emphasis added):

> *"2. The values included in this table are maximum contaminant levels for the purposes of groundwater* ***and surface water discharges and cleanup****. Other water quality objectives (e.g., taste and odor thresholds or other secondary MCLs) and policies (e.g., State Water Board "Policy With Respect to Maintaining High Quality Waters in California") that are more stringent may apply."*
>
> *"* Constituents marked with an * also have taste and odor thresholds that are more stringent than the MCL listed."*

Footnote 2 states that Table 3-2 should be used for surface water discharges and cleanup, which would seemingly include a purpose such as the 303(d) listing. Indeed, in past 303(d) listing, the NCRWQCB has not generally relied on secondary MCLs for determining impairment.

The NCRWQCB put forth a draft Basin Plan Amendment in February 2012 that proposed to include secondary MCLs as water quality objectives. However, the proposed Amendment has been delayed in response to public comments related to this exact issue. Therefore, it is not only premature to use secondary MCLs in determining impairment for the 303(d) list, but it is also inconsistent with the public process being used for the Basin Plan Amendment. Establishing water quality objectives via the 303(d) list would be an "underground regulation," and could make the 2012 Integrated Report vulnerable to legal challenge.

The Use of Secondary MCLs Obscures the Rightful Purpose of the 303(d) List

The State's policy for listing water bodies as impaired is laid out in the September 2004 *Water Quality Control Policy For Developing California's Clean Water Act Section 303(d) List.* As stated therein and in the Clean Water Act, the purpose of the 303(d) listing is to prioritize waters for the purposes of developing Total Maximum Daily Loads (TMDLs). The use of secondary MCLs, which are intended to address concerns such as taste and order and are not intended to protect aquatic life or human health, are not an appropriate basis for developing TMDLs. This is particularly true for constituents such as aluminum, iron, and manganese for which no specific source is likely to be located.

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The draft 303(d) list includes new listings for aluminum for the mainstem Klamath River from Iron Gate Dam to the Scott River; the mainstem Scott River, the mainstem Mad River, the Lower Russian River, the mainstem of Mark West Creek and the mainstem Russian River, as well as a listing for manganese along the mainstem of Mark West Creek. The Town asserts that the listing for manganese should be removed, as there is no water quality objective for manganese that applies to this water body. The listings for aluminum should be re-assessed using the primary MCL of 1 mg/L in lieu of the secondary MCL of 0.2 mg/L. The Town anticipates that this will result in removal of the listing for impairment by aluminum.

State Policy does not require the use of Secondary MCLs

The State's 303(d) listing policy does not require the use of secondary MCLs as water quality objectives. It refers only to "**applicable** Maximum Contaminant Levels," which the Town interprets to mean those that have been incorporated into Basin Plans.

In closing, the Town appreciates the NCRWQCB's close review of ambient water quality monitoring data to determine which streams may have water quality impairments and may ultimately benefit from a TMDL to address such impairment. However, the listing of streams for aluminum, manganese, and other constituents based solely on secondary MCLs is not required by state or federal policy, and doing so is likely to create a regulatory burden with no expected benefit to water quality. On this basis, the Town requests that the NCRWQCB modify its 303(d) list and 2012 Integrated Report to remove those segments, noted above, that are listed solely on the basis of secondary MCLs for aluminum and manganese.

We thank you for your consideration of these comments. If you have any questions, or if further clarification is desired, please do not hesitate to contact me by phone at (707) 838-5978 or by email at tbertolero@townofwindsor.com.

Sincerely,

T. M. Bertolero

Toni Bertolero
Public Works Director/Town Engineer

Cc: Roberta Larson, California Association of Sanitation Agencies
David Guhin, City of Santa Rosa
David Richardson, RMC Water and Environment

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