

November 30, 2006

Mr. Tom Howard
Acting Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Howard:

Thank you for submitting the Section 303(d) water body list for 2004-2006. We received California's 2004-2006 Section 303(d) submittal on November 24, 2006. I commend the State and Regional Boards for their diligent efforts to improve the water body assessment process that supported the 2004-2006 listing decisions. I am pleased that the State and EPA agreed on more than 99% of the State's assessment determinations. EPA is acting today to approve the State's inclusion all waters and pollutants identified in its three part Section 303(d) list with the exception of Walnut Creek for toxicity.

As requested in State Board resolution 2006-0079, we are still reviewing the State's assessment of Walnut Creek. We are also continuing to review the State's assessment of other waters and pollutants not included on the final list, including the beaches identified in the State Board resolution for additional analysis by EPA. Upon completion of our review, we will transmit a second decision concerning those additional State assessments, and identify additional waters for inclusion on the 303(d) list if necessary. If we identify additional waters and pollutants for inclusion on the 303(d) list, we will provide the public an opportunity to comment on the additions to the list. We expect to make this second decision in early 2007.

We carefully reviewed the State's listing decisions, assessment methodology, and supporting data and information. Based on this review, we have determined that California's 2004-2006 list partially meets the requirements of Section 303(d) of the Clean Water and EPA's implementing regulations. EPA hereby approves the listings identified in the three tables that comprise the State Section 303(d) list:

1. List of Water Quality Limited Segments Still Needing Total Maximum Daily Loads¹,
2. List of Water Quality Limited Segments Being Addressed By USEPA Approved TMDLs, and
3. List of Water Quality Limited Segments Being Addressed By Actions Other Than TMDLs.

The statutory and regulatory requirements, and a summary of our review of California's compliance with applicable requirements, are described in Enclosure 1.

¹ As discussed above, EPA is taking no action at this time with respect to the listing of Walnut Creek for toxicity.

We appreciate your submittal of schedules for TMDL development. We understand these schedules serve the purpose of priority rankings required by federal regulations at 40 CFR 130.7(b). We are not taking action on these schedules as federal regulations do not require EPA to act upon TMDL schedules or priority rankings; however, we expect the schedules will guide the State's TMDL development efforts in the future.

The public participation process sponsored by the State Board included several public hearings and opportunities to submit written comments. The State prepared a responsiveness summary explaining how the State considered comments in the final listing decisions. The State's public participation activities were consistent with federal requirements.

The State Board's approval resolution asks EPA to focus our attention on sediment listings for Klamath River and Pescadero Creek. Regarding Klamath River, the State listed the Klamath River Hydrologic Unit, Lower Hydrologic Area, Klamath Glen Hydrologic Sub Area (HSA) as impaired due to sedimentation/siltation. The State Board approval resolution asks EPA to evaluate whether this listing decision applies to waters on tribal lands. EPA reviewed the geographical delineation of the Klamath Glen HSA and has determined that portions of the Klamath River and its tributaries located in this HSA are located on tribal lands while other portions are located on lands under State jurisdiction. EPA's partial approval of California's Section 303(d) list does not extend to any water bodies located within Indian country, as defined in 18 U.S.C. Section 1151. Therefore, this approval action applies to all waters in Klamath Glen HSA that are under California jurisdiction, including portions of the mainstem Klamath and its tributaries within the HSA, and does not apply to other portions of waters in Klamath Glen HSA that are located in Indian country.

Regarding Pescadero Creek, public testimony presented at the adoption hearing suggested the State Department of Fish and Game and National Marine Fisheries Service may have information indicating Pescadero Creek is not impaired by sediment. EPA did not contact these agencies about this issue and we have received no information from them. In reviewing the listing decision, EPA focused our review on the record compiled and submitted by the State and conducted no independent fact-finding to supplement the assessment record. Therefore, we did not reconsider the State's decision to list Pescadero Creek for sediment. The State should consider any new information concerning Pescadero Creek during the 2008 listing process.

If you have questions concerning this decision, please call me at (415) 972-3572 or Peter Kozelka at (415) 972-3448.

Sincerely yours,
/original signed by/

Alexis Strauss, Director
Water Division

Enclosure