From: ERIKSON R4 9/23/02

Notes from:

Water Body	Santa Clara River Reach 6 (EPA Reach 8)
Stressor/Media/Beneficial Use	Nitrite-nitrogen
Data quality assessment. Extent to which data quality requirements met.	~~Good~~, quarterly NPDES samples → Same from RB sampling
Linkage between measurement endpoint and beneficial use or standard	Average to Good for human health beneficial use requirements
Utility of measure for judging if standards or uses are not attained	Average to Good
Water Body-specific Information	Water Quality changes rapidly due to rising groundwater, tributaries and POTW discharge
Data used to assess water quality	36 observations
Spatial representation	Poor location spread as only 2 ~~spots~~ stations sampled
Temporal Representation	Good seasonal spread as at least quarterly samples, Good annual spread as all data were collected 1997-2002
Data Type	Mg/L Numeric
Use of standard method	Impairment>1 mg/L as per basin plan
Potential Source(s) of Pollutant	Point Source, Non point source
Alternative Enforceable Program	None: Ammonia programs do not specify nitrite levels
Number of samples not in compliance	15
% not in compliance	42%
RWQCB Recommendation	List
SWRCB Staff Recommendation	

Num Std

5 yrs

$NO_3^- + NO_2^-$ Possibly go up

WQO in general

pg. 3-11 Nitrite-N 1 mg

SCR Reach 3 Del 15

3

3-8

Reach Bouquet Cyn West Pier Hwy 99

Not

Water Body	Santa Clara River Reach 6 (EPA Reach 8)
Stressor/Media/Beneficial Use	Nitrate nitrogen + nitrite-nitrogen
Data quality assessment. Extent to which data quality requirements met.	Average to Good
Linkage between measurement endpoint and beneficial use or standard	Average to Good
Utility of measure for judging if standards or uses are not attained	Average to Good, NPDES Quarterly Sampling
Water Body-specific Information	Water Quality changes rapidly due to rising groundwater, tributaries and POTW discharge
Data used to assess water quality	44 observations
Spatial representation	Poor location spread as only 3 spots sampled
Temporal Representation	Good seasonal spread as at least quarterly samples, Good annual spread as all data were collected 1997-2002
Data Type	Mg/L
Use of standard method	Impairment>10 mg/L as per basin plan
Potential Source(s) of Pollutant	Point Source, Non point source
Alternative Enforceable Program	None: Ammonia program does not include Nitrate-nitrogen+Nirtrite-nitrogen limits
Number of samples not in compliance	1
% not in compliance	2.3%
RWQCB Recommendation	Delist
SWRCB Staff Recommendation	

NPDES Permit: CSDLAC
more detailed RB data → Ambient
Below discharge vicinity NPDES station

Reason
2nd Single area
gw ... only
at outfall.

Water Body	Santa Clara River Reach 6 (EPA Reach 8)
Stressor/Media/Beneficial Use	Dissolved Oxygen
Data quality assessment. Extent to which data quality requirements met.	Poor overall Lots of samples NPDES Mon
Linkage between measurement endpoint and beneficial use or standard	Poor overall, aquatic life stressor is in evening and samples taken during mid-day.
Utility of measure for judging if standards or uses are not attained	Poor
Water Body-specific Information	Water Quality changes rapidly due to rising groundwater, tributaries and POTW discharge
Data used to assess water quality	144 observations
Spatial representation	Poor location spread as only 1 spot sampled
Temporal Representation	Poor daily spread as expect DO Diurnal cycle and all samples taken 9am-2 pm when DO should be elevated, Good seasonal spread as every month sampled equally, Poor annual spread as all data were collected 1999-2001
Data Type	Dissolved oxygen meter
Use of standard method	Impairment <5 mg/L as per basin plan
Potential Source(s) of Pollutant	Point Source, Non point source
Alternative Enforceable Program	None: Ammonia program does not specify DO limits
Number of samples not in compliance	2
% not in compliance	1.3%
RWQCB Recommendation	Do not delist due to poor data distribution
SWRCB Staff Recommendation	Delist

No 24 hr sampling (-)

Downstream (300 below)

Mon

2 yrs

96 data show low D.O.

No data to indicate low D.O. at night.

Original 96: (20) 4.2-10.8 diurnal: mean (7.4) <5

20 pts @ various times (-)

Need more Data: MPL

Water Body	Santa Clara River Reach 6 (EPA Reach 8)
Stressor/Media/Beneficial Use	Organic Enrichment
Data quality assessment. Extent to which data quality requirements met.	Examined Algae % cover: ~~Poor overall~~
Linkage between measurement endpoint and beneficial use or standard	Algae % cover and aquatic life beneficial use: Poor overall
Utility of measure for judging if standards or uses are not attained	Algae % cover: Poor
Water Body-specific Information	Water Quality changes rapidly due to rising groundwater, tributaries and POTW discharge
Data used to assess water quality	10 observations
Spatial representation	Poor location spread as 2 spots sampled
Temporal Representation	Fair seasonal spread as summer and fall measured, poor annual spread as all data were collected in 2001-2002 (1 yr)
Data Type	% cover floating algae
Use of standard method	Impairment>30% cover as per literature value (See RWQCB recommendation on Malibu for algae)
Potential Source(s) of Pollutant	Point Source, Non point source
Alternative Enforceable Program	None: Ammonia program does not specify algae limits
Number of samples not in compliance	2 → 2 > 30
% not in compliance	20%
RWQCB Recommendation	Do not delist due to poor data quality and number of samples not in compliance
SWRCB Staff Recommendation	

Algal is a surrogate for Organic enrichment
NO TOC, DOC, POC
Algae a symptom of undiagnosed problem.

① [illegible]:

② 1128: Elizabeth

R3: Nitrate De List

[illegible] Nitrate

626-429-1881

R4
SCR

MEMORANDUM

DATE: September 20, 2002

TO: Regional Water Quality Control Board for the Los Angeles Region

CC: Santa Clara River Nutrient TMDL Steering Committee

FROM: Los Angeles County Sanitation Districts

SUBJECT: Applicability of the CWA and the CWA Section 303(d) TMDL Program to the Groundwater Recharge (GWR) Use

Per the conversation at the September 9th steering committee meeting on the Santa Clara River (SCR) nutrient Total Maximum Daily Load (TMDL), the following is our response to the Regional Board's interpretation of the applicability of the Clean Water Act, including the Section 303(d) TMDL Program , to the GWR beneficial use.

FACTUAL BACKGROUND

The Los Angeles Water Quality Control Plan ("Basin Plan") designates groundwater recharge ("GWR") as an existing, potential, or intermittent beneficial use for numerous Inland Surface Waters in the region, including the Santa Clara River. The Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") believes that once GWR has been designated as a beneficial use, the use becomes a federally recognized and enforceable water quality standard under Section 303 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"). As a result, the Regional Board is advocating the listing of waters and establishment of total maximum daily loads ("TMDLs") under Section 303(d) of the CWA to protect the GWR beneficial use. This memorandum addresses the Regional Board's ability to establish TMDLs to attain the GWR use under the Clean Water Act.

ISSUE

Under the Clean Water Act, can the Regional Board list surface waters for an impairment of a GWR use, and thus, establish TMDLs under section 303(d) of the Act?

DISCUSSION

A. There Are No GWR Water Quality Standards.

Section 303(c) of Clean Water Act requires the adoption of water quality standards established in order to accomplish the Act's goal of achieving, wherever attainable, "fishable" and "swimmable" waters. *See* 33 U.S.C. §1251(a)(2). These standards shall consist of:

(1) the designated use of the navigable waters involved, and

(2) the water quality criteria for such waters based upon such uses.

See 33 U.S.C. §1313(c)(2)(A).

The use at issue here is the Ground Water Recharge (GWR) use, which is defined in the Basin Plan as "uses of water for natural or artificial recharge of groundwater for purposes of future extraction, maintenance of water quality or halting seawater intrusion into freshwater aquifers." *See* Basin Plan at 2-1. This use has no relation to the Act's goal uses related to in-stream aquatic life (fishable uses) or to recreation (swimmable uses).

More importantly, there are no criteria applicable to the GWR use specified in the Basin Plan or in the National Toxics Rule (NTR) or California Toxics Rule (CTR). *See* 40 C.F.R. §131.36 and §131.38. The NTR and CTR criteria apply to aquatic life protection and human health protection (for consumption of water and organisms from the applicable surface waters.) *Id.* The Basin Plan contains objectives or criteria applicable to a domestic and municipal water supply (MUN) use in both surface and ground water. *See* Basin Plan at 3-8 and 3-18. However, the NTR, CTR, and Basin Plan do <u>not</u> assign the MUN criteria to the GWR use. *Id.* at Chapter 3. Therefore, there is no federally approvable water quality standard as one of the two requirements under CWA §303(c)(2)(A), namely the water quality criteria, are absent .

B. A TMDL Cannot Be Done if There Is No Applicable Water Quality Standard.

CWA section 303(d) requires States to identify those waters within its boundaries for which technology based effluent limitations under section 301(b)(1)(A) and (B) were not stringent enough to implement any water quality standard applicable to such waters. 33 U.S.C. §1313(d)(1)(A). Then, section 303(d) requires each State to establish TMDLs for those pollutants suitable for such calculation when particular waters are identified as priority waters. 33 U.S.C. § 1313(d)(1)(C). The term "pollutant" means "dredged spoil, solid waste, incinerator residue, [etc.] discharged into water." 33 U.S.C. § 1362(6). Section 502(16) states that "[t]he term 'discharge' when used without qualification includes a discharge of a pollutant, and a discharge of pollutants." 33 U.S.C. § 1362(16). A "discharge of a pollutant" is defined as "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12)(A). "Navigable waters" are defined in section 502(7) as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). Thus, the Regional Board can only establish TMDLs for pollutants discharged into navigable waters that are not implementing the applicable water quality standards.

As stated in section A. above, there are no applicable water quality standards for GWR. Thus, a water body cannot be listed on the basis of a GWR use, and a TMDL cannot be performed to implement a non-existent "water quality standard."

C. The Language and Legislative History of the Clean Water Act Indicates That Groundwater May Not Be Regulated Under the Clean Water Act.

Numerous courts have addressed the issues of whether groundwater is a "navigable water" under the Act, and, thus, whether the CWA regulates groundwater. All courts agree that isolated, non-migratory groundwater, such as wells, are not regulated by the Act. *See Exxon Corp. v. Train,* 554 F.2d 1310, 1330-1331 (5th Cir. 1977) (regarding discharge of wastewater into isolated, non-migrating disposal wells); *United States v. GAF Corporation,* 389 F. Supp. 1379, 1385 (S.D.Tex. 1975) (regarding disposal of organic chemical wastes by injecting the waste into deep wells).

Even groundwater that is hydrologically connected to "navigable waters" of the United States has been held to not be regulated under the CWA.[1] The language and legislative history of the Act show that the CWA does not regulate tributary groundwater. The language of the CWA clearly sets forth a pattern of "federal information gathering and encouragement of state efforts to control groundwater pollution - but not of direct federal control over groundwater pollution [under the CWA]." *Exxon Corp. v. Train,* 554 F.2d 1310, 1322 (5th Cir. 1977).

Specifically, the permitting and TMDL provisions of the Act, such as section 402 and 303(d), make no reference to groundwater. In *Umatilla Water Quality Protective Assn. v. Smith Frozen Foods ("Umatilla"),* 962 F. Supp. 1312 (D. Ore. 1997), the Court, after reviewing the various provisions of the Act, found that "when Congress wanted certain provisions of the CWA to apply to groundwater it stated so explicitly." *Id.* at 1318. *Umatilla* concerned an allegation that the defendant was allowing sodium and chloride to leak from a lagoon to groundwater that traveled to a navigable creek. The Court held that, in part, due to the language of the Act, tributary groundwater was not regulated by the Act, thus, the NPDES requirement did not apply to it. *See also Allegany Environmental Action Coalition v. Westinghouse Electric Corporation,* 1998 U.S. Dist. LEXIS 1838, 7 (D. Penn. 1998).

The legislative history of the Act further indicates that Congress did not intend for the Act to apply to tributary groundwater. In *Village of Oconomowoc Lake v. Dayton Hudson Corp.,* 24 F.3d 962 (7th Cir. 1994), plaintiffs, in an attempt to stop the development of a warehouse, sued Dayton Hudson alleging that the retention pond behind the warehouse was seeping pollutants into the groundwater that flowed into navigable lakes and streams in violation of the CWA. The Seventh Circuit Court of Appeals relied on the legislative history of the CWA to hold that tributary groundwater cannot be regulated under the Act. Specifically, the Court found that during the 1972 amendments of the Act, the Senate Committee on Public Works, in explaining why it had not accepted the addition of groundwater to the scope of the CWA, stated:

---

[1] Groundwater that is hydrologically connected to "navigable waters" of the United States will be referred to as "tributary groundwater" in this memorandum.

> Several bills pending before the Committee provided authority to establish Federally approved standards for groundwaters which permeate rock, soil and other subsurface formations. Because the jurisdiction regarding groundwaters is so complex and varied from State to State, the Committee did not adopt this recommendation.

Id. at 965 (citing S. Rep. No. 414, 92nd Cong., 1st Sess. 73 (1972)). In addition, the House specifically rejected an amendment that would have brought groundwater within the permitting and enforcement sections of the Act. *See Umatilla* at 1318-1319 (citing 118 Cong. Rect. 10,669 (1972)). Since the failure of a proposed amendment strongly advocates against a judgment that Congress intended a result that it expressly declined to enact, the *Dayton Hudson* Court held that the Act's provisions do not extend to tributary groundwater. *Id.* at 966; *see also Umatilla* at 1318-1319 (Stating that the legislative history of the Act "suggests that Congress did not intend to regulate groundwater in any form.").

In addition, though EPA has noted in non-binding guidance documents the potential connection between groundwater and surface water, EPA's informal statements have been contradicted. *See* Preamble to NPDES Permit Application Regulations for Storm Water Discharges, 55 Fed. Reg. 47990, 47997 (Nov. 16, 1990) ("This rulemaking only addresses discharges to waters of the United States, consequently discharges to groundwaters are not covered by this rulemaking unless there is a hydrological connection between the groundwater and a nearby surface water body."); *Cf.* Office of General Counsel Opinion (December 13, 1973) ("Discharges into groundwaters are not included [in the definition of 'discharge of a pollutant.' Accordingly, permits may not be issued, and no application is required, unless a discharge into navigable waters is proposed or is occurring."). Thus, both the *Umatilla* Court and the *Dayton Hudson* Court found that EPA's informal references to tributary groundwater should not be given deference because EPA has not promulgated a *formal, consistent* interpretation of the CWA's authority over tributary groundwater. *Dayton Hudson* at 966; *Umatilla* at 1319. Furthermore, practically speaking, by allowing groundwater to drive the establishment of TMDLs and to create new wasteload allocations to be imposed under the NPDES program, "a new level of uncertainty and expense [would be attached] to the NPDES permitting and would expose potentially hundreds of ... permittees to current and future litigation." *Umatilla* at 1320.

Based on the above-cited case law, the language of the Act, and the legislative history of the Act, groundwater is not a "navigable water" of the United States regulated under the CWA. Therefore, the Regional Board cannot justify its actions on the basis of CWA section 303(d), cannot list surface waters on the State's 303(d) List for an impairment of the GWR use, and cannot establish TMDLs, under section 303(d) of the Act.

D. The Regional Board Cannot Establish TMDLs Pursuant to State Law Either.

State law provides no independent authority for establishing TMDLs for waters of the State (e.g., groundwater). Further, because there are no water quality objectives in the Basin Plan

for protection of the GWR use, there is no requirement or authority for the Regional Board to adopt a program of implementation under Water Code §13242. Before the Regional Board could justify a TMDL-like implementation plan, the Regional Board would have to adopt objectives to protect the GWR through a Basin Plan amendment after complying with the mandates of Water Code § 13241, including assuring that the uses are past, present or probable future uses, and taking into account economic considerations.

Furthermore, there is no legal or technical basis for assuming that all overlying surface waters are MUN, just because there is a GWR use designation. The GWR use may be imposed on a particular water body solely on the basis of extraction of water for non-MUN use, maintenance of non-MUN water quality, or to halt saltwater intrusion, in instances where the groundwater already exceeds any criteria for use as MUN. *See* SWRCB Res. 88-63 exceptions to designating groundwater as MUN. Even where the underlying groundwater has been properly designated as and/or is being used for MUN uses, the MUN objectives need not apply in the overlying surface water in order to protect the groundwater's MUN use. Factors such as soil aquifer treatment and dilution will likely justify a less stringent objective when GWR objectives, currently lacking, are ultimately set.

CONCLUSION

The CWA 303(d) TMDL provisions do not apply to the GWR use because there are no applicable water quality objectives/criteria set to specifically protect the GWR use. Further, the legislative history and language of the CWA indicate that Congress never intended the CWA to regulate groundwater, and EPA has never set forth a definitive regulation explicitly incorporating groundwater, tributary or otherwise, into the requirements of the CWA. Therefore, it is improper for the Regional Board to apply section 303(d) to groundwater or the GWR use.

Post-it™ Fax Note 7671	Date 8/29/02	# of pages ▶ 21
To Melenee Emanuel	From Tracy Versets	
Co./Dept. SWRCB	Co. RB4	
Phone # 916 341 5271	Phone # 213 576 6666	
Fax # 916 341 5550	Fax #	

August 29, 2002

To: Renee DeShazo

From: Elizabeth Erickson

Subj: Response to Comments for 2000 303(d)listing for Nitrate/Nitrite and Organic Enrichment/DO for Reach 6 (EPA Reach 8) of the Santa Clara River

The County Sanitation Districts of Los Angeles(CSDLA) submitted a comment letter dated June 14, 2002 which included new data and requested that Reach 6 (EPA Reach 8) be delisted. I have completed additional analysis of the new data, the previous data, and the components of the best professional judgement of the recommendation to retain the listing for nitrate/nitrite and I summarize these results in detail below. A summary of comments for the nutrient listing questions on this reach is also provided.

Summary

The new data set was collected over only two years of the sample period. Some submitted data was incorrectly attributed to this reach, while it was collected in the adjacent downstream reach, which has more dilution.

The downstream reach has a lower objective (5 mg/L) than the reach for which delisting is requested. Of eleven samples taken in the downstream reach immediately over the reach boundary (station RC), 4 or 36% of the nitrate-nitrite as nitrogen exceeded the 5 mg/L objective, demonstrating that the nutrient levels in the upstream reach are high enough to prevent attainment of the objective at every location in the downstream reach.

A nutrient TMDL is currently underway in this reach proposed for delisting and ongoing sampling efforts and visual observations show the presence of algae and nitrate-nitrite and nitrogen exceedances in this reach.

Although the discharger claims that the ammonia specific objective in the Basin Plan will require compliance with the ammonia objective by 2003, this requirement will not address nitrate, DO or organic enrichment objectives. Further, the discharger has not submitted any data or reports confirming progress to attain the ammonia objective at their plant.

Based on the insufficient data set and the uncertainty in achieving the ammonia objectives, Regional Board staff recommends retaining the listings for nitrate-nitrite, organic enrichment/DO in the reach.

Location and Objectives

Reach 6 (EPA Reach 8) lies between the Bouquest Canyon Bridge and the west pier of the Highway 99 bridge (see figure) . It receives flow from CSDLA's Saugus Water Reclamation Plant, Santa Clara River (dry), South Fork of the Santa Clara River(dry), Bouquet Creek and

rising groundwater. The Santa Clara River and the South Fork of that river are both dry at this location, but maintain underflow in alluvium with unusually high transmisivity. The Santa Clara River becomes a gaining river at the downstream end of the reach which lies within the Holser and San Gabriel Fault zones. The faults act as a water barrier which force up the underflow and other groundwater from the majority of the upper Santa Clara Watershed.

The nitrate plus nitrite objective in Reach 6 (EPA Reach 8) is 10mg/L. The nitrite and nitrate objectives come from the beneficial use for groundwater recharge and are 1 mg./L and 10 mg/L respectively. The reaches immediately downstream and upstream have a lower nitrate plus nitrite objective of 5 mg/L. These also represent historical conditions in the river.

Impairment

The nitrate plus nitrite levels represented in the 2000 303(d) data in Reach 6 (EPA Reach 8) are high enough to prevent attainment of the objective in the downstream reach which is listed for nitrate/nitrite, even if the newly submitted data show that Reach 6 does not exceed the objectives for this nutrient measurement alone. In fact, the data submitted for the 303(d) analysis of that downstream reach comes from within a half mile of the downstream end of the Reach 6 (EPA Reach 8). At that Receiving Water Station RC, 36% of the samples exceed the objective for Reach 5 (EPA Reach 7) of 5 mg/L.

The entire data set submitted for analysis does not represent an even distribution in time or space, but provides data in a biased manner. As an example, the new data submitted for Reach 6 (EPA Reach 8) was collected at two locations, a receiving water station below the Saugus outfall, at the extreme upper end of the reach, and at the Highway 99 bridge, the extreme downstream end of the reach. While CSDLA is correct in that the two data sets together show attainment of the 10 mg/L standard for nitrate plus nitrite in Reach 6 (EPA Reach 8), the data collected at the lower end of the reach included half of the samples, but only 1 ½ years of data. In this small data set alone, 26% of the nitrate plus nitrite data exceeded the 5 mg/L objective of the downstream reach (which lies within a half mile) but meets the 10 mg/L for the reach in question. In the upper end of the reach, a full 4 years of data were reported. Finally, in the comment letter by CSDLA, as much as half of the data presented graphically to demonstrate attainment of the objectives comes from the receiving water station RC, which lies in the downstream reach. These data biases are further demonstrated by comparison with data collected by Regional Board staff, but not used in the 303(d) analysis. Among the 23 samples collected throughout the reach, 14% of the nitrate plus nitrate values in Reach 6 (EPA Reach 8) lay between the downstream objective of 5 mg/L and the objective of 10 mg/L and 12% of the nitrate samples exceeded the objective of 10 mg/L.

Reach 6 (EPA Reach 8) should be listed for nitrite. CSDLA did not include all of the water quality data submitted for their NPDES permit No. CA005431 for the 303(d) analysis and in fact not all of this data was used in the assessment. Receiving water levels in Reach 6 (EPA Reach 8) were evaluated for this memo as reported between 1997 and 2001. Of 20 nitrite samples taken,

15 exceeded the criteria of 1 m/gL, for 75% exceedance. Because this analysis postdates the submission of listing recommendations for 303(d) a new listing has not been recommended, but our permitting group has been asked to prepare a Notice of Violation.

Reach 6 (EPA Reach 8) should be listed for algae. Algae problems have been documented in both Reach 5 and 6. Figures are attached which demonstrate that in October 2001 for Reach 5 and in June 2002 for Reach 6, the algae problem probably exceed the RWQCB-LA Basin Plan Criteria (pg3-8) which states that " waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses." Some of these algae problems, including chorophyll-A mass measurements were documented in October 2001 and should be publically available this year. Access problems, as described below, have prevented further documentation of these observations and the lack of confirmation is the reason Reach 6 (EPA Reach 8) was not recommended for algae listing in the 2000 303(d) listing cycle.

Reach 6 (EPA Reach 8) might also be listed for coliform. RWQCB samples for coliform were collected on May 4, 1999, but were not evaluated for this 303(d), partially due to the difficulties with duplicating the sample due to access problems. On that date, 9000 MPN total coliform was recorded at Bouquet Canyon bridge and 700 was recorded at Highway 99. Additional sampling of these high levels is expected to demonstrate a coliform impairment.

Public Verification of Data Used for Listing

The RWQCB-LA has not be able to access the site sufficiently to verify the water quality information used in this request for delisting. As two examples of these continuous problems, a RWQCB funded study by UCLA, which was designed to document nutrient impairments, requested access of the land owner, Newhall Land and Farming, on Aug 13, 2001 for an October study after the Newhall had signed an MOU agreeing to participate in monitoring. The samplers were ultimately asked to leave the property before completing their assessement of Reach 6 (EPA Reach 8) when they accompanied CSDLA during their sampling of the receiving water stations (see emails attached). Citizen monitoring groups were also denied access to this property in June 2002. When the attached photos were finally taken on City of Santa Clarita property in that month, Newhall responded by saying that access to the sampling point would not be allowed. This problem has been experienced by other agencies, and resulted in an incomplete assessment of the water quality problems in the area. For example, approval of Newhall's development plans by the Los Angeles County Supervisors was delayed this summer after a Fish and Game search warrant revealed that they had illegally graded endangered spine flowers.

Attachments:

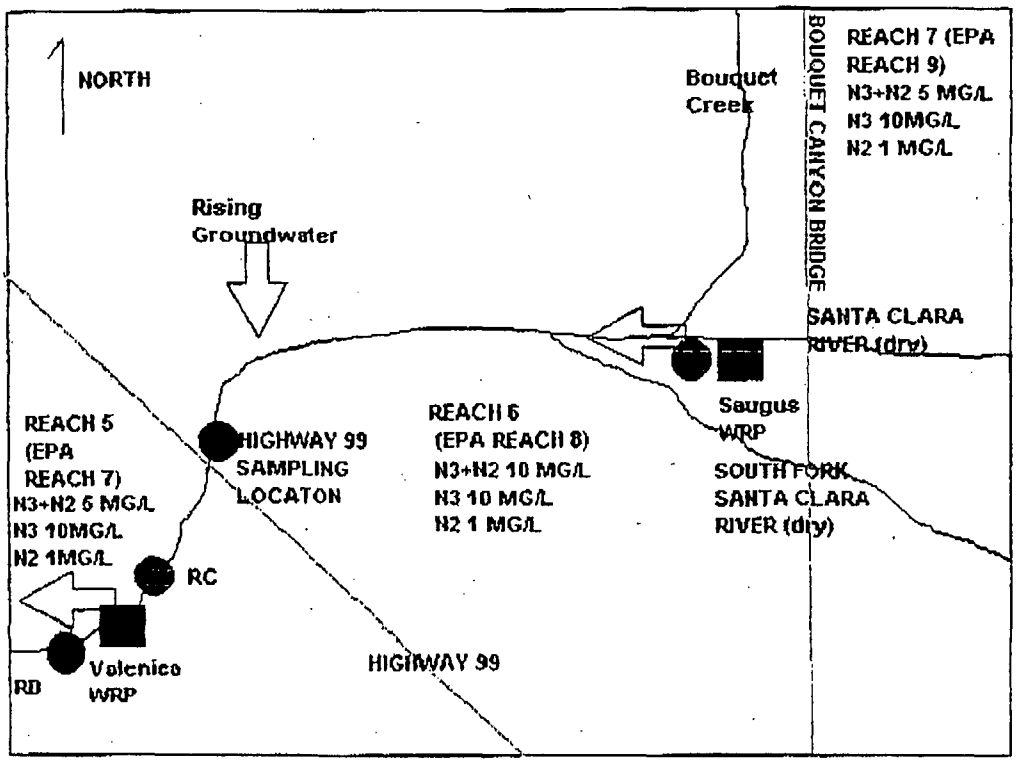
Figure: location map

Picture 1: algae at Receiving Water Station RD below Valencia WRP Outfall, October 2001.
Picture 2: Algae looking upstream from historic Railroad Bridge site between MCBean Parkway and San Fransisquito Creek on Santa Clara River, June 30, 2002-08-29
Picture 3: Algae beneath historic Railroad Bridge site between MCBean Parkway and San Fransisquito Creek on Santa Clara River, June 30, 2002-08-29

Tabel New data submitted
Table LACSD data from RC
Table NPDES report data
Table Regional Board Data not submitted for 303(d) listing

Emails from Mark Subbotin (Newhall Land) Aug 14, September 10, 18, and 19, 2001.
Emials for Heather Merenda, City of Santa Clarita, July 30, 2002.

Santa Clara River: Location Map for Reach 6 (EPA Reach 8)



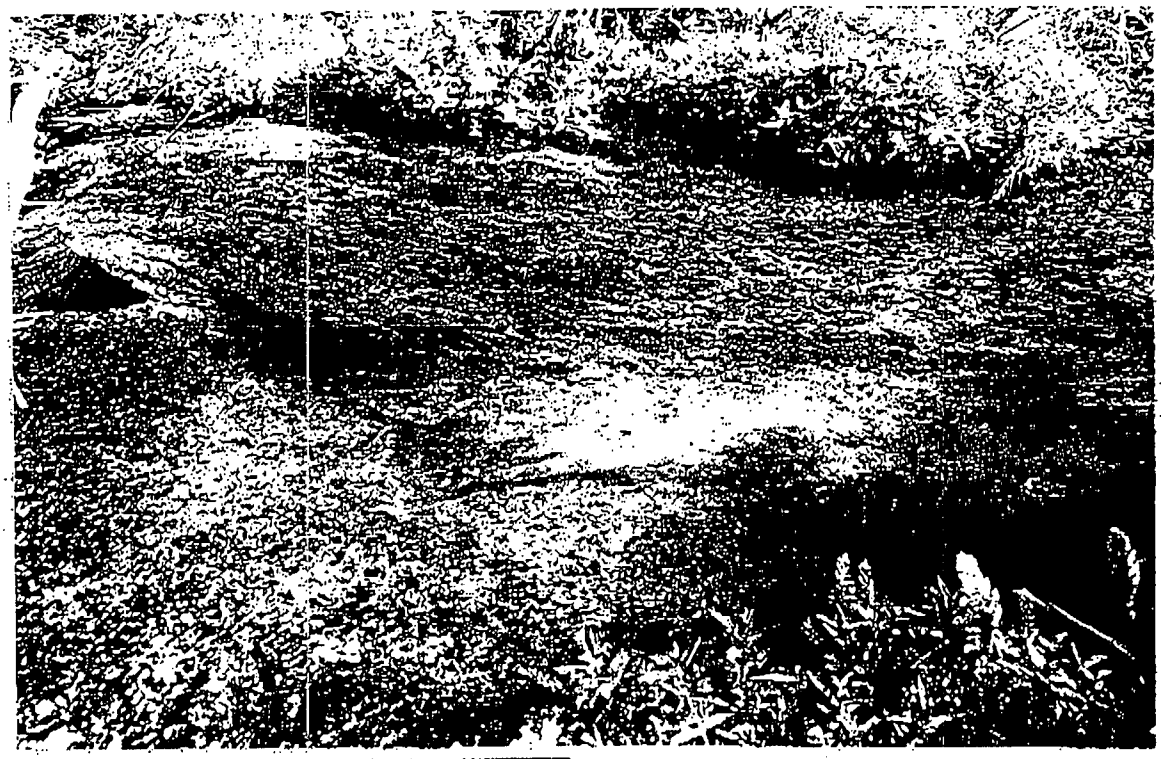
Not to scale, locations are approximate

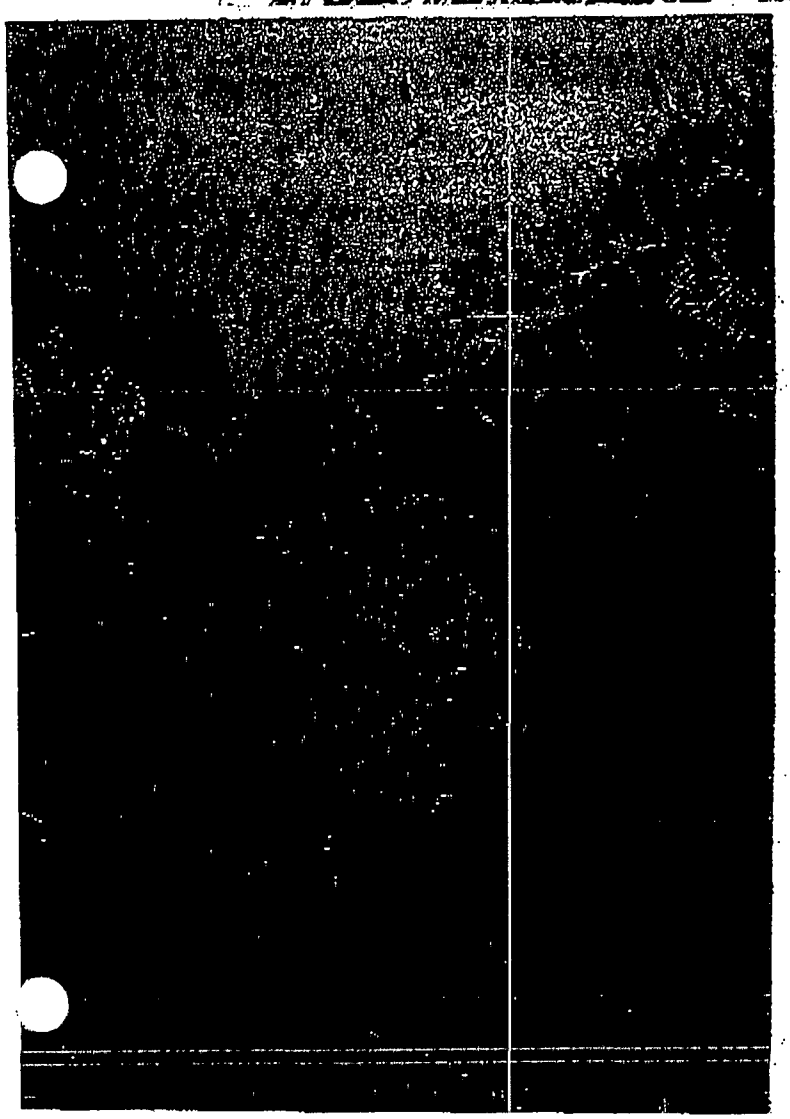
EFFLUENT DISCHARGE

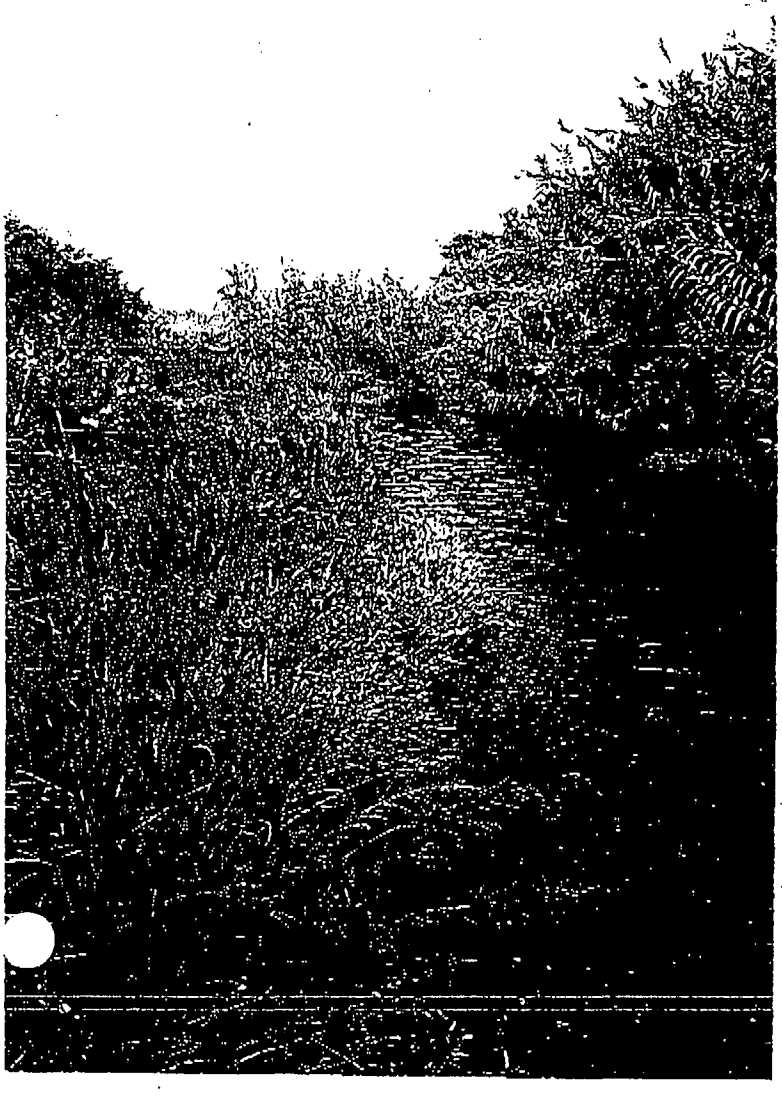
MONITORING POINT

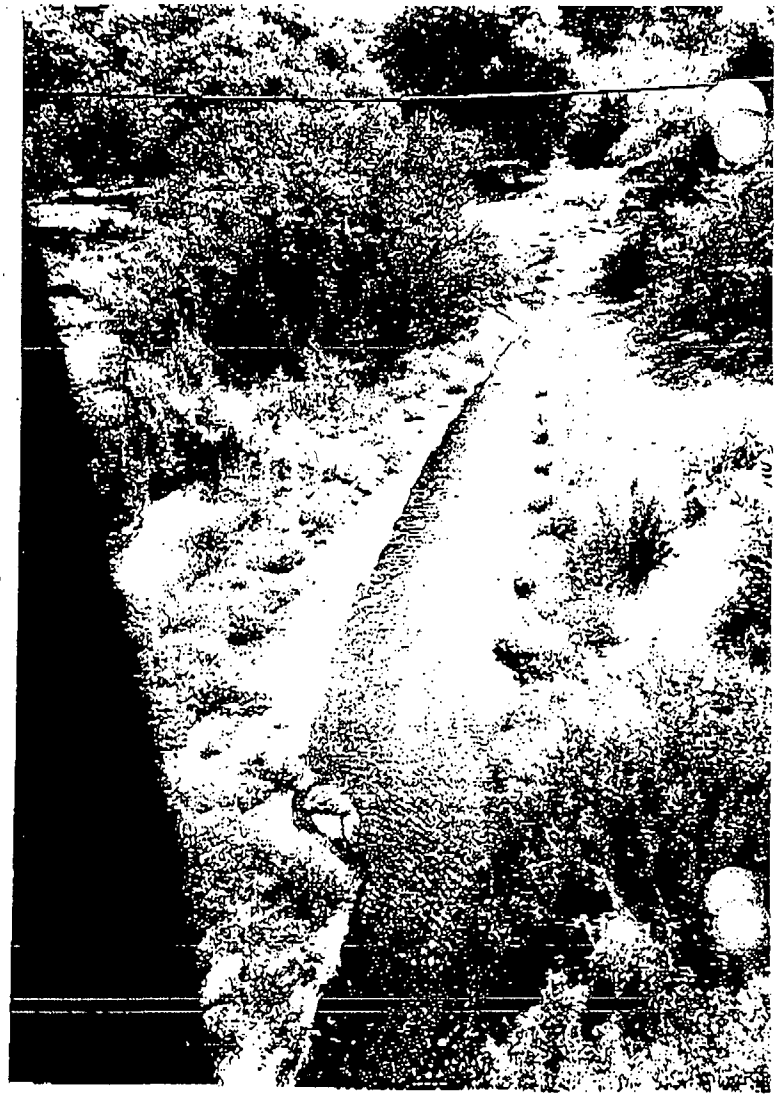
SOURCE OF FLOW

HIGHWAYS AND REACH BOUNDARIES









More importantly however, from your description of the work scope, it is clear that RWQCB is embarking upon a monitoring program as indicated in the MOU you refer to. RWQCB had committed to work in "good faith" w/ stakeholders, rather than launch a sampling and monitoring program without any stakeholder input whatsoever. As a result, I question why you think the MOU is "binding".

For clarification, our intention in signing the MOU was to allow for future monitoring based upon the RWQCB staff recommendation for a Basin Plan Amendment to set a chloride limit of 143 mg/L. Future monitoring per the MOU was to determine what if any effects would be experienced by adopting the new chloride objective.

Prior to allowing access for monitoring purposes, we would be happy to make our offices available for RWQCB to convene a meeting with all affected stakeholders to discuss and develop a monitoring program to "include identification of surface water and ground water monitoring locations", "schedule and frequent of sampling events", "methodologies for data analysis", and other factors as generally described in the MOU. That would also be a good forum to provide a detailed technical description of the methodology of the TMDL development to gain stakeholder support.

Mark Subbotin
Newhall Ranch Company
661-255-4069
<msubbotin@newhall.com>

-----Original Message-----
From: Elizabeth Erickson [mailto:eerickso@rb4.swrcb.ca.gov]
Sent: Monday, August 13, 2001 4:44 PM
To: Mark Subbotin
Cc: Deborah Smith; Jonathan Bishop; Melinda Becker; Shirley Birosik; stevelee@ucla.edu
Subject: Access to Newhall Land

Hello Mark,

I am following up on our conversation from this morning at the Watershed meeting about access to Newhall property for summer season water quality sampling of the Santa Clara River. You had asked for some additional information concerning our efforts, specifically: scope of work, dates, evidence of insurance and access to the data generated as soon as it becomes available to us.

Work scope:
We are continuing sampling efforts in support of ongoing and future TMDL, specifically the Santa Clara chloride and nutrient TMDLs due for completion within the next year. UCLA will be completing sampling and macroinvertebrate

From: Mark Subbotin <msubbotin@newhall.com>
To: "'Melinda Becker'" <mbecker@rb4.swrcb.ca.gov>, Elizabeth Erickson <eerickso@rb4.swrcb.ca.gov>
Date: Tue, Aug 14, 2001 3:33 PM
Subject: RE: Access to Newhall Land

Melinda, Elizabeth told me on Tuesday she was going to actually be taking samples tomorrow.

Why isn't this being done in cooperation with SCR stakeholders, so that efficient coordination with many of the existing efforts by stakeholders is not duplicated or can be expanded upon? I am perplexed as to why RWQCB staff has deliberately chosen not to involve affected local agencies and interested parties in this sampling effort, and in the formulation of the TMDL.

-----Original Message-----
From: Melinda Becker [mailto:mbecker@rb4.swrcb.ca.gov]
Sent: Tuesday, August 14, 2001 2:49 PM
To: Mark Subbotin; Elizabeth Erickson
Cc: s green CSD (E-mail); v conway (E-mail); Dennis Dickerson; Deborah Smith; Jonathan Bishop; Shirley Birosik; J Fosselman (E-mail); J Lambert (E-mail); stevelee@ucla.edu
Subject: RE: Access to Newhall Land

Mark: I have spoken with Elizabeth today and she has indicated that the tour scheduled for tomorrow is merely to select sampling sites and can be accomplished without accessing Newhall Ranch's property. Please feel fee to contact me if you have any additional questions.

Best regards,
Melinda Becker

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
***For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrcb.ca.gov/news/echallenge.html ***

>>> Mark Subbotin <msubbotin@newhall.com> 08/14/01 10:23AM >>>
Elizabeth, as I indicated at yesterday's meeting, Newhall requires that anyone seeking access to our property first obtain an access Permit and carry it with them to demonstrate their right to be on the property. This would include trips you have made yourself in the past to gather samples, as recently as in May(?) of this year. This procedure has been established by Newhall to control trespass which frequently occurs on private property (which is nearly all of the river) without permission. Regrettably this will delay your trip this Thursday.

Regional Board Data not submitted		N3+N2					
organic nitrogen	0.58				2/15/01	old road bridge	
nitrate nitrogen	2.29	2.35			2/15/01	old road bridge	
nitrite-nitrogen	0.06				2/15/01	old road bridge	
nitrate nitrogen	2.21	2.27			2/21/01	old road bridge	
nitrite-nitrogen	0.06				2/21/01	old road bridge	
organic nitrogen	0.29				2/21/01	old road bridge	
nitrate nitrogen	2.3	2.315			3/1/01	old road bridge	
nitrite-nitrogen	<.03				3/1/01	old road bridge	
total nitrogen	2.86				3/1/01	old road bridge	
nitrate nitrogen	2.33	2.38			3/1/01	old road bridge	
nitrite-nitrogen	0.05				3/1/01	old road bridge	
nitrate nitrogen	1.4	1.415			5/3/99	old road bridge	
nitrite-nitrogen	<.03				5/3/99	old road bridge	
nitrate nitrogen	3.2	3.25			5/4/99	old road bridge	
nitrite-nitrogen	0.05				5/4/99	old road bridge	
total nitrogen	0.2				5/4/99	old road bridge	
nitrate+nitrite(N)	7.8	7.8			10/23/01	old road bridge	
nitrate-nitrogen	5.5				2/15/01	at Bouquet Canyon	
nitrite-nitrogen	<.03				2/15/01	at Bouquet Canyon	
nitrate-nitrogen	2.9				2/20/01	at Bouquet Canyon	
nitrite-nitrogen	<.03				2/20/01	at Bouquet Canyon	
total nitrogen	5.33				3/1/01	at Bouquet Canyon	
total nitrogen	13.9				3/1/01	at Bouquet Canyon	
nitrate nitrogen	12.3				3/1/01	at Bouquet Canyon	
nitrite-nitrogen	<.03				3/1/01	at Bouquet Canyon	
nitrate-nitrogen	0.27				3/1/01	at Bouquet Canyon	
nitrite-nitrogen	0.09				3/1/01	at Bouquet Canyon	
nitrate-nitrogen	3.13				3/1/01	at Bouquet Canyon	
nitrite-nitrogen	0.06				3/1/01	at Bouquet Canyon	
nitrate-nitrogen	3.5				5/4/99	at Bouquet Canyon	
nitrite-nitrogen	0.2				5/4/99	at Bouquet Canyon	

LACSD data from receiving water station RC as submitted for 97-00									N3+n2=								
NITRATE (AS	LIQUID		2.15	MG/L	G	8/19/97	11:30	SCR-RC	2.16	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.01	MG/L	G	8/19/97	11:30	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		3.54	MG/L	G	11/5/97	11:30	SCR-RC	3.55	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.01	MG/L	G	11/5/97	11:30	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		3.03	MG/L	G	2/11/98	11:35	SCR-RC	3.03	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.05	MG/L	G	2/11/98	11:35	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		2.32	MG/L	G	5/21/98	11:30	SCR-RC	2.43	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.11	MG/L	G	5/21/98	11:30	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		3.54	MG/L	G	8/19/98	10:50	SCR-RC	3.57	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.03	MG/L	G	8/19/98	10:50	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		5.02	MG/L	G	11/5/98	10:45	SCR-RC	5.09	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.07	MG/L	G	11/5/98	10:45	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		3.77	MG/L	G	2/23/99	10:35	SCR-RC	3.95	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.18	MG/L	G	2/23/99	10:35	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		4.39	MG/L	G	5/26/99	10:45	SCR-RC	4.57	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.18	MG/L	G	5/26/99	10:45	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		6.74	MG/L	G	8/3/99	11:50	SCR-RC	6.92	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.18	MG/L	G	8/3/99	11:50	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		5.69	MG/L	G	11/11/99	11:30	SCR-RC	5.75	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.08	MG/L	G	11/11/99	11:30	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRATE (AS	LIQUID		5.69	MG/L	G	2/3/00	10:55	SCR-RC	6.14	SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
NITRITE (AS	LIQUID		0.45	MG/L	G	2/3/00	10:55	SCR-RC		SANTA CLA	SC-6	403.51	SANTA CLA	SANTA CLA	LOS ANGEL	Valencia WWRP, NPDES
								count	count							
							total #	11	11							
								>10	>5							
							# exceed	0	4							
							% exceed	0	0.363636							

CSDLA data sent as part of NPDES reports but not submitted for 303(d)

Parameter	Date	Value
Receiving water station RB		
Nitrate	Feb-97	4.960
Nitrate	May-97	1.490
Nitrate	Aug-97	2.990
Nitrate	Nov-97	2.960
Nitrate	Feb-99	0.200
Nitrate	Feb-99	0.410
Nitrate	May-99	0.240
Nitrate	May-99	0.300
Nitrate	Aug-99	0.470
Nitrate	Aug-99	2.880
Nitrate	Nov-99	0.810
Nitrate	Nov-99	1.240
Nitrate	Feb-00	<0.05
Nitrate	May-00	1.870
Nitrate	Aug-00	1.410
Nitrate	Nov-00	0.790
Nitrate	Feb-01	1.610
Nitrate	May-01	1.370
Nitrate	Aug-01	1.060
Nitrate	Nov-01	0.510
Nitrite	Feb-97	1.580
Nitrite	May-97	1.020
Nitrite	Aug-97	1.110
Nitrite	Nov-97	0.963
Nitrite	Feb-99	0.988
Nitrite	Feb-99	0.712
Nitrite	May-99	0.912
Nitrite	May-99	0.690
Nitrite	Aug-99	1.220
Nitrite	Aug-99	2.980
Nitrite	Nov-99	3.540
Nitrite	Nov-99	3.090
Nitrite	Feb-00	2.280
Nitrite	May-00	2.390
Nitrite	Aug-00	2.130
Nitrite	Nov-00	1.760
Nitrite	Feb-01	1.830
Nitrite	May-01	2.030
Nitrite	Aug-01	2.120
Nitrite	Nov-01	1.660

Groundwater station T4N-16W-16R1		
nitrate	2/20/97	5.43
nitrite	2/20/97	<.01
nitrate	8/7/97	7.85
nitrite	8/7/97	NA
nitrate	Feb-01	5.21
nitrite	Feb-01	<.01
nitrate	Aug-01	5.86
nitrite	Aug-01	<.01

nitrate	
number	19
exceed	0
impair%	none

nitrite	
number	20
exceed	15
impair%	0.75

New Data Submitted CSDLA															
Parameter	Test Materia	Qualifier	Result	Units	MDL	Sample Met	Sample Date	Sample Tim	Station Nam	Latitude	Longitude	Waterbody	tream Reach	Hydrologic
NITRATE+nitrite (AS NITROGEN)			1.19	MG/L			2/23/99	11:30	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			1.15	MG/L			5/26/99	11:30	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			1.69	MG/L			8/3/99	11:35	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			4.35	MG/L			11/11/99	11:30	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			2.33	MG/L			2/3/00	10:50	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			4.26	MG/L			8/17/00	10:45	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			3.54	MG/L			8/23/00	10:35	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			2.55	MG/L			11/21/00	10:45	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			3.44	MG/L			2/16/01	11:50	SCR-Rb			SANTA CLA	SC-6	403.51
NITRATE+nitrite (AS NITROGEN)			3.4	MG/L			5/21/01		SCR-Rb					
NITRATE+nitrite (AS NITROGEN)			3.18	MG/L			8/21/01		SCR-Rb					
NITRATE+nitrite (AS NITROGEN)			1.5	MG/L			10/31/01		SCR-Rb					
NITRATE+nitrite (AS NITROGEN)			2.17	MG/L			11/7/01		SCR-Rb					
NITRATE+nitrite (AS NITROGEN)			0.16	MG/L			11/15/01		SCR-Rb			**below outfall**		
NITRATE+nitrite (AS NITROGEN			5.15	MG/L			6/29/00		old road bridge			count	14	
NITRATE+nitrite (AS NITROGEN			5	MG/L			7/27/00		old road bridge			exceed	0	
NITRATE+nitrite (AS NITROGEN			4.56	MG/L			8/28/00		old road bridge			impair	0	
NITRATE+nitrite (AS NITROGEN			5.68	MG/L			9/29/00		old road bridge			**Hwy 99**		
NITRATE+nitrite (AS NITROGEN			6.06	MG/L			11/2/00		old road bridge			count	19	
NITRATE+nitrite (AS NITROGEN			4.96	MG/L			11/27/00		old road bridge			exceed	5	
NITRATE+nitrite (AS NITROGEN			6.24	MG/L			12/21/00		old road bridge			impair	0.263158	
NITRATE+nitrite (AS NITROGEN			2.79	MG/L			1/23/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			2.24	MG/L			2/20/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			2.67	MG/L			3/15/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			4.52	MG/L			5/2/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			3.12	MG/L			5/29/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			6.61	MG/L			7/24/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			4.29	MG/L			8/1/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			2.63	MG/L			8/27/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			1.78	MG/L			9/25/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			1.73	MG/L			10/5/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			1.87	MG/L			11/7/01		old road bridge					
NITRATE+nitrite (AS NITROGEN			2.36	MG/L			12/12/01		old road bridge					

dates of sampling	2/23/99-12/12/01
number	33
min	0.16
mean	3.308182
max	6.61
median	3.12
standard deviation	1.635941
No. of samples above 10 mg/L (objective)	0
%. of samples above 10 mg/L	0
No. of samples above 5 mg/L(downstream)	5
% of samples above 5 mg/L	0.151515

studies on the river this fiscal year. The focus of this work will be to relate land use to discharge characteristics and determine background concentrations for TMDL pollutants. It is also likely we will receive additional EPA funding for monitoring and modeling data also for expenditure in this fiscal year. The focus of the study is to fill gaps in the existing data base and to gather input data for advanced water quality modeling. The scope of work statements for these studies is not available to me today, but I expect I will be able to provide them to you next week. These plans also include some cost estimates.

Dates
UCLA is beginning their study with some orientation tours for staff. I expect to accompany them on most of these field trips and collect samples on several. We are scheduled to work in the upper Santa Clara watershed on Thursday, August 16, Thursday, August 23, Tuesday August 28, and Wednesday August 29. As I mentioned, we would be happy to have someone from your organization accompany us on these or any field outing. These are the days when we would like access to your property. I also expect that the UCLA team and I will be establishing a specific sampling schedule for the following year and we will forward this schedule to you as soon as possible for our coordinated planning.

Insurance.
State agencies are self insured and although our legal counsel is not in today, I am confident we will be able to provide you with evidence of liability insurance that you may keep on file for future RWQCB employees. UCLA also carries insurance on its employees and I will let them know that you would like evidence of this coverage

Data
The data we collect is available to the public once we receive the information back from the laboratory and I will be happy to provide you with copies as soon as it is available to me.

Access
You asked me to give you some time to arrange a permit to allow us access and I am happy to provide additional information as soon as is possible. I also understand that you do not consider the memorandum of understanding for sampling which Newhall signed on March 2000 binding because the objective change resolution for the Upper Santa Clara did not pass in December 2000. I reviewed the MOA and the accompanying letter from Mr. Zimmer and I cannot find a reference linking the agreement to any specific resolution. In fact, the agreement states that the undersigned have made "a commitment to work together to assess the conditions of the upper and middle reaches of the river." The agreement also states that Newhall wishes to participate in rountine sampling efforts and I would look forward to having any assistance which seems appropriate to you. I am appreciate your efforts to expedite this matter and clarify how sampling can proceed.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
***For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrcb.ca.gov/news/echallenge.html ***

CC: "s green CSD (E-mail)" <sgreen@lacsd.org>, "v conway (E-mail)" <vconway@lacsd.org>, Dennis Dickerson <DDICKERS@rb4.swrcb.ca.gov>, Deborah Smith <Dsmith@rb4.swrcb.ca.gov>, Jonathan Bishop <JBISHOP@rb4.swrcb.ca.gov>, Shirley Birosik <SBIROSIK@rb4.swrcb.ca.gov>, "J Fosselman (E-mail)" <jfosselman@santa-clarita.com>, "J Lambert (E-mail)" <jlambert@santa-clarita.com>, <stevelee@ucla.edu>

From: Mark Subbotin <msubbotin@newhall.com>
To: "e erickson (E-mail)" <eerickso@rb4.swrcb.ca.gov>
Date: Mon, Sep 10, 2001 11:30 AM
Subject: Water quality sampling

Please fax your self insurance information again. Unfortunately it has been misplaced in our office and in spite of turning the place upside down, I can't find it.

CC: "j bishop RWQCB (E-mail)" <jbishop@rb4.swrcb.ca.gov>, "Shirley Birosik (E-mail)" <SBIROSIK@rb4.swrcb.ca.gov>

From: Mark Subbotin <msubbotin@newhall.com>
To: "'Elizabeth Erickson'" <eerickso@rb4.swrcb.ca.gov>
Date: Mon, Sep 10, 2001 1:50 PM
Subject: RE: Water quality sampling

Elizabeth, I don't have the full scope of work. Please email me the final proposal between UCLA and RWQCB, and we will need in writing from RWQCB agreement to provide all the information obtained from the site visits. I will ask our insurance people if the self insurance will suffice or not and let you know ASAP.

-----Original Message----
From: Elizabeth Erickson [mailto:eerickso@rb4.swrcb.ca.gov]
Sent: Monday, September 10, 2001 11:47 AM
To: msubbotin@newhall.com
Cc: Deborah Smith; Jonathan Bishop; Melinda Becker; Samuel Unger
Subject: Re: Water quality sampling

Hello Mark,
Yes I will resend this information. I believe we have provided all the information you requested to support our access request. If not, please let me know.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
***For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrcb.ca.gov/news/echallenge.html ***

>>> Mark Subbotin <msubbotin@newhall.com> 09/10/01 10:46AM >>>
Please fax your self insurance information again. Unfortunately it has been misplaced in our office and in spite of turning the place upside down, I can't find it.

CC: Deborah Smith <Dsmith.RB4Post.Region4@rb4.swrcb.ca.gov>, Jonathan Bishop <JBISHOP.RB4Post.Region4@rb4.swrcb.ca.gov>, Melinda Becker <mbecker.RB4Post.Region4@rb4.swrcb.ca.gov>, Samuel Unger <sunger.RB4Post.Region4@rb4.swrcb.ca.gov>

From: Mark Subbotin <msubbotin@newhall.com>
To: "e erickson (E-mail)" <eerickso@rb4.swrcb.ca.gov>
Date: Tue, Sep 18, 2001 10:52 AM
Subject: Insurance

Elizabeth, the State's self-insurance coverage is acceptable to Newhall for State employees, but it will not cover UCLA students, and as was done for Shirley's UC Riverside folks, separate coverage will be needed for them. I have not yet seen the scope of work you indicated you would forward.

From: Mark Subbotin <msubbotin@newhall.com>
To: "'Elizabeth Erickson'" <eerickso@rb4.swrcb.ca.gov>
Date: Wed, Sep 19, 2001 11:11 AM
Subject: RE: Insurance

when you say Blue Cut, where do you mean exactly? Can you send me a map or designate on USGS quad sheet?

-----Original Message-----
From: Elizabeth Erickson [mailto:eerickso@rb4.swrcb.ca.gov]
Sent: Tuesday, September 18, 2001 2:02 PM
To: msubbotin@newhall.com
Subject: Re: Insurance

Hello Mark.

Thanks for the info. After reviewing the contract with UCLA at your request, I find it only specifies 'technical studies'. As a result we provided an overview of those studies at the September 6, 2001 meetings. Because you have requested additional detail I copy an email sent yesterday to UCLA which finalizes the sample locations. I will also forward an email sent yesterday to LACSD which lists the parameters we will be sampling. This is more specific than any of the documents you have requested and I am confident it will suffice to characterize our sampling efforts. As we are subject to the public information act, you can get all of this data as soon as we receive it back from the lab.

This is the first I have heard that you wish insurance for the UCLA folks. As I mentioned in my last email, I assumed that you had informed us of any additional information you needed for your consideration of our access request. The UCLA folks have provided this information for others and I am sure that we can make it available to you promptly. In the mean time, please begin any administrative process required to process our request for access to the Blue Cut location before the end of October on my assurance that you will receive this insurance information promptly from UCLA.

Elizabeth Erickson

To: Internet.mime."stevelee@ucla.edu", REGION4:[ucla.edu]:Rambrose
CC: Shirley Birosik, Jonathan Bishop, Tracy Patterson, Samuel Unger

Subject: October 2001 Santa Clara sampling plan
Message: Great to hear from you. I appreciate your thorough and professional efforts in establishing the sampling sites for the UCLA study in the Santa Clara River.

Here is the list :
1)Soledad Canyon at Stickleback critical habitat (reference)
2)Below Bouquet Canyon Dam (reference)
3)Bouquet below Lenny Rd (rural/horse property)
4)Bouquet below Plum Canyon (urban)
5)SAC Highway 99 (above waste treatment plant)
6)SC Magic Mtn (below waste treatment plant)
7)SC Blue Cut or Camulous Ranch (agricultural)

8)Todd Baranca at Foothill (un-used irrigation water and rising groundwater)

9)Todd Baranca at Jail (agriculture)

Schedule:
Todd Baranca(2 sites)- first week in October, awaiting growers return call for exact time
Magic Mountain (1 site)-Third or fourth week in October, at time of LACSD sampling
Blue Cut or Camulous (1 site): as soon as available
All others: as soon as possible

Also we will compare with reference data gathered in Sespe, Santa Paula, San Francisquito (October 2001).

Hoep this is it. Glad to hear that the sampling protocol is coming together.

<<< Mark Subbotin <msubbotin@newhall.com> 9/18 10:52a >>>
Elizabeth, the State's self-insurance coverage is acceptable to Newhall for State employees, but it will not cover UCLA students, and as was done for Shirley's UC Riverside folks, separate coverage will be needed for them. I have not yet seen the scope of work you indicated you would forward.

From: "Heather Merenda" <HMERENDA@santa-clarita.com>
To: <eerickso@rb4.swrcb.ca.gov>, <bottorffm@vcss.k12.ca.us>
Date: 7/30/02 3:37PM
Subject: Monitoring stations

Hello to you both! Had some conversations with Mark Subbotin from Newhall Land. He was concerned that we hadn't communicated well enough where the City's property is on the Santa Clara River near the bridge. Please see the attached map that Mark provided. Also, and FYI, probably within a year, the City will actually get a multi purpose trail that will run near the stream close to the bridge. So perhaps when the Citizen Monitoring funds are ready, so will the public trail. Then you could sample from the trail. Tom Reilly from our Parks and Rec Department said he'd be happy to set up a tour of how to get to the "closest to the bridge" part of the current City property, as you have to take some equestrian trails to get there currently. Please let me know, as Mark seemed really concerned about this and I want to make sure I'm giving you good information and have great successes with the Citizen Monitoring program.

Thanks!

Heather Lea Merenda, Sustainability Planner
City of Santa Clarita
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California Regional Water Quality Control Board

Los Angeles Region

Over 50 Years Serving Coastal Los Angeles and Ventura Counties

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Winston H. Hickox
Secretary for Environmental Protection

Gray Davis
Governor

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August 29, 2002

To: Renee DeShazo

From: Elizabeth Erickson

Subj: Response to Comments for 2000 303(d)listing for Nitrate/Nitrite and Organic Enrichment/DO for Reach 6 (EPA Reach 8) of the Santa Clara River

The County Sanitation Districts of Los Angeles(CSDLA) submitted a comment letter dated June 14, 2002 which included new data and requested that Reach 6 (EPA Reach 8) be delisted. I have completed additional analysis of the new data, the previous data, and the components of the best professional judgement of the recommendation to retain the listing for nitrate/nitrite and I summarize these results in detail below. A summary of comments for the nutrient listing questions on this reach is also provided.

Summary

The new data set was collected over only two years of the sample period. Some submitted data was incorrectly attributed to this reach, while it was collected in the adjacent downstream reach which has more dilution.

The downstream reach has a lower objective (5 mg/L) than the reach for which delisting is requested. Of eleven samples taken in the downstream reach immediately over the reach boundary (station RC), 4 or 36% of the nitrate-nitrite as nitrogen exceeded the 5 mg/L objective, demonstrating that the nutrient levels in the upstream reach are high enough to prevent attainment of the objective at every location in the downstream reach.

A nutrient TMDL is currently underway in this reach proposed for delisting and ongoing sampling efforts and visual observations show the presence of algae and nitrate-nitrite and nitrogen exceedances in this reach.

Although the discharger claims that the ammonia specific objective in the Basin Plan will require compliance with the ammonia objective by 2003, this requirement will not address nitrate, DO or organic enrichment objectives. Further, the discharger has not submitted any data or reports confirming progress to attain the ammonia objective at their plant.

Based on the insufficient data set and the uncertainty in achieving the ammonia objectives, Regional Board staff recommend retaining the listings for nitrate-nitrite, organic enrichment/DO in the reach.

Location and Objectives

Reach 6 (EPA Reach 8) lies between the Bouquest Canyon Bridge and the west pier of the Highway 99 bridge (see figure) . It receives flow from CSDLA's Saugus Water Reclamation Plant, Santa Clara River (dry), South Fork of the Santa Clara River(dry), Bouquet Creek and

rising groundwater. The Santa Clara River and the South Fork of that river are both dry at this location, but maintain underflow in alluvium with unusually high transmisivity. The Santa Clara River becomes a gaining river at the downstream end of the reach which lies within the Holser and San Gabriel Fault zones. The faults act as a water barrier which force up the underflow and other groundwater from the majority of the upper Santa Clara Watershed.

The nitrate plus nitrite objective in Reach 6 (EPA Reach 8) is 10mg/L. The nitrite and nitrate objectives come from the beneficial use for groundwater reacharge and are 1 mg./L and 10 mg/L respectively. The reaches immediately downstream and upstream have a lower nitrate plus nitrite objective of 5 mg/L. These also represent historical conditions in the river.

Impairment

The nitrate plus nitrite levels represented in the 2000 303(d) data in Reach 6 (EPA Reach 8) are high enough to prevent attainment of the objective in the downstream reach which is listed for nitrate/nitrite, even if the newly submitted data show that Reach 6 does not exceed the objectives for this nutrient measurement alone. In fact, the data submitted for the 303(d) analysis of that downstream reach comes from within a half mile of the downstream end of the Reach 6 (EPA Reach 8). At that Receiving Water Station RC, 36% of the samples exceed the objective for Reach 5 (EPA Reach 7) of 5 mg/L.

The entire data set submitted for analysis does not represent an even distribution in time or space, but provides data in a biased manner. As an example, the new data submitted for Reach 6 (EPA Reach 8) was collected at two locations, a receiving water station below the Saugus outfall, at the extreme upper end of the reach, and at the Highway 99 bridge, the extreme downstream end of the reach. While CSDLA is correct in that the two data sets together show attainment of the 10 mg/L standard for nitrate plus nitrite in Reach 6 (EPA Reach 8), the data collected at the lower end of the reach included half of the samples, but only 1 ½ years of data. In this small data set alone, 26% of the nitrate plus nitrite data exceeded the 5 mg/L objective of the downstream reach (which lies within a half mile) but meets the 10 mg/L for the reach in question. In the upper end of the reach, a full 4 years of data were reported. Finally, in the comment letter by CSDLA, as much as half of the data presented graphically to demonstrate attainment of the objectives comes from the receiving water station RC, which lies in the downstream reach. These data biases are further demonstrated by comparison with data collected by Regional Board staff, but not used in the 303(d) analysis. Among the 23 samples collected throughout the reach, 14% of the nitrate plus nitrate values in Reach 6 (EPA Reach 8) lay between the downstream objective of 5 mg/L and the objective of 10 mg/L and 12% of the nitrate samples exceeded the objective of 10 mg/L.

Reach 6 (EPA Reach 8) should be listed for nitrite. CSDLA did not include all of the water quality data submitted for their NPDES permit No. CA005431 for the 303(d) analysis and in fact not all of this data was used in the assessment. Receiving water levels in Reach 6 (EPA Reach 8) were evaluated for this memo as reported between 1997 and 2001. Of 20 nitrite samples taken,

15 exceeded the criteria of 1 m/gL, for 75% exceedance. Because this analysis postdates the submission of listing recommendations for 303(d) a new listing has not been recommended, but our permitting group has been asked to prepare a Notice of Violation.

Reach 6 (EPA Reach 8) should be listed for algae. Algae problems have been documented in both Reach 5 and 6. Figures are attached which demonstrate that in October 2001 for Reach 5 and in June 2002 for Reach 6, the algae problem probably exceed the RWQCB-LA Basin Plan Criteria (pg3-8) which states that " waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or advsersely affects beneficial uses." Some of these algae problems, including chorophyll-A mass measurements were documented in October 2001 and should be publically available this year. Access problems, as described below, have prevented further documentation of these observations and the lack of confirmation is the reason Reach 6 (EPA Reach 8) was not recommended for algae listing in the 2000 303(d) listing cycle.

Reach 6 (EPA Reach 8) might also be listed for coliform. RWQCB samples for coliform were collected on May 4, 1999, but were not evaluated for this 303(d), partially due to the difficulties with duplicating the sample due to access problems. On that date, 9000 MPN total coliform was recorded at Bouquet Canyon bridge and 700 was recorded at Highway 99. Additional sampling of these high levels is expected to demonstrate a coliform impairment.

Public Verification of Data Used for Listing

The RWQCB-LA has not be able to access the site sufficiently to verify the water quality information used in this request for delisting. As two examples of these continuous problems, a RWQCB funded study by UCLA, which was designed to document nutrient impairments, requested access of the land owner, Newhall Land and Farming, on Aug 13, 2001 for an October study after the Newhall had signed an MOU agreeing to participate in monitoring. The samplers were ultimately asked to leave the property before completing their assessement of Reach 6 (EPA Reach 8) when they accompanied CSDLA during their sampling of the receiving water stations (see emails attached). Citizen monitoring groups were also denied access to this property in June 2002. When the attached photos were finally taken on City of Santa Clarita property in that month, Newhall responded by saying that access to the sampling point would not be allowed. This problem has been experienced by other agencies, and resulted in an incomplete assessment of the water quality problems in the area. For example, approval of Newhall's development plans by the Los Angeles County Supervisors was delayed this summer after a Fish and Game search warrant revealed that they had illegally graded endangered spine flowers.

Attachments:

Figure: location map

Picture 1: algae at Receiving Water Station RD below Valencia WRP Outfall, October 2001.
Picture 2: Algae looking upstream from historic Railroad Bridge site between MCBean Parkway and San Fransisquito Creek on Santa Clara River, June 30, 2002-08-29
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