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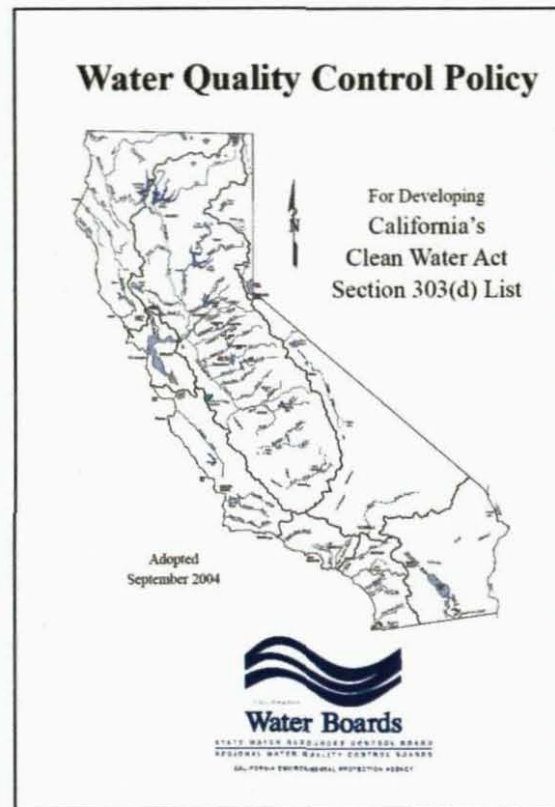
Heal the Bay, NRDC and Santa Monica BayKeeper Comments on the Revised 303(d) List



January 5, 2006

KIRSTEN JAMES

The Listing Policy has not been Applied as Intended...

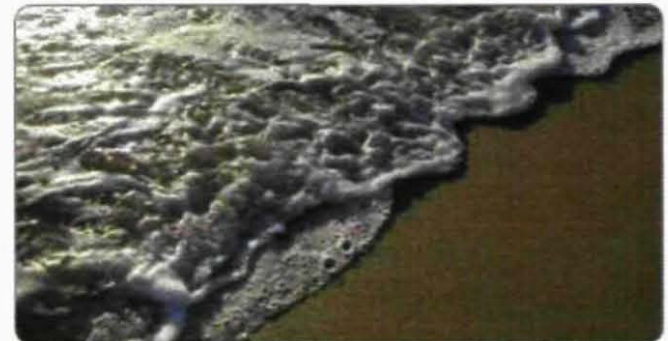


Heal the Bay



28 Santa Monica Bay Beaches are Improperly De-listed

- Many based solely on the fact that a TMDL exists
- Not all readily available data was evaluated
- If all data are considered, all 28 beaches should remain listed



An Existing TMDL alone is not Valid Justification to De-List

“Waters shall only be removed from this category [Water Quality Limited Segments Being Addressed] if it is demonstrated in accordance with section 4 that water quality standards are attained.”

-- Listing Policy, Section 2.2 (emphasis added)

LA County Beaches (proposed for de-listing)

Beach	Monitoring Agency/ID	Monitoring Frequency	Exceedance Freq. - AB-411						
			Allow ³	2000	2001	2002	2003	2004	2005
Abalone Cove	LACSD2	daily	0	1	0	1	0	0	2
Bluff Cove	LACSD8	weekly	0	1	0	2	0	2	0
Hermosa	DHS (114)	weekly	0	0	1	0	2	2	0
Hermosa	S15	daily	0	2	0	1	0	5	6
Malaga Cove	S18	daily	0	0	0	1	2	4	2
Malaga Cove	LACSDM	weekly	0	0	0	0	2	2	1
Malibu	DHS (003)	weekly	0	5	1	2	8	2	6
Whites Point	LACSD6	daily	0	0	0	0	1	1	0
Manhattan	S13	daily	0	1	1	0	2	1	6
Manhattan	DHS (113)	weekly	0	0	0	1	4	6	4
Manhattan	S14	daily	0	2	2	3	0	3	2
Nicholas Canyon	DHS (009)	weekly	0	1	2	1	0	0	1
Portugese Bend	LACSD3	daily	0	1	0	1	0	3	0
Puerco	DHS (004)	weekly	0	0	0	1	2	1	2
Royal Palms	LACSD5	daily	0	4	0	1	2	2	2

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260

LA County Beaches that should be Listed

Beach	Monitoring Agency/ID	Monitoring Frequency	Exceedance Freq. - AB-411						
			Allow ^s	2000	2001	2002	2003	2004	2005
Long Beach City Beach	CLB/B63	weekly	0	10	3	3	3	4	3
Long Beach City Beach	CLB/B5	weekly	0	3	2	2	2	4	3
Long Beach City Beach	CLB/B56	weekly	0	10	0	1	3	2	6
Long Beach City Beach	CLB/B6	weekly	0	10	2	1	2	3	5
Long Beach City Beach	CLB/B60	weekly	0	2	1	1	3	2	3
Long Beach City Beach	CLB/B7	weekly	0	2	0	0	2	2	2
Long Beach City Beach	CLB/B62	weekly	0	4	2	1	3	4	3
Long Beach City Beach	CLB/B8	weekly	0	5	2	0	2	2	5
Long Beach City Beach	CLB/B3	weekly	0	4	4	1	2	2	1
Long Beach City Beach	CLB/B9	weekly	0	1	0	1	3	2	3
Long Beach City Beach	CLB/B64	weekly	0	6	4	4	3	2	2
Long Beach City Beach	CLB/B65	weekly	0	6	3	4	4	2	1
Long Beach City Beach	CLB/B10	weekly	0	0	0	0	3	2	1
Long Beach City Beach	CLB/B66	weekly	0	1	0	1	4	2	2
Long Beach City Beach	CLB/B11	weekly	0	2	0	1	4	2	3
Alamitos Bay	CLB/B31	weekly	0	2	0	0	1	1	1
Alamitos Bay	CLB/B29	weekly	0	2	0	3	0	1	3
Alamitos Bay	CLB/B14	weekly	0	0	0	1	2	1	3
Alamitos Bay	CLB/B22	weekly	0	4	0	2	0	5	1
Alamitos Bay	CLB/B67	weekly	0	4	0	2	1	3	2
Colorado Lagoon	CLB/B25	weekly	0	0	10	3	2	4	7
Colorado Lagoon	CLB/B26	weekly	0	0	1	1	0	4	4
Colorado Lagoon	CLB/B24	weekly	0	0	2	1	1	2	2
Westward Beach	DHS (007)	weekly	0	0	1	0	1	0	7
Latigo Canyon	DHS (005)	weekly	0	2	0	1	1	2	9
Corral State Beach	DHS (005)	weekly	0	1	0	0	0	0	0

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Inappropriate Excess Algal Growth De- listings



Misapplication of Listing Policy

1. Excess algal growth is a pollutant; narrative standards exist for nuisance conditions
2. A nitrogen TMDL alone may not be the solution
3. Qualitative information should be considered under situation-specific weight of evidence factor/BPJ



Narrative Standards should be Fully Assessed under CWA

“For the purposes of listing waters... ‘applicable water quality standards’ refer to those water quality standards established under section 303 of the Act, including numeric criteria, ***narrative criteria***, waterbody uses, and antidegradation requirements.”

-- 40 CFR §130.7(b)(3) (emphasis added)

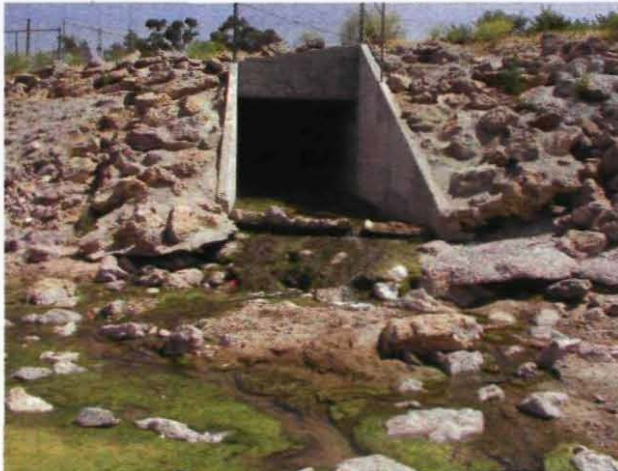
Basin Plan Narrative Objectives

- “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.”
- “Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.”

Excess Algae

“Waters may **also** be placed on the section 303(d) list when a significant nuisance condition exists as compared to reference conditions, or when nutrient concentrations cause or contribute to excessive algae growth.”

-- Listing Policy at §3.7.1



A TMDL is not a Valid Reason for De-listing

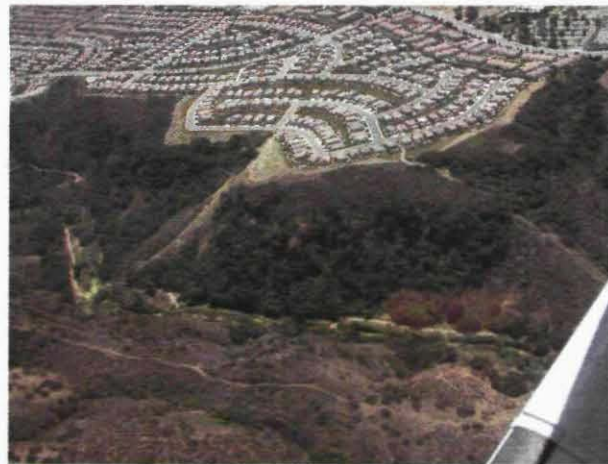
- Proposal relies on existence of nitrogen TMDL only
- Many factors lead to excess algal growth
 - Nitrogen
 - Phosphorus
 - Sunlight
 - Flow

The Narrow Application of Situation-specific Weight of Evidence Listing/De-listing factors is not Consistent with Intent of Policy.

“When all other Listing Factors do not result in the listing of a water segment but information indicates non-attainment of standards, a water segment shall be evaluated to determine whether the weight of evidence demonstrates that a water quality standard is not attained.”

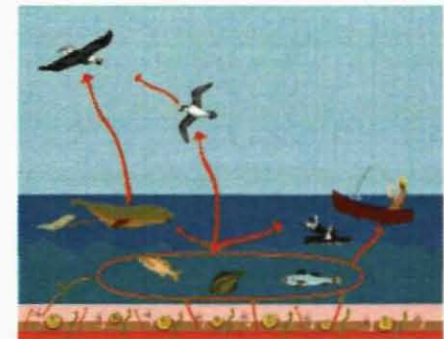
-- Listing Policy, Section 3.11

- **Qualitative information alone is conclusive**
- **>30% Algal Coverage**



Situation-Specific Weight of Evidence: DDT in Dominguez Channel & Estuary

- Montrose Chemical Corporation released around 1,700 tons of DDT to sewer system and adjacent groundwater and soil
- DDT is a persistent and bioaccumulative compound



Situation-Specific Weight of Evidence: Pollutants in Sediment

- No specific listing factor for sediment chemistry
- Not listing unless general toxicity data also exists under listing factor 3.6
 - Even where sediment data show exceedances well above allowable frequency
- Should use specific weight of evidence factor/BPJ



Inconsistencies with Clean Water Act

- Reevaluation of Listings for which TMDLs already have been adopted
- Very narrow construction of weight-of-evidence factor/best professional judgment
- Inadequate consideration of narrative standards
- Failure to review all available information and data



Illegal Underground Regulations

- “Data or information to support the original listing simply does not exist.”
- “Information justifying the original listing was anecdotal.”
- The evaluation guideline used originally and that does not satisfy the requirements of section 6.1.3 of the Listing Policy would lead to an improper listing.

Illegal Underground Regulations

- Staff Report states they re-did the analysis using new guidelines under Section 3, in this instance.
- If no new guideline, they de-listed.
- “This approach was **used to avoid requiring a large burden of proof to delist** a water body pollutant combination if the original listing was found to be baseless in terms of Listing Policy procedures.”



Inconsistencies With State Board's Intent for Application of Listing Policy

- Current Proposal Fails to Use Precautionary Approach
- Regional Board Left Out of Process
- Not a Transparent Process/Difficult to Tell How Multiple Lines of Evidence are Weighed in Making Decision



Retroactive Application of Listing Policy is Flawed

- Higher Burden of Proof
- State Must Show Lack of Impairment to De-List Previous Listings
- Failure to Use Best Professional Judgment
- Regional Board Has Better Information on Local Waterbodies

158.3 + 158.19 → 43.3 - inapprop. excess legal growth for CA
narrative steps exist & nuisance conditions
N TMDL not likely to resolve problem.

158.11 43
4 - consider narrative steps

158.51 5 - narrow applications of situation specific WOE

158.4 6 retroactive application of Policy flawed