

May 15, 2001

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD



2001 MAY 15 P 4:58

Chairman John Minan and Boardmembers
Regional Water Quality Control Board, San Diego Region
9771 Clairemont Mesa Blvd., Suite A
San Diego, CA 92124

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Re: **CWA Section 303(d) Listing**

Dear Chairman Minan and Boardmembers:

San Diego BayKeeper, a community-based 501(c)(3) non-profit organization dedicated to protecting and restoring the region's bays, coastal waters and watersheds, submits these comments on the 2002 Clean Water Act (CWA) section 303(d) listing. San Diego BayKeeper has serious concerns with the adequacy of the current 303(d) list for the region, and we are equally concerned about the direction staff may be taking in compiling the April 2002 listing.

First, we remain concerned that Region 9's proposed 303(d) list is not based on a comprehensive assembly and review of information and data on water quality and other impairments regarding all water bodies in Region 9, as the Clean Water Act and its implementing regulations require. *See, e.g., 40 C.F.R. Section 130.7.* Indeed, wholly apart from the Section 303(d) scheme, under Clean Water Act Section 305(b) and accompanying regulations, each regional board must conduct a regional water quality assessment (WQA) of all water bodies in its region. It is clear from an even cursory review of the most recent 1998 California Water Quality Assessment Report, prepared in August 1999 by the Division of Water Quality, State Water Resources Control Board, that such a comprehensive review has yet to be performed in the San Diego region. After a brief review of data in the 1998 WQA, BayKeeper has concluded that, more than twenty years after these requirements were established, at least 80% of San Diego's waters have not yet been fully assessed. Moreover, much of the data that has been gathered may not be easily accessed or understandable. In other words, this data is never fully reviewed or analyzed.

BayKeeper is also concerned about the requirements placed upon organizations wishing to submit information to support the upcoming 2002 CWA section 303(d) listing. The 305(b) and 303(d) lists are essential steps in first understanding and then addressing the overall health of our waters. Not only will the development of comprehensive and accurate 303(d) and 305(b) reports ensure that waters receive the appropriate level of protection through development of Total Maximum Daily Loads or antidegradation policies, but accurate lists will help ensure resources will be allocated wisely. Proper listings will also allow the region to tap into state and federal dollars earmarked for protecting impaired waters (e.g. SWRCB's 319(h) program or Proposition 13). Despite the importance of the 303(d) list, though, those local residents most knowledgeable about their local waters and most impacted by pollution will have a difficult time complying with the submittal requirements established by this Board even though they may have vital and reliable data. Some of our specific concerns relate to:

Timeframe – Region 9, like other regions, is requiring all information to be submitted by May 15, 2001, a full 11 months prior to the final 2002 303(d) listing. We believe this deadline is not only arbitrary, but also extremely difficult to comply with due to the amount of information being requested in a short timeframe. The San Diego Regional Board did not issue their solicitation for information until March 2001, and a formal workshop to discuss the Board's submission requirements was not held until April 4, 2001. This has left interested parties with a scant six weeks to gather and process information. Considering the more than twenty years the regional board has had to develop sufficient 303(d) and

305(b) reports (which we are still waiting for), less than six weeks to provide needed data is wholly insufficient. BayKeeper intends to continue providing information to regional board staff through the two remaining public comment periods – August 2001 (when RWQCBs solicit input on draft 303(d) list recommendations) and Winter/Spring 2002 (when the SWRCB conducts formal public hearings on the draft 303(d) list). It is our expectation that the data provided in this timeframe will be reviewed and assessed by regional and state board staff for the 2002 listing.

Required Documentation – The regional board has indicated they will consider information and data generated since July 1997 that is provided both in hard copy as well as electronic formats, and that includes ‘bibliographic citations, identification of software used, model outputs with calibration and quality assurance information and description and interpretation of information provided.’ In separate meetings with regional board staff, BayKeeper has been told that data that can demonstrate trend analysis, that has been replicated and that covers physical, chemical *and* biological parameters will be most useful in helping to establish an accurate 303(d) list.

BayKeeper appreciates that the more comprehensive the data we are able to provide, the better. We are nonetheless concerned that these requirements are far beyond the criteria of ‘reliability’ which we believe is appropriate. In fact, it is our assertion that the Regional Board must use *all* relevant, reasonably available data (e.g. water quality, sediment, fish tissue, photos, narrative standards, land use plans, videotapes media coverage) to list waters. Listing should occur if evidence under reasonably foreseeable conditions indicates that a standard (e.g., California Toxics Rule, National Toxics Rule, Basin Plans, beneficial uses) is, or will be, violated. Where judgment calls are required, BayKeeper believes the Regional Board must err on the side of environmental and human health protection.

We assert such an interpretation is embodied in the requirement that “Each State shall identify those waters within its boundaries for which the effluent limitations...are not stringent enough to implement *any* water quality standard applicable to such waters.” (CWA, section 303(d)(1)(A), *emphasis added*). Furthermore, the Clean Water Act and its implementing regulations also distinguish between those existing uses that are actually being attained and designated beneficial uses that *must still be protected* whether or not they are currently being attained.

Yet, the submittal requirements of the regional board require a rigor that is both unrealistic and unnecessary for listing. First, it is extremely costly to undertake much of the scientific analysis being requested by the Board, particularly if multiple replicates are being requested, as is trend analysis. It is unreasonable to expect small, grassroots organizations or concerned citizens to incur these types of expenses. In fact, to undertake some of the water quality analysis being requested by the regional board is costing BayKeeper thousands of dollars, and these costs would be substantially higher if we rushed our orders to meet the May 15 deadline. With limited resources, we decided not to rush these orders, meaning certified lab testing of metals, pesticides and herbicides along the San Diego River will be submitted after May 15, but as soon as is practicable.

It is also often impossible for local residents to gain access to some heavily polluted waters to conduct the types of analysis being requested, particularly as these residents often fear reprisals from local businesses that may be impacted by a demonstration that they are polluting these waters. This is a real and serious problem BayKeeper has faced in trying to gather data for this listing from local residents, particularly along certain areas of the San Diego River.

BayKeeper is also uncertain about the requirement that data be generated since July 1997. Again, we understand the need for reliable data, and more current data would be preferable. We also recognize that it is not necessary to provide pre-1997 data that has already led to a listing in 1998 or before (other than possibly using data to ensure that inappropriate delisting does not occur). However, we believe that valid

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pre-1997 data (particularly that data that the Board already possess) that demonstrates impairment, but which has not yet led to a listing, must be considered by this Board. If fact, as is discussed in greater detail below, the 1998 WQA report includes listings of several water bodies that show some level of impairment but which have not yet been listed. Listing those waters for which information already exists must be the first step in the 2002 listing.

Finally, while BayKeeper – through its ever-expanding Citizen Water Quality Monitoring taskforce – looks forward to working closely with regional board staff to undertake a more comprehensive assessment of local waters, the ultimate burden of listing lies with your agency. Because of the importance of the 2002 list in terms of water quality protections as well as access to resources to help restore waters, we will do everything within our power to point regional board staff in the direction of identifying impaired waters. However, we believe it is the duty of this Board – a duty that has not yet been met – to prepare complete and accurate 305(b) and 303(d) lists. The following information on waters we believe should be listed will need follow-up from regional board staff, and in no way is meant to represent a comprehensive listing of all of San Diego's waters which may be impaired.

303(d) List

BayKeeper believes the first step in preparing an accurate 2002 303(d) list is necessarily to review the most recent 1998 Water Quality Assessment. In that report, a matrix is provided which lists each separate hydrological unit in San Diego, and indicates whether each unit has or has not been assessed. For those that have been assessed, the matrix indicates whether these waters are supporting designated beneficial uses fully, partially, not at all, or whether beneficial uses are threatened. For the reasoning highlighted above, BayKeeper believes it is incumbent on the regional board to err on the side of environmental and human health protection, meaning that listing should occur for every assessed water body that is not meeting designated beneficial uses. This is not the case with the 1998 WQA report, and some examples follow:

Dana Point Harbor (Hydrological Unit 901.140) – listed as 215 acres fully supporting designated beneficial uses. Yet, the assessment comments column indicates that Dana Point Harbor and Baby Beach were closed from 8/96 to 7/97 to water contact recreation. As Dana Point Harbor is listed as meeting Recreation 1 and 2 standards, it should be listed as impaired if it was indeed closed for nearly a year to water contact.

San Diego Bay (Hydrological Unit 900.00) – While 222 acres of San Diego bay are listed as impaired due to benthic community effects, sediment toxicity and copper, 11,772 acres are threatened, but not listed as impaired. The WQA assessment indicates that the entire bay (12,000 acres) is posted with warnings for pregnant women and young children against consumption of fish due to elevated levels of PCB's, mercury and PAH's. By the Regional Board's own findings and by definition, BayKeeper believes the entire Bay should be listed as impaired.

Escondido Creek - (Hydrological Unit 904.600) – 23 miles of Escondido Creek are considered 'threatened' due to excessive sediment and nutrients, and should thus be listed as impaired.

Forester Creek - (Hydrological Unit 907.130) – 1 mile of Forester Creek is considered 'threatened' due to elevated fish tissue levels, and should thus be listed as impaired.

Otay River - (Hydrological Unit 910.200) – 5 miles of the Otay River are listed as only partially supporting designated beneficial uses, and should thus be listed as impaired.

Salt Creek - (Hydrological Unit 901.140) – Salt Creek was closed regularly in 1996 and 1997 due to elevated coliform levels from sewage spills, and should thus be listed as impaired.

San Diego River, Lower - (Hydrological Unit 907.110) - 6 miles of the Lower San Diego River is considered 'threatened' due to elevated coliform levels and exotic plant species, and should thus be listed as impaired. (Discussed in greater detail below.)

San Juan Creek, Upper Middle - (Hydrological Unit 901.260) - 3.2 miles of the Upper Middle San Juan Creek is considered 'threatened' due to elevated coliform levels, and should thus be listed as impaired.

San Luis Rey River, Lower - (Hydrological Units 903.100) - 18.7 miles of the Lower San Luis Rey River is considered 'threatened' due to elevated coliform levels and exotic plant species, and should thus be listed as impaired.

San Diego River

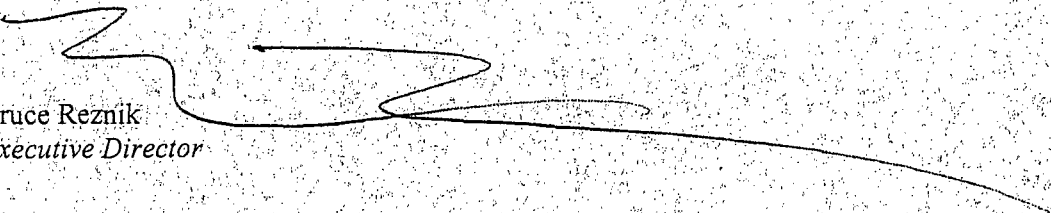
BayKeeper is submitting a separate letter and supporting materials detailing portions of the San Diego River for which sufficient information exists to require a 303(d) listing.

Otay/Sweetwater Rivers

BayKeeper is aware of several comment letters and photographs submitted by Ray Ymzon, Board Member of the Sweetwater Valley Civic Association to the San Diego Regional Water Quality Control relating to 401 certification for the proposed SR-125 toll road. These letters and photos demonstrate increasing trash, and apparent oil and grease problems, at a minimum, along stretches of the rivers, particularly the Sweetwater. We believe further investigation and likely listing is warranted based on the information provided. BayKeeper has not provided copies of these materials, as they should already be in your files.

On behalf of San Diego BayKeeper, I appreciate the opportunity to provide comments on the 2002 CWA section 303(d) listing, and hope they are helpful. A great deal of work is needed to ensure a complete and accurate listing in 2002 and beyond, and BayKeeper looks forward to working with the regional board to ensure such listings. Please do not hesitate to contact me should you have any questions need additional information.

Sincerely,



Bruce Reznik
Executive Director

From: Kyle Olewnik
To: Smith, James
Date: 7/3/01 1:33PM
Subject: Fwd: RE: 303 d listing

Jimmy,

Here is info from bruce Reznik at Baykeeper. He forwarded photos he referenced for Otay River and Sweetwater River. We had copies of a couple of the letters that are attached, but the letters themselves aren't very helpful.

Kyle





