

October 26, 2009

Ms. Cynthia Gorham-Test  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340



**Re: Comments on Proposed 2008 303(d) List of Impaired Waters**

Dear Ms. Gorham-Test:

San Diego Coastkeeper (“Coastkeeper”) is a nonprofit 501(c)(3) organization dedicated to protecting and restoring the region’s bays, coastal waters and watersheds. San Diego Coastkeeper members use and enjoy the region’s watersheds recreationally in a variety of ways, including: hiking, swimming, fishing, and surfing. Additionally, Coastkeeper members value the aesthetic quality of the watersheds and the wildlife they support. Members are excited to spot birds and fish while hiking along the watersheds with their families. Photographers are inspired by the unique beauty San Diego’s watersheds provide. Fish and shellfish from these watersheds are a source of food for some members. San Diego Coastkeeper submits this comment letter on behalf of these members who are interested in ensuring the 303(d) listings are accurate and complete.

We are pleased the 2008 303(d) process has been more inclusive than previous listings and appreciate that more stakeholders have been able to participate in the process. We applaud the Regional Board on using a new, more comprehensive database to compile data. Moving forward, this new approach will ensure improvements in gathering data, which will in turn help improve water quality in the state.

We would like to address two main issues: (1) the listing of water bodies impaired by invasive species; and (2) the need for an export tool from SWAMP/CE DEN to integrate that data into the Cal-WQA database system.

**I. Water Bodies Impaired by Invasive Species Should Be Included on the 303(d) List.**

We strongly support listing water bodies impaired by invasive species. The U.S. Environmental Protection Agency’s (EPA) policy is to place a water segment on the state’s 303(d) list if it is shown to be impaired, “unless the state can demonstrate that no pollutant(s) causes or contribute to the impairment.<sup>1</sup> In 2005, the U.S. District Court for the Northern District of California held invasive species are “biological materials” within the definition of “pollutants” as described in the Clean Water Act (CWA).<sup>2</sup>

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<sup>1</sup> Adam P. Schempp & James McElfish, *The Role of Aquatic Invasive Species in State Listing of Impaired Waters and the TMDL Program*, Environmental Law Institute at 6 (May 2008) citing Env’tl. Prot. Agency, *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act Sec. V.H.5* (2005).

<sup>2</sup> *Northwest Environmental Advocates, et al. v. US EPA*, 2005 U.S. Dist. LEXIS 5373 (N.D. Cal. 2005).

Since 2005, California has included aquatic invasive species as pollutants in its 303(d) listing methodology.<sup>3</sup> As the first state to do this, California had to establish a methodology for determining when a water segment is impaired by an invasive species. The California Water Resources Control Board applied a method where water segments are listed for invasive species impairment if data indicates a correlation between a rise in invasive species and a decline in water quality.<sup>4</sup> This is usually evidenced by a reduction in native species.<sup>5</sup>

Now, warm-water fish in San Mateo Creek are threatening the critical habitat of the steelhead/rainbow trout. San Mateo Creek is a cold-water habitat for trout, which are considered a “rare and endangered species.” The presence of several different species of warm-water fish has made it difficult for the native rainbow trout to feed because the warm-water fish have taken over as top predator in the habitat.<sup>6</sup> Therefore, we strongly support listing San Mateo Creek as being impaired by invasive species.

We agree with the Regional Board’s assessment that Invasive Species require a single line of evidence. Under Listing Policy Section 3.8, the Regional Board is required to place a water segment on the 303(d) list if there is a biological response measured in resident individuals as compared to reference conditions and those impacts are associated with pollutants.<sup>7</sup> The policy states, “endpoints for this factor include reduction in growth, reduction in reproductive capacity, abnormal development, histopathological abnormalities, and other adverse conditions.”<sup>8</sup> With the trout in San Mateo Creek, the evidence (from fish surveys) shows an increase in invasive fish species and a decrease in the rainbow trout population (the trout has not been surveyed in San Mateo Creek since 2000). A tributary of San Mateo Creek with similar conditions, but without the invasive species, had a much healthier rainbow trout population after 2000, until low water conditions impacted the population. Thus, there is sufficient evidence to support the single line requirement showing the invasive fish species are responsible for the decline of native trout populations. Therefore, San Mateo Creek should be on the 303(d) list because it is impaired by a pollutant – the invasive warm-water fish species.

We understand there is currently no TMDL model for invasive species. However, that should not stop water bodies impaired by invasive species from being listed as required by the Clean Water Act. We encourage the Regional Board to continue listing water bodies that are impaired by invasive species and look forward to the State Board establishing an invasive species TMDL in the near future.<sup>9</sup>

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<sup>3</sup> Adam P. Schempp & James McElfish, *The Role of Aquatic Invasive Species in State Listing of Impaired Waters and the TMDL Program*, Environmental Law Institute at 6 (May 2008).

<sup>4</sup> *Id.* citing *State Water Resources Control Board, Staff Report: Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments Vol. I* at 12 (2006).

<sup>5</sup> *Id.*

<sup>6</sup> See San Diego Regional Water Quality Control Board Draft 2008 California 303(d)/305(b) Integrated Report for San Mateo Creek.

<sup>7</sup> See Listing Policy Section 3.8 (Adverse Biological Response).

<sup>8</sup> *Id.*

<sup>9</sup> California has projected 2019 as the completion date for an invasive species TMDL. See *The Role of Aquatic Invasive Species in State Listing of Impaired Waters and the TMDL Program* at 9. This projection is far too long, and we believe a higher priority needs to be placed on drafting an invasive species TMDL.

## II. SWAMP/CEDEN Data Should Be Linked To The Cal-WQA Database System.

At the October 12 303(d) workshop, the staff of the Regional Board introduced the new database (Cal-WQA) that was developed as a decision-making tool for the 303(d) process. It is admirable that the state has developed a database system to better compile and analyze the data for the purpose of streamlining the decision-making process. However, the Cal-WQA database does not interface with the California Data Exchange Network (CEDEN) database, which is the central repository for all of the Copermitttee data under the current stormwater permit. Integration of these two databases would also streamline any quality control processing for data input into the Cal-WQA database.

It was stressed at the workshop that this is an issue that needs to be resolved at the state level. To reduce unnecessary redundancy and maximize limited regional board resources, it is critical that this integration become a priority.

Further, as the data systems supporting the 303(d) process continue to develop, the database must be transparent in order for both dischargers and environmental groups to be able to track the decision-making process.

Lastly, many of the links on the regional board website<sup>10</sup> for the Lines of Evidence are broken. We randomly checked ten links for "data reference," and three of the ten links did not work (Buena Vista Creek, San Mateo Creek, Mission Bay Shoreline, at Bonita Cove). We would hate to have a technicality like this prevent any of the proposed listings from being accepted. This error should be fixed immediately.

## III. Conclusion

On behalf of its members, San Diego Coastkeeper strongly supports the inclusion of water bodies impaired by invasive species on the 2008 303(d) list. Although there are currently no TMDLs for invasive species, the creation of such TMDLs needs to be a higher priority. Additionally, integration of the Cal-WQA and CEDEN databases needs to be implemented in order to ensure accurate and complete data compilation. These databases must then be transparent to allow dischargers and environmental groups to track the decision-making process. And, finally, the links for the data references in the Lines of Evidence need to be fixed so the listing process can continue to move smoothly.

Individual members of the community will also be submitting comments individually for the watersheds they know best.

Sincerely,



Gabriel Solmer  
Legal Director

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<sup>10</sup> See 303(d) Fact Sheet, *available at* [http://www.swrcb.ca.gov/rwqcb9/water\\_issues/programs/303d\\_list/ref\\_reports/index.shtml](http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/303d_list/ref_reports/index.shtml).