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State Water Resources Control Board
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Re: San Diego Bay Council Comments on September 2005 Draft "Revision of California's Clean Water Act Section 303(d) List of Water Quality Limited Segments"

Dear Mr. Wilson:

On behalf of San Diego Coastkeeper, a community-based 501(c)(3) non-profit organization dedicated to protecting and restoring the region's bays, coastal waters and watersheds, I welcome the opportunity to submit these comments on the Draft "Revision of California's Clean Water Act Section 303(d) List of Water Quality Limited Segments" ("List"). San Diego Coastkeeper is joined in these comments by the Environmental Health Coalition, Southwest Wetlands Interpretive Association, and the San Diego Chapter of the Surfrider Foundation.

The undersigned groups strongly support the new listing of 42 impaired water bodies in the San Diego region, as well as listings throughout California. We have concerns, however, with the failure to list a number of impaired or threatened waters due to misapplication of the law, Listing Guidance Policy ("Listing Policy"), and other factors.

These issues of support and concern are shared by environmental organizations across the state. This comment letter incorporates by reference the January 31, 2006 letter submitted by the Natural Resource Defense Council and other environmental groups ("Joint Letter"). This letter will give additional focus to the water bodies considered for listing in Region 9 (San Diego).

1. The List Includes Important San Diego Bay Listings, But Does Not Go Far Enough

The San Diego Bay Council strongly supports the listing of all of San Diego Bay on the 303d list due to failure to meet the beneficial use of Commercial and Sportfishing especially as it related to ecological health and collection of fish for human consumption. We support the staff's recommendation that all of SD Bay be listed for PCBs based on the pollutant-tissue line of evidence showing exceedences of guideline values.

The problem is wider than just PCB contamination and we would urge that the listing be expanded to include mercury and arsenic as well. The 1990 Health Risk Study conducted by the

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San Diego County Department of Environmental Health Services (DEH) resulted in a county fish consumption health risk warning due to elevated levels of mercury and arsenic in addition to PCBs.

Five health risk studies conducted on the safety of eating Bay fish over the past 10 years have all demonstrated significant risks to frequent or high-risk consumers from mercury, PCBs, and arsenic in the fish.

Additional evidence to support the listing is the Survey of Fishers on Piers in San Diego Bay: Results and Conclusions, March, 2005, conducted by San Diego-based Environmental Health Coalition. The survey found that a significant proportion of the fishers frequenting the public piers closest to contaminated area were catching and consuming bay fish and feeding it to their families.

A total of 109 fishers were interviewed in English, Spanish, and Tagalog as appropriate during the winter and spring of 2004. 96% of the fishers (57% Latino, 39% Filipino) were people of color. 58% of the surveyed fishers fished once a week and 25% fished daily. Almost two thirds of the fishers eat their catch. 41% of the children of fishers eat fish as well. This survey group represents an opportunity sample of fishers from South bay piers and was not a randomized sample. However, the results establish that a population regularly catches and consumes fish and demonstrates compelling reasons for regulators to take protective actions to address Bay and fish contamination issues.

A 1995 health risk study by Jon Van Rhyn also found shellfish risks from TBT, Cadmium, Benzo [a] pyrene, Benzo(a) anthracene and Benzo (b) fluoranthene, PCBs, and arsenic. The 1990 DEH study also found significant risks from PCDD/PCDFs in stingray; these were dismissed based on the assumption that the fish were not consumed. In the EHC survey, 18 fishers were found to catch stingray.

2. The List Fails to Meet Requirement to Include Impaired Waters Meeting Listing Criteria

In one case, the "Do Not List" portion of the draft List contains a water body pollutant combination which meets all criteria for inclusion on the draft List. Tecolote Creek appears to have been misclassified as "Do Not List" for Oil & Grease. The Region 9 Fact Sheet in fact reads, "Based on the readily available data and information, the weight of evidence indicates that *there is sufficient justification in favor of placing this water segment-pollutant combination on the section 303(d) list in the Water Quality Limited Segments category*" (page 931, emphasis added).

The data also bears the listing out, with 7 of 9 samples exceeding narrative standards according to the Basin Plan ("Waters shall not contain oils, greases, waxes, or other materials in concentrations which result in a visible film or coating on the surface of the water or on objects in the water, or which cause nuisance or which otherwise adversely affect beneficial uses.").

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3. The List Fails to meet the Requirement To Review All Readily Available Information

The Listing Policy clearly states that "all readily available data and information shall be evaluated." Listing Policy at § 6. The general legal principles supporting this requirement are explained in greater detail in Section C of the Joint Letter referenced above.

In several instances information and specific data were provided to the Regional and State Water Boards which were not evaluated. For example, a June 14, 2004 letter from San Diego Baykeeper (now Coastkeeper) is referenced in the fact sheet for San Diego Bay Shoreline, South Bay Power Plant for impairments chlorine, copper, oxygen, and temperature. Although the letter presents site-specific studies showing impairment in these areas, staff did not list because "information is not backed by data."

Another example is the Upper San Diego River, impaired for TDS. Citation to a 1999 San Diego County study on this subject was included in the same June 2004 Baykeeper letter, but this data was not evaluated.

4. The List Fails to Include Impaired Waters Under a Nuisance Condition

As elaborated on in the Joint Letter (section E), "Waters may also be placed on the section 303(d) list when a significant nuisance condition exists as compared to reference conditions...." (Listing Policy at 6). Several San Diego water bodies were not listed although the impairment described would qualify as a nuisance. For example, San Diego River (Upper) was not listed for excess algal growth. Where there is no quantitative data, the State and regional boards must evaluate the nuisance condition under Sections 3.11 and 4.11 based on all available information. This situation-specific weight of the evidence process must be applied when the other factors fail.

5. The Listing Policy Provides a Disincentive to Adequately Monitor Waters

Many San Diego water bodies were not listed due to insufficient sample size¹. This is particularly troubling when all samples showed exceedences, but not enough samples were taken to fit into the binomial model.² While statistical power is important in making listing decisions, the Listing Policy should not provide this perverse incentive to avoid monitoring or collecting further data on currently listed segments where there is limited data. California must provide incentives for

¹ Buena Vista Creek, chloride & sulfates (1 of 1 sample exceeded); Del Dios Creek, TDS (3 of 3 samples exceeded); El Capitan Lake, thallium (1 of 1 samples exceeded); Encinitas Creek, TDS (1 of 1 sample exceeded); Escondido Creek, arsenic, chromium, copper, nickel, zinc (all had 1 of 1 sample exceeded); Lake Hodges, mercury (1 of 1 sample exceeded); Murrieta Creek, chromium, nickel (both had 1 of 2 samples exceed); Rattlesnake Creek, TDS (1 of 1 sample exceeded); Reidy Canyon Creek, nitrogen (1 of 2 samples exceeded); SD Bay Shoreline Vicinity of B St and Broadway Piers, copper (1 of 1 sample exceeded); San Juan Creek, pH (1 of 1 sample exceeded); San Vicente Reservoir, pentachlorophenol, thallium (both had 1 of 1 sample exceed); Sandia Creek, chromium, nickel (both had 1 of 1 sample exceed); San Marcos Creek, TDS (2 of 2 samples exceeded).

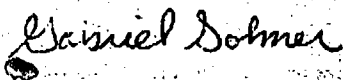
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additional monitoring, not dissuade it, if we are to fully characterize the condition of our waterways.

At least one San Diego water body (Loma Alta Creek) received consistent "poor" scores for benthic macroinvertebrate assemblages, but could not be listed because no monitoring data was available for pollutants in water or sediment. Section 3.9 of the Listing Policy allows for a water segment to be placed on the section 303(d) list if the water segment exhibits significant degradation in biological populations and/or communities as compared to reference site(s), but only if it is associated with water or sediment concentrations of pollutants. In the case of Loma Alta Creek, no study of potential attendant pollutants in the water or sediment was done. Unfortunately, this lack of monitoring results in an impaired water body which will not be restored through the 303(d) listing policy.

On behalf of San Diego Coastkeeper and the undersigned groups, I appreciate the opportunity to provide these comments. A great deal of work is needed to ensure a complete and accurate list in 2006 and beyond. We look forward to working the State and San Diego Regional Boards to ensure such listings. Please do not hesitate to contact me should you have any questions or need additional information.

Sincerely,



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