

NEWHALL LAND

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January 31, 2006

Selica Potter, Acting Clerk to the Board
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comments on the SWRCB's Draft 2006 Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments

Dear Ms. Potter,

We appreciate the opportunity to comment on the Draft 2006 Revision of the Clean Water Act (CWA) Section 303(d) List of Water Quality Limited Segments (Draft List). The Newhall Land and Farming Company (Newhall) takes its responsibility to maintain and protect water quality very seriously, and works hard to meet its obligations. Our comments will focus on the listings that are proposed for the upper Santa Clara River (SCR).

We commend the State Water Resources Control Board (SWRCB) for making progress toward improving the clarity and objectivity of the 303(d) listing process through the development and implementation of the *Water Quality Control Policy for Developing California's Clean Water Act 303(d) List* (Listing Policy) (September 2004). We understand that the goal of the new Listing Policy is to "establish a standardized approach for developing California's 303(d) list" and we support those efforts. While we do not agree with all of the recommended listings, the SWRCB's recommendations, and the basis for those recommendations, are far clearer than in previous listing cycles. Nevertheless, as we discuss below, improvements are needed to assure that listings are based on accurate and verifiable data, in compliance with the Listing Policy, and in compliance the SWRCB's broader administrative duty to make reasoned listing decisions based on a review of all pertinent, available, and appropriate data. See Attachment "A" for a summary of SWRCB's administrative duties with respect to regulatory decisions.

In general, we believe that several modifications should be made to the Draft List for the following purposes:

1. To accurately reflect the actual designated beneficial uses of the Santa Clara River (SCR);
2. To accurately reflect the actual water segment groupings according to Basin Plan reaches;
3. To assure that the listing analysis is based upon evaluation of water quality standards that are appropriate and applicable;
4. To take into account fairly recent "readily available"¹ water quality data that have been collected along the SCR and submitted to the Los Angeles Regional Water Quality Control Board (LARWQCB); and
5. To take into account age and trends in water quality data.

¹ Data submitted to Regional Water Quality Control Boards, such as NPDES data, is defined as readily available data in the Listing Policy. Listing Policy, Section 6.1.2.1, p. 18.

With respect to consideration of available water quality data, Newhall has collected monthly water samples in Reaches 4 and 5 of the SCR since May 2004 as part of a background receiving water monitoring program for its NPDES permit application for the proposed Newhall Ranch Water Reclamation Plant (WRP). In addition, the County Sanitation Districts of Los Angeles County (LACSD) also collects monthly receiving water samples throughout Reaches 5 and 6 as part of their NPDES permit monitoring program for their Valencia and Saugus WRPs. These data were previously submitted to the LARWQCB through quarterly and annual monitoring reports and are currently publicly available through the NPDES permit reporting program. These data are also provided in electronic format on the enclosed CD² for SWRCB convenience. We request that these data be included in the SWRCB's administrative record and 303(d) database, and that the SWRCB consider these fairly robust datasets in making listing determinations.

The following bullet points summarize Newhall's primary comments on specific proposed listings for Reaches 5 and 6 of the SCR. These comments are discussed more thoroughly in Attachment "A", and the fact sheets attached to this letter. Attachment "A" and the fact sheets are incorporated into these comments by reference. The fact sheets were prepared to summarize additional available data and technical information pertinent to particular proposed listing decisions for SWRCB consideration.

- **Aluminum, SCR Reach 5:** First, pursuant to the draft 303(d) fact sheet for this proposed listing, SWAMP data for Castaic Creek was included in the primary dataset considered to support an aluminum listing for SCR Reach 5. Although Castaic Creek is within the SCR watershed, Table 2-1 of the Basin Plan identifies Castaic Creek as a separate water body, with designated beneficial uses that are independent of those designated for SCR Reach 5³. Because Castaic Creek is a separate water body pursuant to the basin plan, and because data from Castaic Creek may or may not be indicative of water quality status in SCR Reach 5, aluminum data for Castaic Creek should be evaluated separately in making a listing determination for SCR Reach 5. It should not be included in the primary dataset relied upon to support the listing of SCR Reach 5 for aluminum.. SCR Reach 5 data shows aluminum exceedances for 2 of 2 samples.

Second, the pursuant to the draft 303(d) fact sheet for this proposed listing, the MUN was considered the beneficial use for SCR Reach 5. However, the MUN designation is inconsistent with the *conditional potential* MUN (MUN*) designation shown in the Basin Plan for SCR Reaches 5 and 6. The conditional potential MUN designation is not enforceable and cannot be used as the basis for regulatory actions. Recognition that the MUN use is not applicable to these receiving waters leads to the conclusion that the proposed listing for aluminum is not warranted, since the standard used to determine an impairment for the pollutant is a *drinking* water quality standard (in fact, the standard used was a Secondary Maximum Contaminant Levels (SMCL) – an

² The associated publicly-available lab QA/QC data has not been included with this data submittal as it has already been submitted to the LARWQCB through the NPDES quarterly monitoring and reporting program.

³ With respect to the accurate reflection of water body segment water quality, several listings proposed for SCR Reaches 5 and 6, including listings for aluminum, chlorpyrifos, diazinon, and PCBs, rely on sample data and exceedances not from the SCR, but from other water quality segments., such as Bouquet Canyon and Castaic Creeks. While these creeks are within the SCR watershed, sample results in these creeks are not as a scientific matter necessarily indicative of water quality status in the SCR mainstem. Whether the sample data in these creeks is indicative of water quality in SCR reaches 5 and 6 depends upon a number of confounding factors, including hydrologic conditions, flow rates and volumes, and natural water quality function within the various surface water body segments. Pursuant to federal Clean Water Act regulations applicable to listings and the Listing Policy, data relied upon to support addition of a water body segment to the 303(d) list should be measured at one or more sites in the water segment and should accurately reflect the water quality status of the pertinent water body segment.

secondary aesthetic drinking water standard). Aesthetic drinking water standards are not appropriate for use in evaluating ambient surface water quality in SCR Reach 5.

Third, SMCLs are “non-enforceable guidelines that are intended to assist public water systems in managing their drinking water for aesthetic considerations, such as taste, color and odor. Contaminants are not considered to present a risk to human health at the SMCL.”⁴ Further, SMCLs are intended to be applied to drinking water at the point of delivery, and are an inappropriate standard for natural surface waters, particularly for waters without an MUN designation. Section 6.1.3 of the Listing Policy is instructive with respect to this point as it specifies the use of evaluation guidelines that are “applicable to the beneficial use.” Thus the water quality standards used to evaluate data and determine the potential for impairment of beneficial uses must be applicable and appropriate, to assure an accurate determination of water quality impairment.

Finally, to the extent that exceedances of an aesthetic secondary drinking water quality standard for aluminum are used to evaluate impairment, the exceedances should more properly be evaluated as a conventional pollutants rather than as a toxicants. The exceedances of the SMCL do not indicate toxicity in SCR Reach 5. Therefore, 2 or 3 data points are too few to base a listing on per Table 3.2 of the Listing Policy. For all of these reasons, the listing of this reach for aluminum is not warranted.

- **Ammonia, SCR Reaches 5 and 6:** Available data show that only 1 sample of 83 (SCR Reach 5) and no samples of 41 (SCR Reach 6) exceed the applicable water quality objective for ammonia. Thus, available data meet the data quantity requirements of the Listing Policy, but do not meet the Listing Policy requirements for number of exceedances. As a result, no new listings are warranted for ammonia in SCR Reaches 5 and 6.
- **Chlorpyrifos, SCR Reach 6:** Pursuant to the draft 303(d) fact sheet for this proposed listing SWAMP data for Bouquet Canyon Creek were included in the primary dataset considered to support a listing for SCR Reach 6. In fact, the all 9 observed exceedances relied upon to support a listing of SCR Reach were actually observed in Bouquet Canyon Creek. While Bouquet Canyon Creek is within the SCR watershed, Table 2-1 of the Basin Plan identifies this creek as a separate waterbody, with designated beneficial uses that are independent of those designated for SCR Reach 6. Therefore Chlorpyrifos data for Bouquet Canyon Creek should be evaluated separately, rather than included in the primary dataset with data collected for SCR Reach 6. Chlorpyrifos data for SCR Reach 6 show *no* exceedances.

Additional data is also provided in the attached CD for Los Angeles County Department of Public Works (LADPW) monitoring station S29, which is within SCR Reach 6. These data show no exceedances of the California Department of Fish and Game (CDFG) aquatic life chronic (4-day) toxicity criterion of 0.05 ug/L for 6 samples collected between August 2002 and April 2003. Thus available data for SCR Reach 6 do not meet the Listing Policy requirements for number of exceedances, and no new listing is warranted for Chlorpyrifos in SCR Reach 6.

- **Diazinon, SCR Reach 5:** Available data show that only 1 sample of 50 exceeds the applicable threshold for diazinon in SCR Reach 5, and this result was 0.11 ug/L, or marginally greater than the California Department of Fish and Game’s chronic toxicity criterion of 0.10 ug/L. Further, this one sample was taken in November 2001, long before completion of the USEPA’s

⁴ Secondary Drinking Water Regulations: Guidance For Nuisance Chemicals EPA 810/K-92-001 (July 1992); 40 CFR 143 et seq.

residential use diazinon phase-out, and its 2004 residential use diazinon ban. Thus, available diazinon data meet the data quantity requirements of the Listing Policy, but do not meet the Listing Policy requirements for number of exceedances, so that no new listing is warranted for diazinon in SCR Reach 5. See attached fact sheet for more information. It should also be noted that diazinon data should be interpreted in the context of the periods during which substantial source controls were implemented for the pollutant (see comments on diazinon in Reach 6 for more discussion on ban). Because there are no exceedances of diazinon out of 47 samples in SCR Reach 5, the proposed listing is not warranted.

- **Diazinon, SCR Reach 6:** More recent data for diazinon should be considered preferentially consistent with EPA guidance and the Listing Policy regarding temporal representation of data⁵. Two substantial source controls for diazinon have been imposed: USEPA's 2004 ban on residential use of the pesticide, and the provisions and conditions of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region (.Order No. R4-2005-0080) (the "Ag Waiver") adopted by the LARWCB in 2005. Post-ban data demonstrate that only 1 of 4 samples exceeded the applicable threshold, indicating that a diazinon listing for this reach is not warranted per the listing policy. Should the SWRCB maintain this proposed listing despite EPA Guidance and the Listing Policy, diazinon in Reach 6 should be listed under the "Water Quality Limited Segments Being Addressed" category due to the existing USEPA ban on diazinon sales for residential use and monitoring and control of diazinon required pursuant to the Ag. Waiver.
- **Nitrate plus Nitrite, SCR Reach 5:** Available data demonstrate that only 10 of 97 samples exceed the applicable water quality objective for nitrate plus nitrite in SCR Reach 5. These data meet the de-listing requirements of Table 4.2 of the Listing Policy, "Maximum Number of Measured Exceedances Allowed to Remove a Water Segment From the Section 303(d) List for Conventional or Other Pollutants". Please also note that the Draft List's fact sheet mistakenly references an MUN use as the basis for this water quality objective (also see previous discussion on aluminum regarding misuse of *conditional potential* MUN, or MUN*, designation for this reach), however historic background concentrations actually serves as the basis for this objective and therefore this pollutant should be evaluated using the "conventional or other pollutants" category (i.e., delisting Table 4.2) rather than the "toxicants" category.
- **Nitrite, SCR Reach 6:** Available data from SCR Reach 6 show no exceedances in 43 total samples. Thus, SCR Reach 6 should not be listed for nitrite.

⁵ USEPA initiated a phase-out of residential diazinon use in 2000 and the phase-out was complete by December 31, 2004. Diazinon has a short half-life (2-4 weeks) in soils, so the phase-out has had a near-immediate effect in reducing concentrations available for wash off into receiving waters. As noted in EPA's *Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act* (July 2005), EPA notes that "older data should be evaluated with care." The Guidance goes on to give an example involving relatively old data. At the time the data were collected, the pollutant exceeded the applicable water quality standards, but, after the time of data collection, source reduction measures were instituted to reduce the levels of the pollutant discharges, and no activities had occurred that would increase loading of the pollutant in the watershed. The Guidance points out that, under such conditions, it would be reasonable to rely on more recent data reflecting the source reduction measures and indicating that the water segment was meeting applicable standards. Further, section 6.1.5.3 of the Listing Policy states, "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered." Applying the Guidance and Listing Policy, SWRCB should take into account the EPA ban (a management measure) and rely preferentially on post-ban data.

- **PCBs, SCR Reach 5:** Pursuant to the draft 303(d) fact sheet for this proposed listing, s SWAMP data for Castaic Creek was included in the primary data set supporting the proposed listing for SCR Reach 5. Table 2-1 of the Basin Plan identifies Castaic Creek as a separate water body with designated uses that are independent of SCR Reach 5. Therefore PCB data for Castaic Creek should be evaluated separately and should not be included in the primary data set considered in determining a listing for SCR Reach 5. SCR Reach 5 data shows that only 1 of 2 samples exceeded the water quality standard. Thus available SCR Reach 5 data do not meet the Listing Policy requirements for number of exceedances, and no new listing is warranted for PCBs in SCR Reach 5.

Furthermore, Section 6.1.5.3 of the Listing Policy states, “If the majority of samples were collected on a single day or during a single short-term natural event (e.g., a storm, flood, or wildfire), the data should not be used as the primary data set supporting the listing decision.” However, the proposed PCBs listing is based on just three samples taken at two SWAMP monitoring station (with one sample being taken from a separate reach), all of which were sampled during storm flows, which are not representative of typical or long-term conditions within this water body. Therefore, not only are there too few exceedances in SCR Reach 5 to list PCBs, but the samples are not representative of multiple conditions and do not meet Listing Policy guidelines for temporal representativeness. See Attachment “A” for discussion.

- **Toxicity, SCR Reach 6:** Section 3.6 of the Listing Policy states, “If the pollutant causing or contributing to the toxicity is identified, the pollutant shall be included on the section 303(d) list as soon as possible (i.e., during the next listing cycle).” Appendix B of the 2005 SWAMP report *Water Quality in the Calleguas Creek and Santa Clara River Watersheds* identifies diazinon as the probable cause of toxicity in the Reach 6 (Bouquet Creek) samples. Therefore, the proposed toxicity listing in Reach 6 should be replaced with diazinon, consistent with these scientific findings and the guidelines of the Listing Policy. However, due to the existing USEPA diazinon ban, diazinon should either not be listed (since by preferentially using post-ban data only, listing would not be warranted), or be listed under the “Water Quality Limited Segments Being Addressed” category (see above comments on Reach 6 proposed diazinon listing).

Thank you again for the opportunity to comment on the Draft List. We realize that our comments are lengthy and potentially confusing, and would be happy to discuss them in a follow-up meeting with SWRCB staff and/or SWRCB counsel. Please contact me at 661-255-4259 to discuss our comments or any address questions you may have.

Sincerely,

NEWHALL LAND & FARMING COMPANY

Matt Carpenter
Director, Environmental Resources

cc: R. DeShazo
J. Bishop

