California Regional Water Quality Control Board

Colorado River Basin Region

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

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(760) 346-7491 • Fax (760) 341-6820
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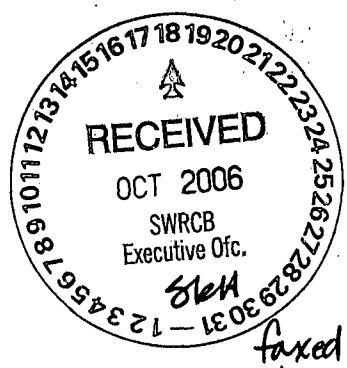
October 11, 2006

303(d) List
Deadline: 10/20/06 5pm



faxed copy also rec'd 10/11/06.

State Water Resources Control Board
c/o Song Her, Clerk to the Board
1001 I Street
Sacramento, CA 95814

SUBJECT: Draft 2006 Federal CWA Section 303(d) List

Dear State Water Board Members:

Thank you for providing us with the opportunity to comment on the proposed 2006 federal Clean Water Act (CWA) Section 303(d) List of Water Quality Limited Segments for California (2006 list). We have reviewed the updated proposed 2006 list and respectfully continue to disagree with your staff's recommendation to list of the All American Canal (AAC) as impaired for specific conductance (SC), total dissolved solids (TDS), and sulfates (SO_4). We have expressed our concerns and reasons for disagreeing with the proposed listing to the State Board staff on several occasions. We also stated our concerns during the January 5, 2006 workshop in Pasadena. This letter reiterates our concerns in hope that you may reconsider listing the AAC.

Background

The AAC was constructed for the purpose of delivering water from the Colorado River to Imperial and Coachella Valleys for agricultural and municipal use. In this context, the AAC is essentially an extension of the Colorado River. Currently, the AAC diverts 3.1 million acre-feet per year of water from the Colorado River to nine Imperial Valley cities, and 580,000 acres of agricultural land in Imperial and Coachella Valleys. Ninety eight percent (98%) of this water is used to irrigate crops mostly in Imperial Valley. The rest of the water is used as drinking water by Imperial Valley cities. Neither point nor anthropogenic nonpoint sources of pollution discharge into the AAC.

The Water Quality Control Plan for the Colorado River Region (Basin Plan), as amended to date, designates Municipal and Domestic supply (MUN) and Agricultural supply as two of the main beneficial uses of the AAC. The Basin Plan's WQOs to protect that use are:

> "II. GENERAL SURFACE WATER OBJECTIVES...Regarding controllable sources of discharge, in the absence of site specific objectives established herein, the following objectives apply to all surface waters of the Colorado River Basin Region...
>
> "H. TOTAL DISSOLVED SOLIDS...Discharges of wastes or wastewater shall not increase the total dissolved solids content of receiving waters, unless it can be demonstrated to the satisfaction of the Regional Board that such an increase in total dissolved solids does not adversely affect beneficial uses of receiving waters...
>
> "N. Chemical Constituents...No individual chemical or combination of chemicals shall be present in concentrations that adversely affect beneficial uses."

On September 30, 2004, the State Board adopted the Water Quality Control Policy for Adopting California's Clean Water Act Section 303(d) List (hereafter referred to as "Listing Policy"). The Listing Policy prescribes narrative and statistical criteria, among other factors, for identifying waters that do not meet applicable water quality standards with technology-based controls alone and for prioritizing such waters for the purposes of developing Total Maximum Daily Loads (TMDLs). The Listing Policy also provides delisting criteria.

The State Board's Fact Sheets Supporting Revisions of the Section 303(d) list (Fact Sheet) for our Region recommends the listing of the AAC under Section 3.1 of the Listing Policy, because a statistically significant number of AAC water quality samples provided by the Imperial Irrigation District (IID) exceed the applicable Secondary Maximum Contaminant Levels (MCLs) for the aforementioned constituents. The Staff Report supporting the listing notes that:

> "...narrative [WQOs] that apply to [the AAC] require the protection of beneficial uses including municipal drinking water. The Secondary MCL and Short Term MCL for MUN were used to assess compliance for TDS and sulfate for the AAC..."

Table 1, below, shows the MCLs in question.

Table 1: Secondary MCLs, CCR, Title 22, Table 64449-B

Constituent	Recommended	Upper	Short Term
Total Dissolved Solids (mg/l) OR Specific Conductance, micromhos	500 900	1,000 1,600	1,500 2,200
Sulfate (mg/l)	250	500	600

We disagree with the proposed listing of the AAC for four main reasons:

1. State Board staff is misinterpreting the narrative standard of our Basin Plan;
2. State Board staff is misapplying the MCLs in question;
3. The listing fails to meet the criteria under Section 2 of the Listing Policy; and
4. The Listing is not in the best interest of the State.

The following paragraphs discuss the four points.

Misinterpretation of Applicable Water Quality Standards

Regional Board staff agrees with State Board staff that the above-mentioned exceedances surpass the exceedances allowed in Tables 3.1 and 3.2 of the Listing Policy, but Regional Board staff disagree with how the State Board staff have interpreted the Basin Plan's narrative standard applicable to the AAC. The narrative standard we believe State Board staff is using for recommending the listing is the one specified in Chapter III, Section II, Subsection N, of our Basin Plan, which states, in part, that:

> "No individual chemical or combination of chemicals shall be present in concentrations that adversely affect beneficial uses..."

We respectfully bring to the attention of the State Board that Section II specifically states that the above-mentioned narrative standard is applicable to "controllable sources of discharge" (Basin Plan, Ch. 3, Sec. II, p. 3.1). To the best of our knowledge, and as stated before, we do not have any controllable point or nonpoint sources discharging wastes/pollutants into AAC. In fact, upstream of Imperial Dam, we only have one NPDES permit that provides for a discharge of pollutants into the Colorado River—the PG&E permit our Board adopted in 2004 for the Topock Compressor Station cleanup. To date, however, PG&E has not discharged any pollutants under that permit, nor does it plan to discharge such materials before the permit expires on January 31, 2007. Moreover, PG&E will not be seeking to renew the permit. Therefore, no discharge upstream of Imperial Dam has occurred or will occur. We do have agricultural runoff from Palo Verde Irrigation District upstream of Imperial Dam. We

offer for your consideration, however, that it is highly speculative to suggest that the subject runoff is causing or contributing to violation of applicable WQS in the AAC, when so far as we know the runoff meets the Colorado River WQS for the same constituents.

Misapplication of MCLs

We note for the record that our Basin Plan does not specifically establish the subject MCLs as the WQOs for the AAC, but without question we also believe that the MCLs are applicable regulatory criteria to the AAC. The Secondary MCLs address drinking water aesthetic, such as taste and odor. These contaminants are not considered to present a risk to human health within the prescribed ranges.

The levels in Table 1, above, convey ranges of protection rather than static limits (e.g., 0 < TDS ≤ 500 mg/L is the recommended; 500 < TDS ≤ 1000 mg/l is the upper level, etc.). For the constituents listed in Table 1, no fixed consumer acceptance contaminant levels have been established (CCR, Title 22, Section 64449 (d)). The guidance states that constituent concentrations lower than the Recommended contaminant level are desirable for a higher degree of consumer acceptance (CCR, Title 22, Section 64449 (d1)). Constituent concentrations ranging to the Upper contaminant level (i.e., 500 < TDS ≤ 1000 mg/l) are acceptable if it is neither reasonable nor feasible to provide more suitable water (CCR, Title 22, Section 64449 (d2)).

Pursuant to the CWA, the Seven States Colorado River Salinity Control Forum developed water quality standards in 1975 for salinity consisting of numeric criteria and a basin-wide plan of implementation for salinity control. Considerations in establishing the salinity standard included what could be reasonably met in light of projected increases in salinity due to human factors. The Forum recommended that each of the Basin States adopt the proposed standards. California along with the other Basin States adopted the Forum's recommended standards, which were subsequently approved by the U.S. Environmental Protection Agency. The TDS standard for the Colorado River at Imperial Dam was set at 879 mg/L. In this context, we offer for your consideration that if the TDS limit for the Colorado River is 879 mg/L, and the 879 mg/L as been established based on what can be reasonably met, and water quality-wise the AAC is an extension of the Colorado River at Imperial Dam, then it stands to reason that the 879 mg/L should be TDS objective for the AAC. We raised this argument in our January 30, 2006, Comment letter on the matter. State Board staff responded to this by indicating that the Colorado River is not being recommended for listing for TDS. This leads us to believe that State Board staff misinterpreted our argument. Our point is not whether the River should be listed; our point is that the Colorado River is the sole water source for the AAC and, therefore, it is the determining factor for the water quality of the AAC (i.e., having a more stringent TDS objective for the AAC is, while highly desirable, wishful thinking).

We also note for the record that in State Board WQ Order No. 2006-0007, the State Board made it explicitly clear that the Colorado River water allocated to IID and Coachella Valley Water via the AAC is perfectly good water for MUN use—good enough to transfer to Southern California metropolitan areas for MUN use.

Using the 879 mg/L value for the AAC, our analysis of the IID data referred to earlier shows that:

- Only one of the 71 samples collected from the AAC exceeded the 1000 mg/l Upper Secondary MCL for TDS in CCR, Title 22, Section 64449; and
- None of the samples collected from the AAC exceeded the 500 mg/l Upper Secondary MCL for sulfates in CCR, Title 22, Section 64449.

Based on this analysis, the AAC should not be listed.

Listing Fails to Comply With Section 2 of the Listing Policy

As articulated in the preceding paragraphs, we do not agree with the premise that the AAC is actually water quality impaired. Section 2 of the Listing Policy states, in part, that:

> "Waters shall be placed in this category of the section 303(d) list if it is determined, in accordance with the California Listing Factors, that the water quality standard is not attained; the standards nonattainment is due to toxicity, a pollutant, or pollutants; **and** [our emphasis] remediation of the standards attainment problem requires one or more TMDLs." (Listing Policy, Sec. 2.1, p. 3)

Because there is no impairment, the AAC should not be listed.

Listing is Not in the Best Interest of the State

The Regional Board has adopted and currently implements three sediment Total Maximum Daily Loads (TMDLs) and one pathogen TMDL in the Imperial Valley; it recently adopted a trash TMDL for the New River, and plans to adopt another TMDL for pathogens for the Coachella Valley Stormwater Channel. Besides the AAC proposed listing, the proposed 2006 list contains other listings that affect eight of the region's most important waterbodies and addresses contaminants such as nutrients, salinity, pesticides, toxicity, volatile organic compounds, and selenium. Unnecessary listing the AAC on the basis of State Board staff's misinterpretation of the narrative WQO in the Basin Plan will create obligations for Regional Board (and the State Board) that would detract from our efforts to address appropriately 303(d) Listed waters in the region and will not result in TMDLs or water quality improvements. Inappropriate listing is not in the best interest of the State. The AAC water quality is essentially the same as the California Aqueduct's. The Aqueduct supplies the Metropolitan Water Districts of Southern California with Colorado River water for millions of people in Southern

California. So far as we know, the Aqueduct meets drinking water standards for the constituents in question. Therefore, to selectively list the AAC and not the Aqueduct would amount to a double standard, which defeats the purpose of the Policy. This double standard is not in the best interest of the State. Also, we note for the record that all Imperial Valley municipalities are in compliance with their Department of Health Services (DHS) permits for drinking water for the constituents in question. Therefore, listing the AAC as an impaired source of drinking water will create confusion for the regulated community, the AAC user, and the public we serve. It would also set a bad policy precedent (i.e., arguably in listing it, the State Board contradicts DHS's determination that the water is drinkable). This cannot be in the best interest of the State.

In spite of the foregoing, the State Board staff, on its own judgment, determined that the AAC should be listed.

We appreciate your considerations on the matter. If you have questions regarding this issue, please contact Logan Raub at (760) 776-8966 or myself at (760) 776-8942.

NADIM ZEYWAR
TMDL/NPS Unit Chief

NZ/tab

cc: Craig Wilson, SWRCB, Division of Water Quality
Tom Howard, SWRCB, Executive Office
Tom Vandenberg, SWRCB, Office of the Chief Counsel

File: BP 303(d)

771

California Regional Water Quality Control Board
Colorado River Basin Region

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Arnold Schwarzenegger
Governor

304

To: DORENA GODING
From: NADIM ZEMWAR
Fax: 916-341-5550
Pages: 6
Phone: 916-341-5596
Date: 10-11-2006
Re: Draft 2006 Federal CWA Section 303(d) List
cc:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

● **COMMENTS:**

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