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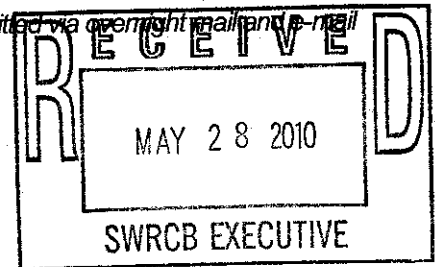
PHILIPPA KLESSIG
Councilmember

ROBERT SLAVIN
Councilmember

May 27, 2010

Ms. Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Submitted via overnight mail and e-mail



Subject: Comment Letter – 2010 Integrated Report / Section 303(d) List
Segments within the Malibu Creek Watershed
Benthic-Macroinvertebrate Bioassessment Listing

Dear Ms. Townsend,

Thank you for the opportunity to comment on the proposed 2010 Integrated Report; hereon referred to as "2010 IR." The City of Westlake Village has reviewed the proposed 2010 IR and has several concerns with the proposed listing of Benthic-Macroinvertebrate Bioassessments for segments within the Malibu Creek Watershed, listing Decisions ID 17208, 17209, 17210, and 17211. The City's concerns, as shared by other principal stakeholders of the Malibu Creek Watershed, are as follows:

- 1) The Benthic-Macroinvertebrate Bioassessments listing does not meet the base criteria of the State's Listing Procedures and Policies;
- 2) The intent of the Benthic-Macroinvertebrate Bioassessments listing is premature because it contradicts state-wide efforts toward determining biological objectives for California streams and rivers; and
- 3) The Benthic-Macroinvertebrate Bioassessments listing imposes an unwarranted impact on Malibu Creek stakeholders due to recent revisions of the Heal the Bay et al v. Browner LA TMDL Consent Decree (Consent Decree).

We further discuss our three main concerns, in detail, below.

Comment No. 1: State's Water Quality Control Policy for Developing California's Clean Water Act Section 303 (d) List (Listing Policy)

The State's listing for "Degradation of Biological Populations and Communities" requires significant data and a convincing, supporting body composed of multiple lines of supporting evidence. Section 3.9 of the Listing Policy requires that where a

"...water segment exhibits significant degradation in biological populations and/or communities as compared to reference site(s) and is associated with water or sediment concentrations of pollutants including but not limited to chemical concentrations, temperature, dissolved oxygen and trash. This condition requires the diminished numbers of species or individual of a single species or other metrics when compared to a reference site(s). This analysis should rely on measurements from at least two stations (*per segment*). Comparisons to reference sites shall be made during similar season or hydrologic conditions."

The Los Angeles Regional Water Quality Control Board's (Regional Board) decision to list this impairment was based on only one study that was conducted in 2005, a study that is now five years old. The report entitled, "Malibu Creek Watershed Monitoring Program, Bioassessment Monitoring, Spring/Fall 2005" (Bioassessment Report) was prepared by Aquatic Bioassay and Consulting Laboratories, Inc. The Report indicated that eleven (11) sites were initially considered for testing on two separate dates – June 1st and 2nd and again on September 19th and 20th in 2005, however, three (3) sites were not included because there was no flow during the inspections. In total only eight (8) sites were tested throughout the entire watershed, with the Hidden Valley site tested only in September 2005. Therein, only two samples, one for spring and one for fall (not in the same season), were collected each for the seven sites, with no two sites being in the same reach or segment. Therefore, the proposed 2010 IR listing of benthic-macroinvertebrate for Malibu Creek is based on insufficient data collected five (5) years ago when conditions were far less than average.

The Bioassessment Report also indicates there were significant concerns the measurement season, 2005, was a significant rain year with over 52.92 inches of rain; more than typical. It is now well known that these high volume rain seasons leach significant concentrations of selenium and other metals, metalloids and minerals into the watershed from the exposed sediments of the Monterey and Modelo formations. Additionally, the report indicated that some of the stream beds and adjacent areas had been significantly impacted by recent forest fires and subsequent drops of *Phos-Chek* and other water quality affecting flame suppressants.

Section 7 of the Listing Policy defines a "reference condition" as, "the characteristics of water body segments least impaired by human activities". As such, reference conditions can be used to describe attainable biological or habitat conditions for water body segments with common watershed/catchment characteristics within defined geographical regions."

The inclusion of a reference site, condition, or location is often based on a calculated Index of Biotic Integrity (IBI). Based on the definition of this term, shown above, the IBI should be, "attainable biological or habitat conditions for water body segments with *common watershed/ catchment characteristics within defined geographical regions.*" In review of the 2005 Bioassessment Report, the authors appeared to have used an IBI based on studies conducted in the Russian River in 1999 and studies conducted in the San Diego area along the Mexican border. The San Diego County IBI studies were conducted in 1995, 1996, 2000, and 2003. It is these two IBI indices that were used to define the apparent 'degradation' in Malibu Creek Watershed, a watershed whose geological formations alone make it incomparable to those used to develop the IBI.

Section 3.9 of the Listing Policy also provides that bioassessment "data used for listing decisions *shall be consistent with section 6.1.5.8.* In turn, Section 6.1.5.8, requires that:

"When evaluating biological data and information, RWQCBs shall evaluate all readily available data and information **and shall:**

- Identify appropriate reference sites within water segments, watersheds, or ecoregions. Document methods for selection of reference sites.
- Evaluate bioassessment data at reference sites using water segment-appropriate method(s) and index period(s). Document sampling methods, index periods, and Quality Assurance/Quality Control procedures for the habitat being sampled and question(s) being asked.
- *Evaluate bioassessment data from other sites*, and compare to reference conditions. Evaluate physical habitat data and other water quality data, when available, to support conclusions about the status of the water segment.
- Calculate biological metrics for reference sites and develop Index of Biological Integrity if possible."

As required by this section (Listing Policy, Section 6.1.5.8), the State Board must consider whether the listing has been adequately compared to the reference site and other sites and must also evaluate the physical habitat data and other water quality data. The use of IBI indices based on characteristics of streams some 200 to 400 miles away, with arguably very distinct chemistry, geology, hydrology is an inappropriate basis of comparison on which to base a judgment of impairment. There has been no attempt to correct for the relative effect of inherently different site characteristics that exist between a subject, regulated stream site and a remote pristine reference site. Among the naturally occurring and uncorrected variables which can be significantly distinct between a regulated and a reference stream site would include the following:

- Elevation above sea-level
- Variations of water temperature
- Water depth
- Water Hardness
- Amount of direct sun or foliar canopy

- Stream velocity, grade drop and flow profile
- Scour or sedimentation
- Seasonal variations in between years, hatch cycles or specific monitoring event timing
- Background geologic influences on water chemistry (e.g., upraised marine sediments)
- Influence of the Monterey and Modelo formations
- Predatory activity
- Imported supply water vs. groundwater chemistry
- Variation in the volume of or make-up of organic debris
- Topographical fire damage or phos-chek releases in tributary areas
- Water Turbidity

Comment No. 2: Premature and Inappropriate Use of a Biological Objective

The City agrees with the State regarding the importance of and pending use of Biological Objectives for evaluating waters of the State. The City is encouraged by the process being used by the SWRCB in conjunction with State Department of Fish and Game, Information Management and Analysis, Aquatic Bioassessment Laboratories, SWAMP and Southern California Coastal Waters Research Project to develop, fully vet and implement a consistent, fully researched and equitable plan to implement workable and obtainable Biological Objectives. The City believes this proposed listing for benthic-macroinvertebrates in the Malibu Creek violates these significant efforts proceeding on a state-wide level to develop attainable biological objectives.

As noted in the listing policy, the benthic-macroinvertebrate impairment listing must result in association with other listed pollutant impairments. The current 2008 303(d) list adopted by the Regional Board includes several reaches of the Malibu Creek listed for benthic-macroinvertebrate impairments and a completion date in 2021. This timing would allow for completing the TMDLs on these other "associated pollutant" impairments. Subsequent study could then proceed without the complication or compounding effects of these additional stressors. Should the SWRCB include the benthic-macroinvertebrates listings for Malibu Creek, the adoption date would advance to 2013 due to the proposed revisions of the Consent Decree.

Comment No. 3: Unwarranted impact on Malibu Creek stakeholders due to the proposed revision to the 1999 EPA/ Heal-the-Bay Consent Decree

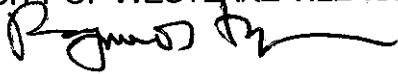
Should the SWRCB allow the benthic-macroinvertebrate listing on Malibu Creek to be approved with the 2010 IR, the Regional Board's expected TMDL completion date of 2021 will advance to 2013 due to its incorporation into the EPA/Heal-the-Bay Consent Decree. The consequence of this accelerated time-frame will equate to large expenditures to be borne by the local agencies within the Malibu Creek Watershed. It must be also recognized that the Consent Decree is absolutely the wrong mechanism for implementing any Biological Objective driven TMDL. It is a rigid and inflexible methodology for such an uncertain objective over an extremely abbreviated period of time. This accelerated 2-1/2 year time frame under the terms of the Consent Decree does not provide for any implementation plan, nor does it provide any accommodation for developing science or policy achieved from the Statewide Biological Objectives effort.

In summary the City strongly encourages the SWRCB to omit benthic-macroinvertebrate listing from the 2010 Integrated Report.

We look forward to your consideration of our comments. If you have any questions, please feel free to contact the City's Stormwater Program Manager, Joe Bellomo, at (805) 279-6856.

Respectfully submitted,

CITY OF WESTLAKE VILLAGE



Raymond B. Taylor
City Manager

cc: Samuel Unger, Interim Executive Officer of the Regional Water Quality Control Board – Los Angeles
John Knipe, City Engineer
Joe Bellomo, Stormwater Program Manager