



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE
REFER TO FILE

WM-9

May 27, 2010

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

Dear Ms Townsend

COMMENT LETTER – 2010 INTEGRATED REPORT/SECTION 303(D) LIST

Thank you for the opportunity to comment on the 2010 Integrated Report/Section 303(d) List (303[d] List) and the supporting Staff Report. The following comments are being submitted on behalf of the unincorporated County of Los Angeles (County) and the Los Angeles County Flood Control District. The County and the Los Angeles County Flood Control District previously provided written comments on this matter on June 17, 2009, to the California Regional Water Quality Control Board, Los Angeles Region (enclosed). To the extent that those comments were not incorporated, they are hereby incorporated by reference.

1. Invasive species should not be added to the 303(d) List

The Staff Report provides no satisfactory explanation for the recommendation to add invasive species except for a declarative statement that "[i]nvasive species would be considered as pollutants and would be considered for inclusion of the Section 303(d) List." As indicated in our June 2009 letter, in spite of their harmful impact on the aquatic environment and native species, adding invasive species to the 303(d) List is not the appropriate mechanism for remediating these impacts.

The 303(d) List is intended to identify water bodies that have been impaired due to some measurable contaminant associated with anthropogenic discharges. Section 3.9 of the Water Quality Control Policy for Developing California's Clean Water Act 303(d) List states that a water body shall be put on the 303(d) List if

the water body exhibits significant degradation in biological populations as compared to reference site(s) “and is associated with the water or sediment concentrations of pollutants.” Invasive species are not pollutants whose concentrations can be measured in water or sediment. In the case of New Zealand mudsnails, the resultant degradation in biological populations is not associated with a pollutant in water or sediment, but with human behavior that is largely outside the control of local government. Once added to the 303(d) List, it is not clear how a Total Maximum Daily Load (TMDL) would be developed, who would be responsible for the elimination of the mudsnails, or how allocations would be made. Therefore, we believe that the 303(d) List and TMDLs are not the appropriate mechanism to address the invasive species problem and invasive species should be moved to the “do not list” category.

2. Listings for Benthic-macroinvertebrate Bioassessments are inappropriate

The proposed 303(d) List includes new listings for Benthic-macroinvertebrate Bioassessments (benthic impairments) for several water bodies in the Los Angeles Region. These proposed new listings are inappropriate for the following reasons. First, there are currently no objectives, narrative or numeric, set for benthic impairments in California. It would be inappropriate to list a water body as impaired for which there is no water-quality objective. Secondly, current science is not sufficiently advanced to formulate a defensible stressor identification or linkage analysis, both of which are crucial in developing a TMDL for benthic impairments. This point is crucial because the proposed listing would result in a TMDL for benthic impairments in Malibu Creek by March 2013, according to a recent agreement between the U.S. Environmental Protection Agency and the TMDL consent decree plaintiffs (Heal the Bay and Santa Monica Baykeeper). For these reasons, the proposed listings for benthic impairments in the Los Angeles Region are premature and should not be approved.

3. Fish Barriers listing for Malibu Creek is inappropriate

The current 303(d) List contains an inappropriate “Fish Barriers” listing for Malibu Creek. Fish Barriers in this instance most likely refers to the Rindge Dam located in Malibu Creek State Park. The Water Quality Control Policy for Developing California’s Clean Water Act 303(d) List does not provide justification to characterize

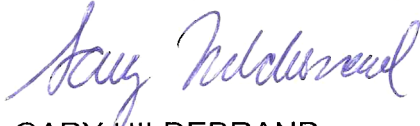
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a physical structure as a pollutant or impairment. It is also not clear how a TMDL would be written. As with invasive species, the 303(d) List is not the appropriate mechanism to address the issue of steelhead migration in Malibu Creek. Therefore, the Fish Barriers listing for Malibu Creek should be removed.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Rossana D'Antonio at (626) 458-4325 or rdanton@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works



GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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Enc.

cc. Chief Executive Office (Culp, Kumagawa, Park)



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IN REPLY PLEASE
REFER TO FILE: WM-9

June 17, 2009

Ms Tracy Egoscue, Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Attention Mr. Man Voong

Dear Ms Egoscue.

COMMENTS ON THE 2008 LOS ANGELES REGION IMPAIRED WATER BODIES LIST, SECTION 303(d) OF THE CLEAN WATER ACT

Thank you for the opportunity to comment on the proposed impaired water bodies list for the Los Angeles Region, Section 303(d) of the Clean Water Act (303(d)). On behalf of the County of Los Angeles and the Los Angeles County Flood Control District (LACFCD), we have the following comments.

1. Evaluation of Sediment Impairment

In evaluating the sediment impairment in Bays and Estuaries for 303(d) listing purposes, the Regional Water Quality Control Board (Regional Board) – Los Angeles Region (Los Angeles Regional Board) utilized sediment quality guidelines and numeric objectives established by the National Oceanic and Atmospheric Administration (NOAA). These NOAA guidelines and objectives were established based on the single-line-of-evidence approach and were never intended to be used for 303(d) listing purposes.

As you are aware, the State Water Resources Control Board (State Water Board) has developed Sediment Quality Objectives (SQO) for Enclosed Bays and Estuaries, adopted on September 16, 2008, in the State of California. For the purposes of assessing sediment impairment, the State SQO utilizes the

multiple-line-of-evidence approach. Further, the State SQO was established based on the most recent scientific information available to date and is hence more robust and scientifically sound.

The State SQO plan recommends that Regional Boards utilize the plan to evaluate sediment impairments in Bays and Estuaries to develop a new or revise the existing 303(d) list. Given that the State SQO supersedes the NOAA criteria, the State SQO must be used for appropriate evaluation of 303(d) listings of sediment impairments in Bays and Estuaries in the Los Angeles Region.

2. Evaluation of Impairment for Bacteria

The use of calendar-month approach for calculating the geometric mean for bacteria indicators is more reasonable than the 30-day rolling approach that has been used in the past. Bacteria standards established by the Los Angeles Regional Board (e.g., Basin Plan), the State Water Board (e.g., Ocean Plan), and the United States Environmental Protection Agency (EPA) all require a minimum of five data points for the calculation of geometric mean to satisfy the needed statistical significance. The use of data points less than five for the calculation of geometric mean for 303(d) listing purposes does not follow the Federal and State standard guidelines. Given that the Los Angeles Regional Board indicated in its report that two or more samples were used in the calculation of the geometric mean, this does not meet the established guidelines for the calculation of geometric mean.

It is clear that sufficient data points (≥ 5) may not be available in each month. To avoid the insufficiency of data points, it is more appropriate to calculate the geometric mean based on calendar seasons (instead of calendar months), consistent with the EPA's recommendation. In this approach, a year can be divided into two to four seasons based on recreational uses and one geometric mean would be calculated for each season.

Moreover, it is not appropriate to use geometric mean for 303(d) listing purposes. Geometric mean can be used to assess the condition of a water body over a longer time period for impaired water bodies, but not as a parameter for developing a new or revising the current 303(d) list. Thus, listing a water body for bacterial impairment shall be made exclusively based on the evaluation of the single-sample exceedances only.

Further, the Basin Plan lists four bacteria indicators (total coliform, fecal coliform, Enterococcus, and fecal-to-total coliform ratio) for marine waters and two bacteria indicators (*E. coli* and fecal coliform) for fresh water. With the exceedance-day approach used by the Los Angeles Regional Board to assess bacteria impairment, an exceedance day is defined as a day during which any of the bacteria indicators exceeds the standard. In the case of marine waters having four bacteria indicators, a day with exceedance in only one bacteria indicator can still be considered as an exceedance day, even if the other three remaining indicators do not show an exceedance. This approach is not logical and could potentially result in an unimpaired water body being listed as impaired. Instead, the appropriate approach should be to list a water body when two or more of the bacteria indicators have exceeded the standard.

3. Evaluation of Impairment for Invasive Species

We agree that actions need to be taken to curtail the impact of invasive species on the aquatic environment and human health. However, we have reservations on listing invasive species as pollutants requiring Total Maximum Daily Loads (TMDL). Invasive species should not be interpreted as pollutants. Invasive species are alien species of which the sources are mostly unknown, and even when known, they cannot be attributed to local discharges. Further, there is no water quality standards set for invasive species in the Basin Plan. Additionally, the State listing policy, which the current listing is based on, does not include guidelines for listing invasive species. Thus, the invasive species listing should be removed from the TMDL-required list.

Invasive species should be treated as a cause of harm to the aquatic environment, but not as pollutants that require development of TMDL allocations. The impact of invasive species on the aquatic ecosystem should then be addressed through programs other than TMDLs.

4. Evaluation of Impairment for Metals

In the current evaluations for metals listing, it is unclear whether total or dissolved metals criteria are applied and appropriate hardness values are used. However, in reviewing some of the exceedances observed in the applicable datasets in comparison with the exceedances listed in the Los Angeles Regional Board's fact sheet for the proposed listings, it appears that most of the listings are made based on observed total metals fraction. The California Toxics Rule

mandates that the dissolved, and not the total, metals fraction be used, as dissolved metals concentrations more closely approximate the bioavailable fraction of a metal than total recoverable concentrations do.

Although the California Toxics Rule includes conversion factors for total metals, only dissolved metals were intended to be used as criteria for assessing water body impairment for 303(d) listing purposes. In the absence of dissolved metals data, listing a water body for metals impairment lacks the necessary scientific and regulatory basis. Therefore, all currently proposed metals listings that are generated based on observed total recoverable metals data must be removed. The assessment of water body impairment for metals must be made only based on observed dissolved metals data

5. Evaluation of Impairment for Ammonia

For several water bodies in the Los Angeles Region, site-specific objectives (SSOs) for ammonia were developed, amended into the Basin Plan, and became effective on April 23, 2009. As indicated in the associated Basin Plan Amendment, the SSO adopted for ammonia applies to water bodies in the Los Angeles River, San Gabriel River, and Santa Clara River Watersheds.

With the Los Angeles Regional Board having adopted the ammonia SSO, the criteria proposed in the SSO must be utilized for evaluating the current listing. Therefore, the assessments for ammonia impairment in all of the applicable watersheds need to be re-evaluated to reflect the appropriate ammonia water quality standards in the Basin Plan.

6. Evaluation of Listings Based on Conditional Beneficial Uses

Several of the new proposed 303(d) listings are generated based on the conditional beneficial use designations, which are denoted with an asterisk (*) in the Basin Plan. In the past, both the State Water Board and the EPA have taken the position that conditional beneficial uses are not final designations and should not be used for 303(d) listing purposes. As such, the State Water Board removed all of the proposed 303(d) listings generated for the conditional beneficial use designations during the 2006 303(d) listing update.

Since the 2006 action, we are not aware of any status change on conditional beneficial use designations. Thus, the Regional Board must abide to the Federal and State policies and remove all water bodies that are proposed for the 2008 303(d) listings where a listing was done based on an evaluation of criteria for beneficial uses designated as conditional (i.e., asterisked) in the Basin Plan.

7. Evaluation of Impairment for Sulfates in Puente Creek

Based on the water quality data available for Puente Creek, the Los Angeles Regional Board concluded that Puente Creek should be placed on the 303(d) listing for sulfate impairment. As you know, the Puente Creek station was sampled during the 2006-07 monitoring year by the LACFCD as part of the Los Angeles County Municipal Storm Water Permit's San Gabriel River Tributary Monitoring Program.

In its evaluation, the Los Angeles Regional Board used recommended maximum contaminant level criteria of 250 micrograms per liter as specified in the California Code of Regulations' Table 64449-B and concluded that five out of seven data points were exceeded. However, an exceedance for sulfate was observed for only one of the seven data points per the data collected by the LACFCD and reported to the Los Angeles Regional Board. Given the State's 303(d) listing policy requires a minimum of two exceedances for a water body to be listed as impaired, Puente Creek is erroneously listed for sulfate and must be removed from the proposed listing

8. Evaluation of Impairment for Bis(2-ethylhexyl)phthalate

Bis(2-ethylhexyl)phthalates (DEHPs) are commonly found in plastic materials used for sampling and laboratory analysis, including gloves, tubings, and buckets that are made of plastics. A review of the LACFCD's sampling data from 2001 to 2007 indicates that a significant exceedance of DEHP was observed during the 2003-04 sampling season, but not detected in any of the remaining sampling years. In 2004 our records indicate that a change was made in the equipment used to analyze the samples. During the same period, it was noted that analytical laboratories across the State were making changes to address DEHP sample contamination. Given that the major sources of DEHP are plasticizers, the DEHP detections observed during the 2003-04 sampling season could

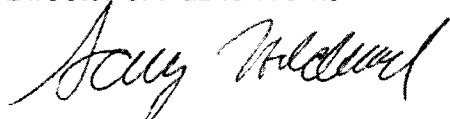
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potentially be a result of sample handling and laboratory analysis. Therefore, until further evidence is found that links the DEHP to sources other than the field and laboratory equipments used, this pollutant must not be included in the 303(d) list.

We look forward to your consideration of our comments. If you have any questions, please call me or your staff may contact Mr. Frank Wu at (626) 458-4358 or fwu@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works



GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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