

VENTURA COUNTY



PUBLIC WORKS AGENCY
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WATERSHED PROTECTION DISTRICT

May 28, 2010

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

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**SUBJECT: COMMENT LETTER ON THE PROPOSED 2010 INTEGRATED REPORT
CLEAN WATER ACT SECTIONS 303(d) AND 305(b)**

Dear Ms Townsend:

The Ventura County Public Works Agency (VCPWA) and the Ventura County Watershed Protection District (VCWPD) appreciate the opportunity from the State Water Resources Control Board (State Board) to provide comments on the Staff Report 2010 Proposed Integrated Report for Section 303(d) and 305(b) (hereafter referred as to 2010 Staff Report). After review of the proposed revisions to the 2010 Staff Report, we believe that comments are appropriate for the proposed listings of Malibu Creek Benthic-Macroinvertebrate Bioassessment - Listing Decision ID 17209 and Medea Creek Reach 2 (Above Confluence with Lindero) Benthic-Macroinvertebrate Bioassessment - Listing Decision 17210 located within Ventura County.

We have serious concerns about the Benthic-Macroinvertebrate Bioassessment listings, based on the following important points:

1. The proposed listings do not meet the base criteria of the State Board's Listing Procedures and Policies.
2. The State Board is in the early process of developing, defining, and establishing biological objectives and reference sites. Therefore, the objectives and reference data are not available yet for the proposed listings and potential fast-tracked Total Maximum Daily Loads (TMDLs).
3. The possible consequences of the proposed listings will be significant due to the addition of the Malibu Creek Benthic-Macroinvertebrate Bioassessment listing to the proposed revision of the *Heal the Bay et al v. Browner* LA TMDL Consent Decree.

We recommend that the State Board delay these listings until all the facts, necessary data, correct procedures, in-depth analysis, and pollutant(s) or stressor(s) causing the perceived impairment to the aquatic life are clearly understood and defined. Our concerns and final recommendations related to this proposed listings are described in detail below.

1. Inappropriate Listing Procedures

Section 3.9 of the State's Water Quality Control Policy for Developing California's Clean Water Act Section 303 (d) List (Listing Policy), "Degradation of Biological Populations and Communities" 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, it shall be placed on the section 303(d) list."* This section also requires that the pollutant be *"...associated with water or sediment concentrations of pollutants including but not limited to chemical concentrations, temperature, dissolved oxygen, and trash."* Further, this section requires that the, *"...diminished numbers of species or individuals of a single species or other metrics compared to reference site(s). The analysis should rely on measurements from at least two stations. Comparisons to reference site conditions shall be made during similar season and/or hydrologic conditions."*

First, as of today, no baseline has been developed as a reference to determine diminished or degraded conditions. The decision to list these impairments was based solely upon one line of evidence (LOE), a study entitled, "Malibu Creek Watershed Monitoring Program, Bioassessment Monitoring" prepared by Bioassay and Consulting Laboratories, Inc., Spring/Fall 2005. In this study, only eight (8) of the proposed eleven (11) sites were tested throughout the entire watershed, with no two sites being in the same reach or segment. Only seven sites were sampled both in spring and fall. The proposed impairment listing is therefore, based only on fifteen (15) total samples that were collected five (5) years ago. We believe that this data set is insufficient to support the listings.

In addition, the Report also indicates there were significant concerns that the 2005 measurement period included a significant rainy season with over 52.92 inches of rain. It is well known that these heavy rain seasons typically overwhelm Malibu Creek Watershed (MCW) with significant loads of Monterrey formation sediment carrying elevated concentrations of selenium and other metals and minerals. However, the 2005 Report does not evaluate effects of such conditions on the benthic macroinvertebrate populations. Also, the stream beds of MCW and adjacent areas are impacted by fire control chemicals increasing nitrogen and phosphorus concentrations in the watershed. Results of the 2005 Report do not take into consideration effects of increased nutrient availability for algae and/or vegetation growth on the native benthic macroinvertebrate populations.

Second, the proposed listings of Benthic-Macroinvertebrate Bioassessment do not discuss, demonstrate, provide, or reference the impairments "association" to "chemical concentrations, temperature, dissolved oxygen, trash, and other pollutants" as required by Section 3.9 of the Listing Policy. The only statement to its association is found in the weight-of-evidence section of the proposed listings *"...this impairment is associated with impairments for Invasive Species, Nutrients (algae), Sedimentation/Siltation, Selenium, Sulfates and Trash."* Based on the review of the 2005 Bioassessment Report, there is no

information on the bioassessment findings related to the required “associated” pollutants.

2. Reference Site and Biological Objectives not Yet Defined and/or Established

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 occasionally based on a calculated Index of Biotic Integrity (IBI). Based on the definition of this term, 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 in 1995, 1996, 2000, and 2003. Our concern is that the ‘degradation’ of MCW was determined on the basis of findings in the studies outside MCW area and characterized by different conditions than MCW.

Furthermore, 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.*” As such, section 6.1.5.8, requires,

“When evaluating biological data and information, RWQCBs [Regional Water Quality Control Boards] shall evaluate all readily available data and information and shall:

- *Identify appropriate reference sites within water segments, watersheds, or eco-regions. 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 Section 6.1.5.8 of the Listing Policy, 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. Some of

the significant naturally occurring differences between the regulated segment and a reference site might include 1) hydrology and topographic differences, 2) surface and groundwater chemistry, 3) biological and habitat conditions among the others. Therefore, it is evident that an updated and similar seasonal and hydrologic site-specific IBI study is necessary and required for this proposed impairment to meet the requirements of the Listing Policy.

Furthermore, as you know, the State Board is in the early stages of designing development processes and defining biological objectives, which may not be ready for reference and use as reliable bioassessment indicators by the proposed due date for establishing the Malibu Creek Benthic-Macroinvertebrate Bioassessment (Listing Decision ID 17209). We fear that the proposed listings will require the potentially responsible parties to invest considerable funding allocations toward uncertain objectives and questionable improvement of the water quality.

3. Impact of the U.S. EPA and Heal the Bay Consent Decree Revisions

The recently proposed revisions to the Los Angeles TMDLs Consent Decree *Heal the Bay at al. v. Browner*, C.98-4825 SBA, March 23, 1999 (Consent Decree) include addition of the new TMDL for Benthic-Macroinvertebrate Bioassessment, Listing Decision ID 17209 for the Malibu Creek. The addition of this TMDL to the Consent Decree is contingent upon approval of 303(d) listing for this impairment. If approved, this listing would result in fast tracking TMDL development, and its establishment by March 24, 2013 as required in the Consent Decree. The current 2008 303(d) List adopted by the Los Angeles Regional Water Quality Control Board includes several reaches of the Malibu Creek (listed for Benthic Macroinvertebrate impairments) to have TMDLs completed by 2021. We believe that additional time is required to define objectives, determine reference site, and complete the TMDLs on the other "associated pollutant" impairments.

Moreover, the Consent Decree dictated early TMDL establishment will cause the responsible stakeholders to incur significant expenditures that might not result in meeting the biological objectives and improving water quality.

In summary, we urge and encourage the State Board to delay listing of Malibu Creek Benthic-Macroinvertebrate Bioassessment Listing Decision ID 17209 and Medea Creek Reach 2 (Above Confluence with Lindero) Benthic-Macroinvertebrate Bioassessment - Listing Decision 17210 until the sufficient data are available to evidence impairments in the Malibu Creek water segments, and secondly, site-specific reference conditions are defined to appropriately determine impairments. We are committed to achieving water quality improvement with a clear understanding of the established site-specific objectives.

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Given the importance of this, we would like to offer our time and resources to further discuss this matter. If you have any additional questions or require further clarification, please contact Ewelina Mutkowska at (805) 645-1382.

Sincerely,



Gerhardt Hubner
Deputy Director

cc: Sam Unger, Interim LARWQCB Executive Officer
Norma Camacho, VCWPD Director
Jeff Pratt, PWA Director
Ewelina Mutkowska, Engineer Manager I
Ricardo Moreno, Water Quality Planner III
Joe Bellomo, Chair of the Malibu Creek Watershed Management Committee

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