

SALT & BORON TMDL

San Joaquin River Group Authority

The SJRGA has made three Public Records Act requests for the administrative record adding the Lower San Joaquin River to the Section 303(d) List for salt and boron in 1996.

October 13, 2005

Ted Cobb
Assistant Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Public Records Act Request – Legal and technical documentation for the 1996 303(d) list.

Dear Mr. Cobb:

Pursuant to the Public Records Act (Government Code §6250 et seq.), I am requesting on behalf of the San Joaquin River Group Authority that the State Water Resources Control Board make available all documentation, including, but not limited to, all drafts, comments, reports, notes, documents, memorandums, e-mails, spreadsheets, electronic spreadsheets, communications, and internal memorandums, whether in physical or electronic form, related to the 303(d) listing of the San Joaquin River for salinity by the State Water Resources Control Board in 1996.

Pursuant to the Public Records Act, you are required to respond to this request within ten (10) days. (Govt. Code §6253(c).) Also, please be aware that Government Code §6253(a) requires release of all reasonably segregable portions of the requested records which are not themselves exempt from mandatory disclosure. Accordingly, I also request that you provide me with a privilege log of all documents that the Department maintains are exempt from disclosure, pursuant to the Act's requirement that "[t]he agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter." (Govt. Code §6253.)

Once you have compiled the documents, please call me with an estimate of photocopying costs. The San Joaquin River Group Authority may elect to review the materials in your office to determine which documents should be copied.

Thank you for your attention on this matter.

Sincerely,

O'LAUGHLIN & PARTS LLP

By: Kenneth Petruzzelli
Kenneth Petruzzelli

KPA/J

First public records act requests submitted to the SWRCB on October 13, 2005. An identical request was submitted to the CVRWQCB

San Joaquin River Group
Authority



O'Laughlin & Paris LLP

Attorneys at Law

October 31, 2005

Las Grober
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Public Records Act Request – Legal and technical documentation used to develop the Regional Board's 1996 §303(d) list.

Dear Mr. Grober:

Pursuant to the Public Records Act (Government Code §6250 et seq.), I am requesting on behalf of the San Joaquin River Group Authority that the Central Valley Regional Water Quality Control Board ("Regional Board") make available all documentation, including, but not limited to, all drafts, comments, reports, notes, discussions, memorandums, e-mails, spreadsheets, electronic spreadsheets, communications, and internal memorandums, whether in physical or electronic form, related to:

1. The addition of salt and boron on the San Joaquin River to the January 26, 1996 draft §303(d) list attached to the Regional Board agenda and adopted January 29, 1996.
2. The staff report presented to the Regional Board by Sue Yee on January 26, 1996, in addition to all documents and water body data relied on in drafting the staff report.
3. Water body data on file at the Regional Board office referred to by Sue Yee in her April 3, 1996 memorandum to Nancy Richard regarding changes to the Regional Board's §303(d) list. (see attached)

Page 1 of 2

From: Public Records Act Request - 11/15/2005 10:00 AM To: [Redacted] Subject: [Redacted]

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Oakland, CA 94612
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Telephone: 415.763.1400
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Page 1

4. All water body data used to develop the §303(d) list finally adopted by the Regional Board on January 29, 1996.
5. Water body data related to changing the San Joaquin River §303(d) listing for salinity to electrical conductivity in 1998.
6. Comments and recommendations regarding the listing status of the San Joaquin River for salinity and boron in 1996 from the United States Environmental Protection Agency and State Water Resources Control Board.
7. Comments and recommendations regarding the listing status of the San Joaquin River for electrical conductivity in 1998 from the United States Environmental Protection Agency and State Water Resources Control Board.

Pursuant to the Public Records Act, you are required to respond to this request within ten (10) days. (Govt. Code §6253(c).) Also, please be aware that Government Code §6255(a) requires release of all reasonably segregable portions of the requested records which are not themselves exempt from mandatory disclosure. Accordingly, I also request that you provide me with a privilege log of all documents that the Department maintains are exempt from disclosure, pursuant to the Act's requirement that "[t]he agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter." (Govt. Code §6255.)

Once you have compiled the documents, please call me with an estimate of photocopying costs. The San Joaquin River Group Authority may elect to review the materials in your office to determine which documents should be copied.

Thank you for your attention on this matter.

Sincerely,

O'LAUGHLIN & PARIS LLP

By:

Kenneth Petruzelli

Enclosures

Page 2 of 2

From: Public Records Act Request - 11/15/2005 10:00 AM To: [Redacted] Subject: [Redacted]

Second public records act request submitted to the CVRWQCB on October 31, 2005.

11/15/2005

San Joaquin River Group
Authority

4



California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair



Aznold
Schwarzenegger
Governor

Alan C. Lloyd, Ph.D.
Regional Secretary

Sacramento Main Office
1020 Sun Center, Box 64200, Rancho Cordova, California 95668-5111
Phone: (916) 464-6531 • FAX: (916) 464-4045
http://www.waterboards.ca.gov/cvrcvrb/

27 October 2005

Kenneth Petruzzelli
O'Laughlin & Paris, LLP
2571 California Park Drive, Suite 210
Chico, California 95928

PUBLIC RECORDS ACT REQUESTS RELATED TO 1996 303(d) LISTING OF THE SAN JOAQUIN RIVER FOR SALINITY

Dear Mr. Petruzzelli:

This letter is in response to your Public Records Act requests (letter dated 13 October 2005 and e-mail dated 24 October 2005) in which you requested documents related to the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) 303(d) listing of the San Joaquin River for salinity. Enclosed please find the entire Administrative Record related to the 303(d) list adopted by the Central Valley Water Board on 29 January 1996.

As discussed, there is a \$7.60 copying cost associated with these requests (76 pages @ \$10 per page). Please make a check payable to the State Water Resources Control Board for \$7.60 and send it my attention. Feel free to contact me at ebertsen@waterboards.ca.gov or (916) 464-4653 if you have any questions.

Eric Bertsen
San Joaquin River TMDL Unit

Enclosure: Administrative Record – 1996 303(d) List (76 pages)

cc (w/o enclosure): Les Grober
Jerrald Bruns
Craig Wilson, State Water Resources Control Board

SWRCB State Water Resources Control Board SR 040196A Remo.

California Environmental Protection Agency



Kenneth Petruzzelli

From: Craig J. Wilson [cjlwilson@waterboards.ca.gov]
Sent: Thursday, October 20, 2005 10:15 AM
To: Kenneth Petruzzelli
Cc: Randal Yates; Steven Blum; Ted Cobb
Subject: Public Records Act Request -- Documentation for the 1996303(d) list

Dear Mr. Petruzzelli,

I am writing in response to your Public Records Act request, dated October 13, 2005. In your letter, you request any documents related to the 303(d) listing of the San Joaquin River for salinity by the State Water Resources Control Board in 1996.

All documents related to the 1996 section 303(d) list have been compiled. The size of the file is between 1,500 and 2,000 pages. Without reviewing the entire file, it is not possible for me to specify which portion or portions of the file are related specifically to the 303(d) listing of the San Joaquin River for salinity. You may wish you may review the materials to determine which portion(s) of the file should be copied.

Before I estimate the cost of copying the file, please let me know if you would like to review the file first. To make an appointment to review the file please call Randy Yates at (916) 341-5533. For any other questions, please do not hesitate to call me at (916) 341-5560.

CJWilson
(916) 341-5560
email: cjlwilson@waterboards.ca.gov
<http://www.waterboards.ca.gov>

Responses from the SWRCB and CVRWQCB to the first two Public Records Act requests.



California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair



Arnold Schwarzenegger
Governor

Alan C. Lloyd, Ph.D.
Agency Secretary

Sacramento Main Office
11020 Sun Center Drive #210, Rancho Cordova, California 95670-6114
Phone (916) 464-5591 • FAX (916) 464-6643
<http://www.waterboards.ca.gov/centralvalley>

10 November 2005

Post-it Fax Note	7671	Page 1 of 1	
To	VSN Petruzzelli	From	Eric Bernsten
Cell No.	O'Laughlin	Cell	
Phone	(916) 464-5591	Phone A	
Fax	(916) 464-6643	Fax	

Kenneth Petruzzelli
O'Laughlin & Paris, LLP
2571 California Park Drive, Suite 210
Chico, California 95928

PUBLIC RECORDS ACT REQUEST - LEGAL AND TECHNICAL DOCUMENTATION USED TO DEVELOP THE REGIONAL BOARD'S 1996 303(d) LIST

Dear Mr. Petruzzelli:

This letter is in response to your Public Records Act letter dated 31 October 2005 in which you requested documents related to the Central Valley Regional Water Quality Control Board's 303(d) listing of the San Joaquin River for salinity. It will require additional time to determine what is available to fill your request. I will provide you an update on the status of filling your request by 18 November 2005.

Feel free to contact me at ebernsten@waterboards.ca.gov or (916) 464-4658 if you have any questions.

Eric Bernsten
San Joaquin River TMDL Unit

cc: Les Grober
Jerold Bruns
Craig Wilson, State Water Resources Control Board

EKRW:State Board Meeting notes SJR, and PRA Request_2

California Environmental Protection Agency

TCR 11/21

CVRWQCB response to the SJRGA's third Public Records Act request.

The Lower San Joaquin River was added to the 303(d) list for salt and boron in 1996.

CVRWQCB Staff did not initially recommend listing.

ITEM: 21

SUBJECT: Consideration of Adopting 1996 Waterbody List for Clean Water Act Section 303(d)

REPORT: The following table contains the staff recommended § 303(d) List and Total Maximum Daily Load (TMDL) development priority for our region. This is an update of the Region's 1994 list. § 303(d) waterbodies are those that will not meet water quality standards even if point sources are regulated to comply with the current level of treatment technology required by law. For waterbodies on this list, the State is required to establish TMDLs for the pollutants impacting water quality. Loads are allocated among different pollutant sources so that appropriate control actions can be taken and water quality standards achieved.

In the past, we did not solicit public comments on prioritizing TMDL development, but the priorities in the enclosed table reflect information we had presented to the State Water Resources Control Board and U.S. EPA. The '94 303(d) list was incorporated in the Water Quality Assessment and only a few significant changes are proposed for this update:

1. Mormon Slough, Mormon Channel, and Delta (SI at Antioch) have been taken off the list because they and the pollutants of concern are included within the Delta Waterways.
2. Panoche Creek has been changed from 1 mile to 50 miles to reflect its actual length.
3. Copper, cadmium, and lead have been removed as water quality limiting pollutants in the Delta Waterways. These metals were included in '94 303(d) list because their concentrations in the Delta exceeded the California Inland Surface Waters Plan (Inland Plan) objectives. We have been directed by U.S. EPA to remove pollutants that were placed on the list based on Inland Plan objectives.
4. Chlorpyrifos has been added as a water quality limiting pollutant in the Delta Waterways, Lower American River, Lower Feather River, Natoma's East Main Drain, Lower Sacramento River, Sacramento Slough, and San Joaquin River to reflect the findings of recent Board special studies.
5. Dioxin has been removed as a water quality limited pollutant in the Sacramento River (Shasta Dam to Red Bluff) because the Office of Environmental Health and Hazard Assessment and Department of Fish and Game have both lifted their health advisory and warning for dioxin in the upper Sacramento River. Monitoring has shown that the dioxin concentrations in the tissue of fish taken from the Anderson area, the location of dioxin discharge into the Sacramento River, are no higher than that found in fish from other areas.
6. Pit River has been added to the list because it violates our Basin Plan objectives for dissolved oxygen, temperature, and nutrients.

RECOMMENDATION: Adopt the proposed 303(d) list and the TMDL priority.

Central Valley RWQCB agenda item for revision of the 303(d) list, January 26, 1996.

There was no proposal to add salt and boron as 303(d) pollutants on the San Joaquin River.

Excerpt from 303(d) List (January 26, 1996)

Water Body	Total Size	Impaired	Pollutants	Sources	Targeted for TMDL	Priority
San Joaquin River	330 mi	130 mi	Se	AGRI	Yes	H
		130 mi	Diazinon, Chlorpyrifos	AGRI	No	M
		130 mi	UTX	UNKN	No	M
		130 mi	Carbaryl, Parathion	AGRI	No	L
		130 mi	Group A, Eptam	AGRI	No	L

Salt and boron were not on the proposed list.

Waterbody	Total Size	Impaired	Pollutants	Sources ¹	Targeted for TMDL ²	Priority ³	Start	End
Natomas East Yuba Delta	12 mi	12 mi	PCB ⁴	INDU, CESA	No	I		
		5 mi	Diazinon, Chlordane	AGRI, URBA	No	I		
Oxide Creek	3 mi	3 mi	Pb, Cd	AGRI	No	L		
Paroche Creek	50 mi	50 mi	NO _x	AGRI, GRAZ, ROAD	No	L		
		25 mi	Hg	MINI	No	L		
Pit River	200 mi	100 mi	BO, Temp, Bacteria	INDR, GRAZ, AGRI	No	L		
Sacramento River (Starts at Red Bluff)	50 mi	40 mi	Cu	MINI	Yes	II	1996	1998
		40 mi	Cr	MINI	Yes	II	1996	1998
		40 mi	Zn	MINI	Yes	II	1996	1998
		30 mi	UTX	UNKN	No	M		
		30 mi	Temperature	DAM	No	L		
Sacramento River (Red Bluff to Delta)	145 mi	185 mi	UTX	UNKN	No	M		
		30 mi	B _p	MINI	No	M		
		30 mi	Diazinon, Chlordane	AGRI	No	M		
		30 mi	Carbaryl	AGRI	Yes	II	1996	1996
		30 mi	Malathion	AGRI	Yes	II	1996	1996
		30 mi	Methyl parathion	AGRI	Yes	II	1996	1996
Sacramento Slough	1 mi	1 mi	H ₈	UNKN	No	I		
		1 mi	Diazinon, Chlordane	AGRI, URBA	No	I		
Salt Slough	31 mi	15 mi	Se	AGRI	Yes	II	1992	1996
		15 mi	TDS, PFS, UTX, Heron	AGRI	No	I		
San Carlos Creek	1 mi	1 mi	Hg	MINI	No	I		
San Joaquin River	540 mi	130 mi	Se	AGRI	Yes	II	1992	1996
		130 mi	Diazinon, Chlordane	AGRI	No	M		
		130 mi	UTX	UNKN	No	M		
		130 mi	Salt Bore	AGRI	No	M		
		130 mi	Carbaryl, Parathion	AGRI	No	L		
		130 mi	Group A, Epan	AGRI	No	L		
Spring Creek	8 mi	5 mi	Cu, Zn, Cd, ACID	MINI	No	L		
Stamens River, Lower	48 mi	48 mi	Group A, DDT	AGRI	No	L		
		48 mi	UTX	UNKN	No	L		
Stiffa Creek	7 mi	7 mi	Hg	MINI	No	L		
Temple Creek	10 mi	10 mi	Atrazine, Salt	AGRI	No	I		
Trux Creek	3 mi	1 mi	Cd, Cu, Pb, Zn	MINI	No	I		
Turquoise River, Lower	32 mi	32 mi	Group A, DDT	AGRI	No	I		
		32 mi	UTX	UNKN	No	I		
Turlock Irrigation District (Area #5)	7 mi	7 mi	Atrazine	MINI, AGS ⁵	No	L		
		7 mi	PFS, UTX	AGRI	No	L		
West Squaw Creek	8 mi	2 mi	Cu, Zn, Cd, Pb	MINI	No	L		
Willow Creek (Wanskogen)	15 mi	3 mi	Cu, Zn, ACID	MINI	No	L		

CVRWQCB CWA System List, Jan. 29 January 1996

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Draft 303(d) list attached to Jerry Bruns memo. (January 29, 1996)

San Joaquin River Group
Authority

Excerpt from 303(d) List (January 29, 1996)

Water Body	Total Size	Impaired	Pollutants	Sources	Targeted for TMDL	Priority
San Joaquin River	330 mi	130 mi	Se	AGRI	Yes	H
		130 mi	Diazinon, Chlorpyrifos	AGRI	No	M
		130 mi	UTX	UNKN	No	M
		130 mi	Salt, Boron	AGRI	No	M
		130 mi	Carbaryl, Parathion	AGRI	No	L
		130 mi	Group A, Eptam	AGRI	No	L

Without explanation, salt and boron were suddenly added.

M E M O R A N D U M

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD • CENTRAL VALLEY REGION
3443 Raulier Road, Suite A Phone: (916) 255-3000
Sacramento, California 95827-3090 CALNET: 8-494-3000

TO: Nancy Richard
Division of Water Quality

FROM: Sue Yee
Planning Unit

DATE: 3 April 1996

SIGNATURE: *Sue Yee*

SUBJECT: CHANGES TO THE CENTRAL VALLEY RWQCB'S SECTION 303D LIST

As we discussed, I have enclosed the newly revised Section 303d list. Two pollutants have been added to the currently listed waterbodies. Salt has been added to the lower San Joaquin River and the Delta, and boron has been added to the lower San Joaquin River. These pollutants are well documented to be impairing the respective waterbodies and should have been included on the earlier list. The waterbody data used for making these changes as well as that used for making the list is on file at our office. We appreciate that Dave Smith, the TMDL coordinator for Region 9 U.S. EPA, will public notice these changes in the Federal Register. Thank you again for your help.

Enclosure

Memo from Sue Yee to Nancy Richards, April 3, 1996, regarding revisions to the Central Valley RWQCB 303(d) List.

“Salt has been added to the LSJR and the Delta, and boron has been added to the LSJR. These pollutants are well documented to be impairing the respective water bodies and should have been included on the earlier list. The water body data used for making these changes as well as that used for making the list is on file at our office.” – Sue Yee (April 4, 1994)

Where is the proof of impairment?

professional judgment is needed to interpret available data. Also, the Basin Plan indicates that the Regional Board can use available information (i.e., NAS, U.S. EPA criteria) to assess compliance with the narrative toxicity objective.

7. COMMENT: MANY OF THE LISTINGS ARE BASED ON OLD DATA, DATA THAT WERE NOT SUBJECTED TO RIGOROUS QA/QC OR THAT MAY BE OUTDATED.

Staff agrees with the City that some of the data on which listing decisions were based are somewhat dated, but sometimes it is the only information available on specific pollutants. Staff believes that U.S. EPA's directions are being followed in using the available data. Of course, it would be preferable to have more current monitoring information. Staff supports efforts to obtain better data (with good QA/QC) for all of the pollutants on the 303(d) list and especially supports monitoring for the high and medium priority pollutants. Generally, staff is reluctant to remove waterbodies from the list unless new monitoring data suggests that there is no longer a problem.

8. COMMENT: WE HAVE RESERVATIONS WITH THE "PHASED TMDL" APPROACH, WHICH WE VIEW AS SHORTCUT AROUND THE IMPORTANT STEPS OF COLLECTING THE DATA AND INFORMATION NECESSARY TO MAKE TECHNICALLY SUPPORTABLE LOAD AND LOAD ALLOCATION DECISIONS.

Staff does not believe the phased TMDL approach to be an impediment to the collection of data. In fact, the approach requires the collection of new data. It also offers the Regional Boards the means to provide further pollution reduction without waiting for new data collection and analysis. The margin of safety developed under the phased approach will reflect the adequacy of data and the degree of uncertainty about the relationship between load allocation and receiving water quality.

East Bay Municipal Utility District

9. COMMENT: BASED ON THE DISTRICT'S MONITORING INFORMATION, THE LOWER STOKELUMNE RIVER IS NOT NOW IMPAIRED BY LOW DISSOLVED OXYGEN OR ELEVATED CONCENTRATIONS OF HYDROGEN SULFIDE FROM CAMANCHE DAM RELEASES. THESE PARAMETERS SHOULD BE REMOVED FROM THE LISTING.

Staff reviewed the data and agreed that since the District installed a treatment device at Camanche Dam, there no longer seems to be an impairment due to low dissolved oxygen or elevated concentrations of hydrogen sulfide. This recent period of compliance, however, has been during average to above average wet weather conditions in the drainage. To address the District's concerns about documenting the improvements in the River, staff included the following footnote to the list to reflect EBMUD's efforts and monitoring results: *EBMUD has installed a treatment system at Camanche Reservoir and has shown compliance with the applicable objectives with respect to DO and H₂S during average to wet weather years. We are waiting to receive dry weather information to evaluate whether to remove them as pollutants of concern for the Mokelumne River.*

10. COMMENT: IDENTIFYING MINING ACTIVITIES AS THE SOLE NON-POINT SOURCE OF COPPER AND ZINC FAILS TO ACKNOWLEDGE THE GEOCHEMICAL CHARACTER OF THE AREA AND THE SIZEABLE CONTRIBUTION THAT STORMWATER RUNOFF UNRELATED TO MINING ACTIVITY HAS ON THE LOADING OF THESE POLLUTANTS.

Staff recognizes that background contributions of copper and zinc are not negligible in this drainage. The mining source, however, has been characterized, while the other sources have not. Mine contributions are believed to be the most significant sources of metals. If and when additional data is collected that identifies other significant sources of metals, then these sources will be added to the list.

Responses to comments on the revisions to the 303(d) list for 1996.

“Staff agrees with the City that some of the data on which listing decisions were based are somewhat dated, but sometimes it is the only information available on specific pollutants. Staff believes that U.S. EPA’s directions are being followed in using the available data. Of course, it would be preferable to have more current monitoring information. Staff supports efforts to obtain better data (with good QA/QC) for all of the pollutants on the 303(d) list and especially supports monitoring for the high and medium priority pollutants. Generally, staff is reluctant to remove waterbodies from the list unless new monitoring data suggests that there is no longer a problem.” – CVRWQCB Staff Response

The Water Quality Control Policy for Developing California's 303(d) List was adopted in 2004. The Listing Policy established very strict requirements for data quality assurances, quality controls, and data evaluation.

Under the Listing Policy, if a water body-pollutant combination was listed based on data quality or analysis that would not meet the current standards for quality assurance, quality control, or data evaluation, it must be removed from the Section 303(d) List.

Listing Policy, Section 4

Water body-pollutant combinations that were listed based on data or analysis now inadequate under the Listing Policy, are re-evaluated as if they were never listed.

The party wishing to keep the water body-pollutant combination on the 303(d) List has the burden to prove it should be there.

Draft Staff Report Supporting the Recommended Revisions to the Clean Water Act §303(d) List; Volume 1 (September 2005); p11.

Anecdotal data is insufficient.

Outdated data is insufficient.

Where are the water quality violations?

Where is the science? Where is the proof
to support the Listing?