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January 30, 2006



303 (d) Deadline: 1/31/06

Ms. Tam Doduc, Board Chair
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814

Attention Selica Potter, Acting Clerk to the Board

COMMENTS ON THE PROPOSED 2006 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS AND STAFF REPORT

Dear Ms. Doduc:

The City of Los Angeles, Bureau of Sanitation (Bureau) appreciates the opportunity to comment on the State Water Resources Control Board's (SWRCB) proposed 2006 Clean Water Act (CWA) §303(d) List of Water Quality Limited Segments and staff report. It is our understanding that the 2006 List consists of the 2002 List combined with new listings and de-listings proposed by the SWRCB staff in conjunction with Regional Water Quality Control Board staff. The Bureau has previously submitted comments at a SWRCB workshop and hearing on the CWA §303(d) 2002 List and appreciates SWRCB staff response to our past requests and the changes made.

The Bureau commends the effort that SWRCB staff has undertaken to collect and review all readily available environmental data and information and evaluate a portion of these data utilizing the newly adopted SWRCB Listing Policy.

The Bureau generally supports the State's 2006 CWA §303(d) List. However, after reviewing the 2002 List and proposed changes for the 2006 List, the Bureau is requesting changes to the process and format, and re-evaluation of some of the listing decisions (see Appendix for detailed comment).

The Bureau requests:

1. That the SWRCB compile one List. The format of this draft staff report is confusing as to the overall changes to the 2002 List and the proposed 2006 List. A simple table that identifies by region the 2002 CWA 303(d) listings and includes all the proposed changes



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each with a status indicator (e.g. 'Do Not Delist', 'No Change') would provide clarity as to these changes and as to what listings were evaluated under the State Listing Policy.

2. That the SWRCB evaluate the remaining unexamined Water Quality Limited Segments identified in the attached Appendix under the new Listing Policy so that the 2006 List is completely consistent with this Policy and current environmental conditions in order to clearly identify which waterbodies are impaired (see Table 1). Every fact sheet should be updated biennially and include the data plots.
3. That the SWRCB use a primary line of evidence in conjunction with a Total Maximum Daily Load (TMDL) to satisfy Section 2.2 or Section 3.11 of the Listing Policy. Referencing a TMDL does not provide the necessary information to evaluate the original listing or the 2006 listing decision. Without the supporting data included in the Report, stakeholders cannot verify if the conditions for placement in the water quality limited segments category have been met or if water quality standards have been attained.

The Bureau believes these changes will result in a better process for developing future lists and result in more accurate listings. Accurate listings will focus scarce public resources on impaired waters to effectively improve water quality and our environment.

The Bureau appreciates and thanks the SWRCB and its staff for the effort they have put forth in preparing both the 303(d) List and implementing the new Listing Policy. It is our intention that the attached comments and supporting data will assist the SWRCB to further refine the CWA §303(d) format, process and listing decisions to the benefit of all of the State's inhabitants.

If you should have any additional questions or comments, please contact Mr. H.R. (Omar) Moghaddam of my staff at (310) 648-5423.

Sincerely,



RITA L. ROBINSON, Director
 Bureau of Sanitation

RLR:HRM:GD:JM

Enclosures

cc: Letter Only ALL
 Members, SWRCB
 Celeste Cantu, State Water Resources Control Board, Executive Officer
 Jonathan Bishop, Los Angeles Regional Water Quality Control Board
 Daniel Hackney, Mayor's Office
 Chris Westhoff, City Attorney
 Ana Mae Yutan, City Administrative Office
 Rafael Prieto, Chief Legislative Analyst Office
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 RAD Central File/Water Quality Section

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The Bureau requests:

1. ONE LIST. The preparation of one list would make it clear which listings were evaluated under the State listing policy. The format of this draft staff report is confusing as to the overall changes to the 2002 List and the proposed 2006 List. A simple table that identifies by region the 2002 CWA 303(d) listings and includes all the proposed changes would provide clarity.

The Bureau requests that one list be prepared for the proposed 2006 List and included in the staff report. This 2006 List to be organized by Region and waterbody and overlaid onto the 2002 List by including a column that would identify all the change status designators such a 'List', 'Delist', 'Do Not List', 'Do Not Delist', and the addition of a 'No Change' designator.

2. REVIEW OF UNEXAMINED WATER QUALITY LIMITED SEGMENTS: To ensure an accurate 2006 List that is completely consistent with the 2004 State Listing Policy and clearly identifies impaired waterbodies in California, the SWRCB should review and revise the remaining unexamined Water Quality Limited Segments under the new Listing Policy. Until adoption of the 2004 State Listing Policy, there had been no standardized procedure for listing waterbodies on the 303(d) List (federal or state). Due to the absence of a standardized procedure, the Bureau agrees with SWRCB staff that many of the waterbody/pollutant combinations were improperly listed on the 1998 and 2002 Lists which are now being carried forward onto the 2006 List. Faulty listings may be caused by judgment errors, such as choosing an insufficiently small data set or absence of data, accepting data whose origin was from samples collected and analyzed using improper analytical methods or without approved quality assurance/quality control procedures, data collected outside of a waterbody segment, use of unapproved criteria or guidelines, or evidence that natural sources have caused or contributed to the impairment. In order to avoid similar problems in the future, we believe that the SWRCB should take this opportunity to completely evaluate all previous listings by the application of *listing criteria* in the State's 2004 Listing Policy. The 2006 List would then be able to serve as a benchmark for all subsequent listing processes conducted by the State.

We recognize that assessing all of the listings not identified with a change in listing status in the 2006 Draft List places a burden on the SWRCB and RWQCBs. In the alternative, we would support an application process, whereby an interested party can request that an existing listing be reassessed under the provisions of the new Listing Policy if it has not been subject to the new Policy previously. This application process is different from the delisting provisions of the Policy. Under the Policy, an interested party can request a delisting if it meets the delisting factors, which are set at a higher threshold than the listing factors. Before being subject to the higher level of review for delisting, every listing should first be verified to make sure that it meets the listing thresholds as identified in the adopted Listing Policy. If a water body could not be listed under the provisions of the new Listing Policy, the listing should not be on the 2006 303(d) List.

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The Bureau requests that all listed waterbody/pollutants combinations be examined under the listing criteria of 2004 State Listing Policy. As an alternative the Bureau requests that the waterbody/pollutant segments identified in the Appendix be reviewed under the listing requirements in the 2004 Listing Policy (see Appendix Table 1).

3. PREPARE AND UPDATE FACT SHEETS FOR ALL IMPAIRED WATERS LISTINGS. Fact sheets are critical because they provide the rationale for placing waterbodies on or off the 303(d) list. If the Fact Sheets are not present for a listing the State cannot: 1) validate the previous impairment decision, 2) adjust for changes in the development of new water quality criteria, 3) adjust to changes in environmental and receiving water conditions, 4) adjust to the application of the use attainability analysis or site specific objective. These fact sheets will be part of the TMDL development and implementation process and a component of scientific studies conducted to determine impairment.

The Bureau requests that these fact sheets be prepared and included in the 2006 report. Fact sheets should be developed for all listings not just for changes on the list. These fact sheets should be updated biennially, so that stakeholders can be better informed on the reasons for a listing decision and review of water quality trends.

4. THE USE A PRIMARY LINE OF EVIDENCE IN CONJUNCTION WITH THE TMDL: A primary line of evidence used in conjunction with a TMDL will satisfy Section 2.2 or Section 3.11 of the Listing Policy. Referencing a TMDL does not provide information to evaluate the original listing or the 2006 listing decision. The use of a TMDL in a single line of evidence does not satisfy Section 2.2 of the Listing Policy or Section 3.11. Without the supporting data included in the Report, stakeholders cannot verify if the conditions for placement in the water quality limited segments category have been met or if water quality standards have been attained.

For example in the Burbank Western Channel the State fact sheet did not consider the data analyzed as a part of the Los Angeles River Metals TMDL. The data in the TMDL includes the analysis of 96 samples from the Burbank Western Channel (extending through December 2003); the State fact sheet lists only six sample events. Using the TMDL data analysis results from 96 samples, and including the six samples on the State fact sheet, would result in only 3 exceedances in 102 samples. This low number of exceedances does not meet the frequency requirements of the Listing Policy to list zinc for the Burbank Western Channel.

As shown in this example, referencing a TMDL will not identify current environmental conditions that may indicate attainment of water quality standards or lack of data to support the original listing. It is clear in Section 2.2 of the listing policy that data in support of impairment must be present to make a listing decision and states that:

*'Water segments shall be placed in this category if the conditions for placement in the water quality limited segments category (section 3) are met **and** . . . a TMDL has been developed and approved by USEPA and the*

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approved implementation plan is expected to result in full attainment of the standard within a specified time frame.’

Without the data included in the Report, the conditions for placement in the water quality limited segments category (section 3) **have not** been met in several cases. The section 3 listing factors which are missing to evaluate a listing by referencing a TMDL, are: Numeric water quality objectives, Health Advisories, Bioaccumulation, Water/ Sediment Toxicity, Adverse Biological Response, Nuisance and Trends.

The Bureau requests that a primary line of evidence used in conjunction with a TMDL will satisfy Section 2.2 or Section 3.11 of the Listing Policy. Without the supporting data included in the Report, stakeholders cannot verify if the conditions for placement in the water quality limited segments category have been met or if water quality standards have been attained. (see Appendix Table 2).

5. **AREAS OF CHANGE.** The Area of Change should be clearly demarcated using both narrative and graphic descriptions and included in the Report. Also in Region 4 several of these Areas of Change have Beneficial Uses that are incorrectly identified.

The Bureau requests that the descriptions include readily identifiable geographical markers and graphic or photographic overlays. Additionally, the beneficial uses need to be revised so that they are consistent with the Region 4 Basin Plan.

6. **IMPAIRED WATER LISTINGS FOR POTENTIAL MUN:** There are a number of listings based on the impairment of the MUN Beneficial Use. These impairment determinations are incorrect due to the removal of the beneficial use MUN and the associated (drinking water) criteria for all waterbodies identified as potential MUN (asterisked MUN) beneficial use in the Basin Plan.

The Bureau requests that these listings be evaluated (see Appendix Table 3).

7. **BENEFICIAL USES ASSIGNED BY THE SWRCB BUT NOT DESIGNATED IN THE REGION 4 BASIN PLAN:** The SWRCB may have assigned beneficial uses to waterbodies outside of the Basin Plan amendment process or inadvertently applied incorrect beneficial uses. In the SWRCB’s staff report, it states that “[i]f beneficial uses were not identified for a water body in the Basin Plans and the uses existed in the water body, then waters were assessed using the existing beneficial uses of water.” (Staff Report, Volume 1, September 2005, page 6.) The designation of existing or potential beneficial uses for waterbodies is to be done in accordance with Federal and State law governing the adoption of water quality standards. As such, the designation (and de-designation) of beneficial uses requires a Basin Plan Amendment, which includes a public review process.

The Bureau requests that these listing be evaluated using the Basin plan designated uses and the 2004 State Listing Policy (see Appendix Table 4).

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8. **IMPAIRED WATER LISTINGS WITHOUT BENEFICIAL USE LISTINGS IDENTIFIED BY THE STATE.** The previous §303(d) list from 2002 did not associate beneficial uses with the pollutants for most waterbodies. The 2006 fact sheets do not always identify the beneficial use that is being impacted, which triggers the need for a listing of impairment. The identification of the beneficial use being impacted is required as part of the water quality standard.

The Bureau requests that the SWRCB and RWQCBs associate each impairment on the 2006 §303(d) summary list with a beneficial use (see Appendix Table 5).

9. **POLLUTANT IDENTIFICATION AND CHEMICAL CATEGORY LISTINGS:** The Bureau supports the SWRCB in recommending that a number of waterbody listings for conditions be deleted from the 303(d) list. Waters listed for algae or beach closure are inappropriate because these are waterbody conditions and not pollutants as required by 40 CFR §130.7(b)(4) or the 2004 Listing Policy. For the 2006 List, the SWRCB may have missed some of the previous listings.

The Bureau also supports the SWRCB in moving away from listings based on a Category of Pollutants. Pollutants should be identified as stated in 40CFR §130.7(b)(4): "The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section...shall identify the pollutants causing or expected to cause violations of the applicable water quality standards...." However, there are listings carried over from the 2002 listing.

The Bureau requests that waterbodies listed for a condition be evaluated and if appropriate removed from the list until further data indicates impairment due to pollution or toxicity. The Bureau requests that Category pollutants such as Chema, PAH's, and Bacterial Measurements be reviewed and listed for the appropriate indicators or pollutants. The Bureau also requests that listings for enteric virus be evaluated under the Listing Policy as there are no criteria to evaluate impairment (see Appendix Table 6).

10. **METALS LISTINGS:** The Bureau supports the SWRCB in only using dissolved metals data to determine impairment. It is difficult to determine from the report which listings were evaluated using Total Metal or Dissolved Metal data. In the past, the assessment of receiving water quality for the Los Angeles Region frequently compared total recoverable metal concentrations to dissolved objectives or translated dissolved water quality objectives to total recoverable receiving water targets to make decisions about impairment. Both of these approaches are inconsistent with State Policy.

The Bureau requests that the metals data used in the report be identified as Total Metals or Dissolved Metals data.

11. **LISTINGS FOR TROPHIC STATUS:** Criteria are not available to determine impairment for trophic conditions (eutrophic, mesotrophic and oligotrophic waterbodies). Research is required to define which waterbodies go under which category. These trophic categories were developed for coastal waters and closed waterbodies such as lakes and reservoirs.

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Also, they are used to mean different things: some use them simply to indicate the relative level of nutrient concentrations, others use them (particularly the "excessive" adjective) as shorthand for the effects of severe nutrient enrichment (e.g. low DO, high organic detritus levels, fish kills, pH exceedances, etc.). These terms are used without explanation. Often a water body with a "nutrient" loading is not a nutrient anthropogenic sources of nitrogen and phosphorus, with no demonstration of a link to impairment of beneficial uses.

The Bureau requests that the information be provided in a format that meets the requirements of the Listing Policy Section 2 and Section 5.1.3 (see Appendix Table 1).

12. ENCLOSED STORM DRAINS: The 2006 303(d) List has identified and listed storm drains as Impaired Waters of the State. Enclosed stormwater conveyance drains are not

swimming/recreational surface waterbodies and are not of the type that are considered

stormwater conveyance drains do not have designated beneficial uses in the Basin Plan and are not listed as impaired. Furthermore, the Los Angeles County Municipal Water Services

Storm Water Mitigation Plans and the County's Storm Water Quality Management Programs. All of which have been approved by the State Water Resources Control Board. The Bureau requests that the listings for storm water conveyance drains be evaluated for consistency with the Clean Water Act (see Appendix Table 1).

13. SEASONAL VARIATION: As a note of caution - many of the new listings in Report 4

Thus, the data is not representative of daily conditions in Southern California waterbodies. The Bureau requests that the listings for storm water conveyance drains be evaluated for consistency with the Clean Water Act (see Appendix Table 1).

completion dates are dates that are part of the Consent Decree or other legal instrument. The Bureau requests that the listings for storm water conveyance drains be evaluated for consistency with the Clean Water Act (see Appendix Table 1).

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Consent Decree may be removed from the 303(d) List due to the SWRCB's assessment for the 2006 List. In these cases, the SWRCB should identify how it will address the requirements of the Consent Decree. Current understanding is that a TMDL (which is a quasi-legislative activity under the purview of the State) will be developed for all Consent Decree listings even if the listing is faulty or water quality standards have been attained. In the Los Angeles Region, this is a significant problem.

The Bureau requests that Volume 1 Staff report TABLE 9 identify the 303(d) listings that are subject to Consent Decree timelines to assist all stakeholders in evaluating the proposed schedule. Additionally, the Bureau requests a reply on how the SWRCB will address 303(d) listings subject to the Consent Decree that may be removed due to the SWRCB's assessment of the 2006 List and how this will relate to the requirements of the Consent Decree (see Appendix Table 10).

15. DATA MANAGEMENT: The current process for a data records review is problematic. In anticipation of the 303(d) Listing process, the Bureau requested copies of all data submitted to the SWRCB for Region 4 that was to be considered as part of the 2004 Listing Process. Much of the data and information received by the Bureau was in the form of printed spreadsheets that had been reduced in size to fit on a letter sized page. In many instances, the headings were cut off, and were thus unreadable. From the recordkeeping perspective, the RWQCBs and the SWRCB should consider posting all information that was used in previous listings and the 2006 Listing on the SWRCB's website. By providing public access to this information, the public can view all lines of evidence used in the decision-making process which provides transparency to the 303(d) listing process. In particular, some of the old listings carried over from the 1996, 1998 and 2002 lists do not identify the reports and information used to make the original listing decision. We appreciate the SWRCB's efforts to correct some of these early faulty listings in the 2006 Listing process. However, we believe that a more thorough review of all earlier listings is warranted. By providing the reports and information used to make these early listing decisions on the SWRCB's website, members of the public can review the listings that are of concern to them.

The Bureau requests that an updated records repository system be prepared to retain legible and accurate records of data required to make the listing decisions and that this system be made available to public.

16. MAPPING: The staff report indicates that the high and medium priority data sets contained data that was identifiable, presumably including the location for the data samples. (Staff Report, page 5.) Thus, the data used for the 2006 Listing analysis should have sample locations identified and geocoded.

The Bureau requests that maps be produced to identify the sample locations for the data for each pollutant/waterbody combination.

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17. TYPOGRAPHICAL ERRORS AND CONTRADICTIONARY LANGUAGE:

- i. Staff report page 5 - Contents of the fact sheet 3rd sentence: If data ~~and~~ were reviewed for a water body-pollutant combination not currently on the section 303(d) list, it was considered for listing (using the ~~delisting~~ listing factors in section 3 of the Listing Policy). Conversely, if data ~~and~~ were reviewed for a water body pollutant combination currently on the section 303(d) list, it was considered for delisting (using the delisting factors in section 4 of the Listing Policy).
- ii. Ballona Creek Estuary Do Not Delist Listing - Incongruent language. Listed for DDT, paragraph 3 contradicts impairment determination. Pg 224.

18. DETAILED COMMENT ON SPECIFIC LISTINGS: In addition to the previous comments on listings provided in Table 1-8 the Bureau has identified incomplete, incongruent or inaccurate listings and delistings based on the report and data provided by the State and the 2004 State Listing Policy. More detailed comments on these listings are provided in the Appendix Table 11.

facsimile transmittal

To: Selica Potter, Acting Clerk to the Board Fax: (916) 341-5620

From: Jim Marchese, City of Los Angeles Date: 1/31/2006
Department of Public Works/Sanitation
Regulatory Affairs Division

Re: Comments on Proposed 2006 303(d) List of Water Quality Limited Segments & Staff Report Pages: 10 (including cover)

CC: SEE NOTE BELOW

- Urgent For Review Please Comment Please Reply Please Recycle

Please find herewith our Comments on the Proposed 2006 303(d) List of Water Quality Limited Segments and Staff Report. These documents were emailed to you as well, data sets included. This document will come in 3 Parts. Please forward a copy of Part 1 only to all of your board members listed on the transmittal and Celeste Cantu.

If you have any questions, please direct them to Jim Marchese of the Regulatory Affairs Division at (310) 648-5421. Thank you kindly!