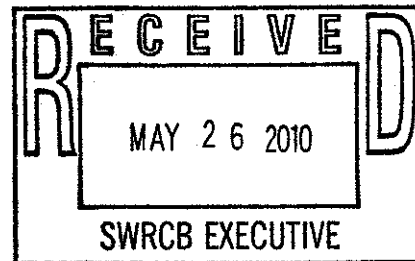


"Gateway to the Santa Monica Mountains National Recreation Area"

May 26, 2010

Jeanine Townsend, Clerk of the Board
1001 I Street
Sacramento, CA 95814
Email commentletters@waterboards.ca.gov



COMMENT LETTER- 2010 INTEGRATED REPORT/ SECTION 303(d) LIST

Dear Ms. Townsend:

The City of Agoura Hills respectfully submits the following comments related to the California State Water Resources Control Board (State Board) in its development of the proposed 2010 Integrated Report for the Section 303(d) List. The City of Agoura Hills continues to work with the community, local agencies, and State Board in our efforts to exceed water quality standards. We feel our comments are appropriate and constructive to help meet those goals. After a review of the proposed additions, we have significant concerns with the proposed listing of Benthic-Macroinvertebrate Bioassessments, listing Decision ID Nos. 17208 & 17210, on the proposed 2010-303(d) Listing.

According to the slide presentation called "Introduction to Bioassessments" located on the State Board webpage; "bioassessments are a scientific way of interpreting the ecological condition of a resource, (e.g. streams/rivers), from its resident biota (fish, insects, algae, plants, etc.)" and therefore can act as a tool to measure the health of the water to support aquatic life. A study can include "associations between ecological condition, and both natural and anthropogenic sources of variation". It is our understanding a bioassessment itself is not a "pollutant or stressor" and therefore it would not be appropriate to list this as a waterbody pollutant combination on the 303(d) list.

The following concerns and final recommendations related to the proposed BMI listing are outlined in more detail for the Board's consideration:

Listing Procedures & Policies: As indicated in the proposed listing, the pollutant is being considered for inclusion based on the listing protocols found in 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." As we show below, we believe that the current data and underlying lines of evidence do not currently support a listing at this time.

State Policy Listing Requirements- 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” 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.” Furthermore, this section requires that the, “diminished numbers of species or individuals of a single species or other metrics be 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.” To ensure that the listing has been properly developed, each of these provisions of State Policy is examined below.

1. Data Analysis and Review

We would like to point out we disagree with the State’s decision to list this impairment based on only one outdated study that was conducted in 2005. The report entitled, “Malibu Creek Watershed Monitoring Program, Bioassessment Monitoring, Spring/Fall 2005” was prepared by Aquatic Bioassay and Consulting Laboratories, Inc. The report indicated that eleven (11) sites were initially considered for testing on two separate occasions – 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. Hence, only eight (8) total 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, were collected for each of the seven sites. The proposed impairment listing is therefore based only on fifteen (15) total samples that were collected five (5) years ago. The report also indicates there were significant concerns about the measurement season due to over 52.92 inches of rain in 2005, which is not typical for the area. Additionally, the report indicated that some of the stream beds and areas had been significantly impacted by recent forest fires.

Recommendation(s): Based on the age of the biotic data and natural and seasonal events at the time of this one time measurement, it is recommended that the State delay this listing until additional data sets and indices are obtained. This will not only ensure such impairments exist, but will set rational goals and attainable water quality objectives needed to be met.

2. Comparison to Reference Site(s)

As discussed above and in the Listing Policy, a reference site is also considered a “reference condition.” 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.”

Listing Policy, page 27. Without restating volumes of exacting detail, 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, shown above, the IBI should be, “attainable biological or

habitat conditions for water body segments with common watershed/catchment characteristics within defined geographical regions.” *Id.* In review of the 2005 Bioassessment Report, the authors appeared to have used an IBI based on studies conducted in the Russian River which is north of San Francisco in 1999; and in San Diego along the Mexican border and Monterey County line. The San Diego County IBI studies that were conducted in 2000 and 2003 are irrelevant and are now being applied to the Malibu Creek Watershed, some 200 miles away, using in-stream measurements taken over 5 years ago.

Furthermore, section 3.9 provides that all proposed listings shall be compared to “similar season and/or hydrologic conditions.” The report the State is relying on, the 2005 Bioassessment Report, has not been compared to a similar season, nor, a similar hydrologic condition, as is required by the State’s Listing Policy.

Recommendation(s): An updated and similar season and hydrologic local area IBI studies are necessary, **and required**, for this proposed impairment to meet the requirements of the State’s Listing Policy, e.g., attainable biological [and] habitat conditions for water body segments with common watershed/catchment characteristics within defined geographical regions. These studies should be updated to reflect current water quality levels due to the increases in water quality protection efforts such as increased development and design standards, illicit connection and discharge prohibitions, Total Maximum Daily Loads (TMDLs) adoption and implementation, etc.

3. Associated to Pollutants

Section 3.9 also requires that a, “water segment shall be placed on the section 303(d) list if the 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 section also specifies that the impairment be an “association of chemical concentrations, temperature, dissolved oxygen, trash, and other pollutants *shall be determined* using sections 3.1, 3.2, 3.6, 3.7, 6.1.5.9, or other applicable sections.” *Id.* Where the proposed impairment is related to sedimentation, the Listing Policy requires that the, “...populations or communities [be] identified and effects are associated with clean sediment loads in water or with loads stored in the channel when compared to evaluation guidelines (satisfying the conditions of section 6.1.3) using the binomial distribution as described in section 3.1 or as compared to reference sites.” *Id.*

The proposed listings, Decision ID Nos. 17208 & 17210, do not discuss, demonstrate, provide, or reference the impairments “associated” to “chemical concentrations, temperature, dissolved oxygen, trash, and other pollutants.” This is mandatory pursuant to the Listing Policy. The only statement to its association is found in the “Weight of Evidence” section of the proposed listings. This section only provides that, “this impairment is associated with impairments for Invasive Species, Nutrients (algae), Sedimentation/Siltation, Selenium, Sulfates and Trash.” Decision IDs 17208 & 17210, Weight of Evidence, Final 2008 California 303(d)/305(b) Integrated Report, Supporting Information. In review of the 2005 Bioassessment Report, it also does not provide any information on the bioassessments findings related to the required “associated” pollutants. For example, no binomial distribution is provided in either, as required, for loading of sediments and as compared to reference sites.

The report only provides findings related to physical habitat *characteristics*, physical habitat *scores*, and BMI community scores. The only recognizable relationship between BMI indices and scoring to any other pollutant or sedimentation is the ranking of the physical habitat; however, no clear delineation or relationship is made or developed. The report does indicate the temperatures and dissolved oxygen (DO) levels at the time of sampling, but no association to the results of the BMI/IBI are provided.

Recommendation(s): The State should delay this listing until it has completed the required association analysis under Section 3.9 of the Listing Policy and in accordance with U.S. EPA's guidance documents and policies.

4. Consistency with Section 6.1.5.8

Section 3.9 also provides that bioassessment "data used for listing decisions shall be consistent with section 6.1.5.8. For bioassessment, measurements at one stream reach may be sufficient to warrant listing provided that the impairment is associated with a pollutant(s) as described in this section." In turn, Section 6.1.5.8, requires:

"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.

Listing Policy, Section 6.1.5.8, page 25. As required by this section, 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.

As previously mentioned, the proposed listing has not been compared to a reference site or condition within the meaning of Section 3.9 and Section 6.1.5.8. As provided in 6.1.5.8, the State Board "shall" perform this analysis and evaluation before it can list the impairment.

Recommendation(s): This impairment should be delayed until the State can retest the Malibu Creek water segments to determine whether such impairments still exists, and develop a reference site and condition to compare the proposed listing. Such efforts will ensure that the proposed listing:

- is an attainable biological or habitat conditions for the water body segments;

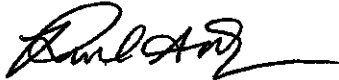
- the reference site and condition is a common watershed and catchment characteristic within the defined geographical regions;
- is compared to a similar season and/or hydrologic conditions; and
- is associated to and with the required pollutant combinations.

In closing, I would like summarize the City of Agoura Hills' recommendations for the Board's consideration:

1. Do not list a waterbody (in particular Malibu Creek) on the 303(d) list of impaired waterbodies for "Benthic-Macroinvertebrate Assessments" as this is not a pollutant or stressor. The appropriate listing must be based on the actual pollutant(s) or stressor(s) causing the perceived impairment to the aquatic life.
2. Delay any consideration of such related type of aquatic life pollutant/stressor listing until consistent Biological Objectives that take tiered aquatic life uses into consideration have been developed.
3. Conduct additional studies that are necessary to determine appropriate reference conditions, and obtain any data needed in accordance with EPA recommendations and the listing policy to justifiably make a listing.

Should you have any questions, please contact me at (818) 597-7353 or radeva@ci.agoura-hills.ca.us.

Sincerely,



Ramiro S. Adeva III
City Engineer

c: Greg Ramirez, City Manager
Kelly Fisher, Public Works Project Manager