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December 6, 2017

California Regional Water Quality Control Board
Los Angeles Region
Attn: Dr. Celine Gallon
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA ELECTRONIC MAIL c/o Celine Gallon, celine.gallon@waterboards.ca.gov

RE: Comment Letter - 2017-19 Triennial Review

Dear Celine Gallon:

Earth Law Center (ELC) is a 501(c)(3) non-profit that advances legal rights for ecosystems and species to exist, thrive and evolve. ELC asks that the Los Angeles Regional Water Quality Control Board (LARWQCB) include on the “priority list” of the 2017-2019 Triennial Review the development of narrative and numeric water quality objectives (or “criteria”) for flow that *fully* protect beneficial uses, as required by the Clean Water Act (CWA).

As recognized in the Notice of the 2017-19 Triennial Review of Water Quality Standards in the Los Angeles Region (“Triennial Review Notice”), “basin plans are designed to preserve and enhance water quality and protect the beneficial uses of regional surface and ground waters.”¹ The Triennial Review Notice further acknowledges that “...basin plans ... set narrative and numerical objectives to protect the designated beneficial uses and conform to the state's anti-degradation policy.”² **Ensuring that flow regimes support fish and aquatic life is essential in order to protect beneficial uses within Los Angeles Region waterways, and thus LARWQCB staff must integrate water quality objectives specific to flow into the Basin Plan.** As the U.S. Supreme Court found in *PUD No. 1 of Jefferson County v. Washington Dep't of Ecology*, 511 U.S. 700 (1994), the distinction between water quality and water quantity is “artificial”; flows are impacted such that one or more beneficial uses cannot be met, then water quality standards are being violated.

Prioritizing development of water quality objectives for flow would result in many practical benefits, including the following, amongst others:

- (1) Formal recognition of the relationship between changes to hydrological patterns (including flow) and beneficial use protection ensures consideration of flow impacts

¹ Notice of the 2017-19 Triennial Review of Water Quality Standards in the Los Angeles Region, Los Angeles Regional Water Quality Control Board, at:

https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/Triennial_Review/2017-2019/PublicNotice2017-19TriennialReview.pdf

² *Id.*

in numerous local and state processes, such as by assuring that projects and permits are designed and evaluated to avoid significant negative impacts on flow.

- (2) Water quality objectives for flow will help streamline the identification by LARWQCB staff of waterways that are impaired due to altered flows – namely in close cases, since beneficial uses (including use as fish habitat) in the most severely dewatered rivers and streams (such as Reaches 3 and 4 of the Ventura River³ and the Santa Clara River⁴) are clearly impaired due to altered flow and must be listed as such,⁵ as is true for those rivers where *too much* flow can result in beneficial use impairment (such as the Los Angeles River⁶).
- (3) Helping to clarify the relationships among flow and other parameters regulated by the LARWQCB (such as sediment and temperature) can guide efforts to protect and recover waterways more effectively than under existing water quality objectives.

With respect to a regional narrative objective for flow, there is significant precedent from which to draft effective language. As one example, Tennessee’s narrative instream flow water quality criterion reads: “Stream or other waterbody flows shall support the fish and aquatic life criteria,” and “Stream flows shall support recreational uses.” And Kentucky’s narrative criterion reads: “Flow shall not be altered to a degree which will adversely affect the aquatic community.” The LARWQCB should similarly determine a straightforward narrative flow objective for Los Angeles Region waterways, and ELC would be pleased to contribute to this process.

Additionally, with respect to specific numeric objectives for flow, these may include, for example, “the volume, timing, and quality of flow necessary under different hydrologic conditions...”⁷ ELC also reminds the LARWQCB that, according to the CWA, such numeric objectives must be science-based and *fully* protect the most sensitive beneficial uses.

As a final point, and for many of the same reasons as established above, ELC supports the development of water quality objectives to implement beneficial uses with respect to hydromodification in the Los Angeles Region, as described in the comment letter on the 2017-19 Triennial Review submitted by Los Angeles Waterkeeper.⁸

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³ Excessive pumping contributes to the severe dewatering of the Ventura River Reaches 3 and 4, imperiling endangered steelhead trout and other aquatic species.

⁴ The Santa Clara River is Southern California’s last major free flowing waterway and is home to 17 species listed as threatened or endangered under the state and federal Endangered Species Acts. United, USGS, and local agency data show that water diverted at the Vern Freeman Diversion Dam for agricultural usage, groundwater recharge, and other uses, deprive migrating steelhead of sufficient flows and juvenile steelhead of healthy estuary rearing grounds.

⁵ See letter from Earth Law Center to the Los Angeles Regional Water Quality Control Board, “Comment Letter - Revisions to the Los Angeles Region 303(d) List” (Mar. 30, 2017), available at: <http://bit.ly/2AuLtGG>.

⁶ See comment letter from Los Angeles Waterkeeper to Los Angeles Regional Water Quality Control Board, “Comments Letter- 2017-19 Triennial Review” (Dec. 6, 2017).

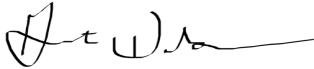
⁷ See e.g. State Water Resources Control Board Resolution No. 2010-0039, “Determining Flow Criteria Pursuant to the Delta Reform Act” (Aug. 3, 2010).

⁸ See comment letter from Los Angeles Waterkeeper to Los Angeles Regional Water Quality Control Board, “Comments Letter- 2017-19 Triennial Review” (Dec. 6, 2017).

In sum, considering the dire need for a healthy flow regime in a number Los Angeles Region waterways, the practical benefits described above, the legal impetus of the CWA, and the precedent set by other states, we ask that the LARWQCB to incorporate into the 2017-2019 Triennial Review the development of water quality objectives for flow.

Thank you for your attention to these comments.

Best regards,

A handwritten signature in black ink, appearing to read "Grant Wilson", with a long horizontal flourish extending to the right.

Grant Wilson

Directing Attorney

gwilson@earthlaw.org