

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Richard Looker)
MEETING DATE: March 13, 2019

ITEM: 6

SUBJECT: **Proposed Revisions to Clean Water Act Section 303(d) List of Impaired Waters -**
Adoption of Resolution Approving Recommendations for Revisions

CHRONOLOGY: April 12, 2017 - Adoption of Recommendations to 2016 303(d) List

DISCUSSION: This is a hearing on a Tentative Resolution (Appendix A) which would approve proposed revisions to the list of impaired waters in the San Francisco Bay Region, compiled in compliance with section 303(d) of the federal Clean Water Act (303(d) List). We prepared a supporting Staff Report (Appendix B) and Fact Sheets explaining the revisions (Appendix C). The statewide formal data solicitation for this listing period occurred between November 3, 2016 and May 3, 2017, so the listing recommendations are and must be based on data collected prior to the latter date.

The Clean Water Act requires states to submit a comprehensive assessment of water quality and a list of waterbodies not meeting water quality standards (Integrated Report) to the United States Environmental Protection Agency (U.S. EPA) every two years. However, each of the nine Regional Water Boards only assesses all of its waterbodies every six years. When a Regional Water Board is scheduled to assess all of its waterbodies for the Integrated Report, it is "on-cycle". The San Francisco Bay Regional Water Board prepared its full Integrated Report when it was on-cycle in 2016 and will do so again in 2022. Regional Water Boards that are "off-cycle" during each two-year Integrated Report cycle have the discretion to assess new "high-priority" data and make new listing/delisting decisions.

For the 2018 303(d) List, we recommend a limited number of off-cycle 303(d) List revisions. Some of these recommended revisions are straightforward changes to ensure that the 303(d) List accurately reflects recently updated water quality objectives for indicator bacteria as well as a recently approved Total Maximum Daily Load (TMDL) project for Suisun Marsh. High stream temperatures can cause both lethal and growth impacts to salmonids such as steelhead, a species listed as threatened under the Endangered Species Act. Accordingly, we evaluated an extensive temperature dataset for Los Gatos Creek submitted during the data solicitation period. We found that temperatures in the lower portion of the creek were too high to support steelhead habitat. We are bringing these findings to the Board for consideration in 2018 rather than waiting for this Region's next on-cycle opportunity in 2022.

Following adoption by the Board, the new listing/delisting decisions will be transmitted to the State Water Board for approval and inclusion with the full on-cycle 2018 303(d) List that will subsequently be submitted to U.S. EPA for approval.

The proposed 303(d) List revisions for our Region include:

- Listing lower Los Gatos Creek (downstream of Lexington Reservoir) for temperature;
- Delistings for indicator bacteria for six beaches (Crown Beach, Drake's Estero, Fort Baker's Horseshoe Cove, Keller Beach, Schoonmaker Beach, and Miller Point) that were listed during the 2016 cycle due exclusively to exceedances of the Basin Plan's total coliform objective, which was replaced by *Enterococcus* objectives adopted by the State Water Board in August 2018 because total coliform was poorly correlated to human illness; and
- Listing status changes for Suisun Marsh and associated sloughs to make clear that these impairments are addressed by the TMDL for dissolved oxygen and mercury in Suisun Marsh.

We provided a 30-day public review of the proposed 303(d) List revisions and received five comment letters (Appendix D). Our Responses to Comments document (Appendix E) addresses all comments received. Living Rivers Council requested that the Board should leave in place the nutrient listing for Napa River. In response, we explained that this Board approved a delisting for Napa River in 2014, and we have determined that the basis for the delisting remains valid notwithstanding the photographic evidence contained in the Living Rivers Council comment letter.

Two of the comment letters offered support for our proposed listing of lower Los Gatos Creek for temperature, and two letters opposed the listing. The commenters in opposition criticized the evaluation guidelines used to determine impairment and suggested that a settlement agreement between the California Department of Fish and Wildlife and the Santa Clara Valley Water District (Fish and Habitat Collaborative Effort) contains measures that will resolve the listing so that a listing and subsequent TMDL are not necessary. In our response, we explain how the evaluation guidelines are scientifically sound and meet the requirements established by State Water Board in the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*. We also explain how the settlement agreement cited by the commenters does not contain sufficient detail about actions in Los Gatos Creek to ensure that the temperature impairment will be resolved.

**RECOMMEN-
DATION:**

Adopt the Tentative Resolution approving 2018 303(d) List revisions.

APPENDICES:

- A. Tentative Resolution
- B. Staff Report
- C. Fact Sheets – [available online only](#)
- D. Comment Letters
- E. Response to Comments