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July 10, 2017

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Dear Ms. Townsend:

Subject: Comment Letter – 303(d) List for waterbodies in the Los Angeles Region

The Los Angeles Department of Water and Power (LADWP) would like to thank the State Water Resources Control Board (SWRCB) for the opportunity to comment on the 303(d) List for waterbodies in the Los Angeles region (List).

LADWP is the largest municipally-owned utility in the nation, which serves a 465 square-mile area in Los Angeles with approximately four million residents and a portion of the Eastern Sierras in Owens Valley. Its mission is to provide essential public services (water and power) for grid reliability and public health and safety in an efficient and environmentally responsible manner. LADWP owns its electrical generation, distribution, and transmission systems as well as its 233-mile, gravity fed Los Angeles Aqueduct, which brings water to the City of Los Angeles (City). LADWP's Power System supplies more than 23 million megawatt hours of electricity a year, and LADWP is responsible for maintaining and replacing 3,507 miles of overhead transmission circuits spanning five western states. LADWP's Water System supplies approximately 177 billion gallons of water annually and an average of 446 million gallons per day to its residential and business customers.

LADWP understands that the need to develop Total Daily Maximum Loads (TMDLs) is fundamental to achieving water quality improvements in impaired water bodies. LADWP recognizes and supports the protection that TMDLs provide for those water bodies. LADWP has reviewed the changes since the last Staff Report Revision and has the following general and specific comments.

General Comments:

1. The 303d listing recommendations should be updated to include current data and information.
2. The proposed listings for "benthic community effects" are premature at this time, particularly for proposed listings in modified channels.
3. Listing and delisting as described in Section 2.4 of the June 2017 Revised Staff Report should be a more stakeholder involved process.

Specific Comments with regards to LADWP facilities:

4. Elderberry Forebay is not open to the public and does not allow fishing.

I. General Comments

1. The 303(d) listing recommendations should be updated to include current data and information.

The Los Angeles Regional Water Quality Control Board (LARWQCB) staff indicated in their response to comments that "Due to the volume of data received during the 2010 data solicitation period, the SWRCB determined that no additional data would be solicited or analyzed until all the 2010 data are assessed. [...] LARWQCB staff estimates that the 2022 303(d) list will include data submitted through 2021." (Staff Report, p. 6). However, LADWP would like to reiterate the concern that many of the data upon which proposed listings are based are more than ten years old, and are not necessarily representative of current conditions and therefore listing may not be necessary for certain water bodies.

LADWP respectfully requests that updated data and information be used in the 303(d) listing, as basing the listing of datasets that do not include the most recent information could list a waterbody that no longer should or need be on the list.

2. The proposed listings for "benthic community effects" are premature at this time, particularly for proposed listings in modified channels.

LADWP notes that several of the proposed listings for "benthic community effects" are based upon limited data (2 or 3 samples) that were collected nine or more years ago, and that some of the proposed listings are based upon "index of biotic integrity" (IBI) scores.

As the SWRCB is in the midst of developing a comprehensive, consistent state-wide Biostimulatory Substances and Biological Integrity Policy (including specifically the technical and policy approaches to regulating biological integrity in modified channels) which will include biological condition assessment methods, scoring tools, and targets for biological integrity. Workshops, meetings, and policy development are all actively

underway. Given that the SWRCB's policy development is underway, tools and metrics that are no longer being developed for inclusion in the State's policy should not be used as the basis for 303(d) listings. This includes IBI-based benthic community listing methods and interpretations, which do not represent current technical understanding for biological integrity in California. Additionally, many of the water bodies proposed for listing for benthic community effects are engineered or modified channels, and it is not scientifically or technically appropriate to expect that modified channels will achieve the CSCI or IBI scores that are observed in reference channels. The proposed listings do not consistently establish a link between the biological condition and the pollutant(s) that may be responsible for the biological condition;, it is not clear that the pollutant measurements (available only for some proposed listings) were collected at the same time as the biological data. Finally, some of the samples upon which the proposed listings are based were collected downstream of and shortly after major wildfires; these data are likely representative of temporary disturbed conditions and may not be representative of typical conditions.

In order to create meaningful and relevant 303(d) listings and to implement efficient and effective management solutions, both science and policy need to converge on determining (a) whether biological impairment actually exists, such that impairments are not designated where they would be indicated by a statistical artifact of the metric calculation methodology employed and not by the actual physical condition, (b) whether regulatory benchmarks applied are biologically meaningful in the context where they are being applied, and (c) whether there is a clear understanding of how to remedy correctly identified and meaningfully interpreted impairments. The SWRCB has made significant progress towards meetings these goals, and in conjunction with the Southern California Coastal Water Research Project (SCCWRP), has been active in collecting feedback from stakeholders.

On the subject of regulating modified channels, SCCWRP has acknowledged that the newly developed California Stream Condition Index (CSCI), which compares observed to expected benthic communities in a waterbody, does not account for landscape modifications that preclude achievement of reference biological communities. Such landscape modifications include concrete-lined and other highly modified channels. As such, SCCWRP is developing a model to predict where biological quality is constrained by the landscape (e.g., modified channels), identifying conditions where it is not possible for a biological metric score to achieve reference conditions. "Some streams may not be able to attain high scores, even if key stressors are reduced" (SCCWRP webinar; June 26, 2017). Prior to a comprehensive discussion of "how policies might address constraints on biointegrity" (SCCWRP webinar; June 26, 2017), it is counter-productive and unsuitable to list such streams for benthic community effects in absence of a scientifically valid and meaningful regulatory strategy for assessing those effects. As SCCWRP stated in the feedback solicitation form provided after the June 26, 2017 webinar, it is important to evaluate "observed CSCI scores, comparing a site not just to a target threshold but also to its expected range"; "[i]n some scenarios, the sites in question may not be sampled, or their scores may be less relevant to the management

decision". Feedback from the Biostimulatory-Biointegrity Project Regulatory Advisory Group provided by SCCWRP suggests that " 'Constrained class' could be a line of evidence for not putting on 303(d) list" and "Biological objectives may not be good targets in constrained streams" (SCCWRP webinar; June 26, 2017). Given the unresolved discussion regarding how to identify and regulate a stream segment expected to have poor biological quality based on its surrounding landscape, it seems premature to list such segments on the 303(d) list.

Listings made during the current listing cycle and based on the proposed use of the IBI / CSCI are likely to be out of date and inconsistent with the forthcoming policy that is currently in development. It does not appear that the IBI / CSCI in their current forms are suitable metrics for determining impairment in all circumstances, it is unclear what modified streams "should" look like, and what management action(s) might be needed to address these impairments. It is also unclear how listings that are made now would be adjusted or removed in the future, should they be found to be inconsistent with the policy that is currently in development. Thus, listings based on the IBI may lead to not needed TMDLs. In summary, it may not be possible for certain streams, particularly modified channels or channels within modified landscapes, to achieve the target IBI reference conditions. Given that the process for evaluating biological integrity is still in development, LADWP requests that the SWRCB decline to list as impaired any pollutant/water body combinations that are proposed for listing for benthic community effects based on IBI scores

3. Listing and delisting as described in Section 2.4 of the June 2017 Revised Staff Report should be a more stakeholder involved process.

LADWP would like to propose that the listing and delisting of the 303(d) list become a more involved process with stakeholders. Currently the development of the 303(d) list is a closed process with little to no stakeholder involvement. However, if the data used to evaluate listings were to be shared with stakeholders before placement on the 303(d) list, it would be conducive to a more cooperative and transparent process.

II. Specific Comment to LADWP Facilities

4. Elderberry Forebay is not open to the public and does not allow fishing.

In the response to comments, the LARWQCB mentioned that Elderberry Forebay has several beneficial uses, but COMM (Commercial and Sport Fishing) is not one of them. However, in the fact sheet for the proposed listing, under "beneficial use affected" for Line of Evidence (LOE) 94684 and LOE 62708, Elderberry Forebay is listed as "Commercial or recreational collection of fish, shellfish, or organisms". Not only is COMM not listed as a proposed or existing beneficial use at Elderberry Forebay in the Basin Plan, but no fishing of any kind is allowed at the Forebay. The fact sheet also mentions WARM (Warm Freshwater Habitat) in LOE 84210 and LOE 84222, which is one of the designated beneficial uses at Elderberry Forebay. REC1 and REC 2 (which include fishing) also apply to Elderberry Forebay, but the REC1 use in the Basin Plan

has a footnote indicating that access to Elderberry Forebay is prohibited. However, the staff response to comments indicates that "Restricted access does not preclude a waterbody from possessing beneficial uses" or being assessed for impairments.

LADWP's largest hydroelectric facility is the Castaic Power Plant (CPP), which is critical to the reliability of the electrical grid in the Los Angeles Basin. This facility, along with the Elderberry Forebay, was built in 1960 as part of a Federal Energy Regulatory Commission (FERC) project with the Department of Water Resources, and is operated under a FERC license. The Elderberry Forebay was built strictly for the operation of the plant as a storage component for the water that passes through the plant to generate electricity. This hydroelectric plant is known as a pass-through facility. Water from Pyramid Lake flows down gradient through the Los Angeles Tunnel and seven penstocks to turn seven turbines in order to produce electricity. The water enters Elderberry Forebay after the turbines; from where it is then either discharged to Castaic Lake or pumped back to Pyramid Lake.

LADWP understands the LARWQCB's response that even though restricted access to the CPP does not preclude it from possessing beneficial uses; LADWP would like to emphasize that public access is not allowed at Elderberry Forebay, primarily due to the high flow velocities and extreme water level fluctuations. As there is no public access, there is also no fishing of any kind allowed in the Forebay, and therefore the Forebay does not have any beneficial uses beyond being an operating body of water for the CPP. Consequently, fish consumption criteria should not be used for listing purposes of Elderberry Forebay.

For these reasons, LADWP respectfully requests that the Elderberry Forebay be excluded from the 303(d) list.

LADWP appreciates the opportunity to provide comments on the List and looks forward to working with SWRCB staff in this process. Should you have any questions regarding this letter, please contact me at (213) 367-0436 or Ms. Chloé Grison of the Wastewater Quality and Compliance Group at (213) 367-1339.

Sincerely,

Katherine Rubin
Manager of Wastewater Quality and Compliance

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c: Ms. Chloé Grison