NEWHALL LAND
The Newhall Land and Farming Company
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303 (d) Deadline:
1/31/06

January 31, 2006

Selica Potter, Acting Clerk to the Board
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comments on the SWRCB's Draft 2006 Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments

Dear Ms. Potter,

We appreciate the opportunity to comment on the Draft 2006 Revision of the Clean Water Act (CWA) Section 303(d) List of Water Quality Limited Segments (Draft List). The Newhall Land and Farming Company (Newhall) takes its responsibility to maintain and protect water quality very seriously, and works hard to meet its obligations. Our comments will focus on the listings that are proposed for the upper Santa Clara River (SCR).

We commend the State Water Resources Control Board (SWRCB) for making progress toward improving the clarity and objectivity of the 303(d) listing process through the development and implementation of the *Water Quality Control Policy for Developing California's Clean Water Act 303(d) List* (Listing Policy) (September 2004). We understand that the goal of the new Listing Policy is to "establish a standardized approach for developing California's 303(d) list" and we support those efforts. While we do not agree with all of the recommended listings, the SWRCB's recommendations, and the basis for those recommendations, are far clearer than in previous listing cycles. Nevertheless, as we discuss below, improvements are needed to assure that listings are based on accurate and verifiable data, in compliance with the Listing Policy, and in compliance the SWRCB's broader administrative duty to make reasoned listing decisions based on a review of all pertinent, available, and appropriate data. See Attachment "A" for a summary of SWRCB's administrative duties with respect to regulatory decisions.

In general, we believe that several modifications should be made to the Draft List for the following purposes:

1. To accurately reflect the actual designated beneficial uses of the Santa Clara River (SCR);
2. To accurately reflect the actual water segment groupings according to Basin Plan reaches;
3. To assure that the listing analysis is based upon evaluation of water quality standards that are appropriate and applicable;
4. To take into account fairly recent "readily available [1]" water quality data that have been collected along the SCR and submitted to the Los Angeles Regional Water Quality Control Board (LARWQCB); and
5. To take into account age and trends in water quality data.

[1] Data submitted to Regional Water Quality Control Boards, such as NPDES data, is defined as readily available data in the Listing Policy. Listing Policy, Section 6.1.2.1, p. 18.

With respect to consideration of available water quality data, Newhall has collected monthly water samples in Reaches 4 and 5 of the SCR since May 2004 as part of a background receiving water monitoring program for its NPDES permit application for the proposed Newhall Ranch Water Reclamation Plant (WRP). In addition, the County Sanitation Districts of Los Angeles County (LACSD) also collects monthly receiving water samples throughout Reaches 5 and 6 as part of their NPDES permit monitoring program for their Valencia and Saugus WRPs. These data were previously submitted to the LARWQCB through quarterly and annual monitoring reports and are currently publicly available through the NDPES permit reporting program. These data are also provided in electronic format on the enclosed CD[2] for SWRCB convenience. We request that these data be included in the SWRCB's administrative record and 303(d) database, and that the SWRCB consider these fairly robust datasets in making listing determinations.

The following bullet points summarize Newhall's primary comments on specific proposed listings for Reaches 5 and 6 of the SCR. These comments are discussed more thoroughly in Attachment "A", and the fact sheets attached to this letter. Attachment "A" and the fact sheets are incorporated into these comments by reference. The fact sheets were prepared to summarize additional available data and technical information pertinent to particular proposed listing decisions for SWRCB consideration.

- **Aluminum, SCR Reach 5:** First, pursuant to the draft 303(d) fact sheet for this proposed listing, SWAMP data for Castaic Creek was included in the primary dataset considered to support an aluminum listing for SCR Reach 5. Although Castaic Creek is within the SCR watershed, Table 2-1 of the Basin Plan identifies Castaic Creek as a separate water body, with designated beneficial uses that are independent of those designated for SCR Reach 5[3] Because Castaic Creek is a separate water body pursuant to the basin plan, and because data from Castaic Creek may or may not be indicative of water quality status in SCR Reach 5, aluminum data for Castaic Creek should be evaluated separately in making a listing determination for SCR Reach 5. It should not be included in the primary dataset relied upon to support the listing of SCR Reach 5 for aluminum.. SCR Reach 5 data shows aluminum exceedances for 2 of 2 samples.

  Second, the pursuant to the draft 303(d) fact sheet for this proposed listing, the MUN was considered the beneficial use for SCR Reach 5. However, the MUN designation is inconsistent with the *conditional potential* MUN (MUN*) designation shown in the Basin Plan for SCR Reaches 5 and 6. The conditional potential MUN designation is not enforceable and cannot be used as the basis for regulatory actions. Recognition that the MUN use is not applicable to these receiving waters leads to the conclusion that the proposed listing for aluminum is not warranted, since the standard used to determine an impairment for the pollutant is a *drinking* water quality standard (in fact, the standard used was a Secondary Maximum Contaminant Levels (SMCL) – an

[2] The associated publicly-available lab QA/QC data has not been included with this data submittal as it has already been submitted to the LARWQCB through the NPDES quarterly monitoring and reporting program.

[3] With respect to the accurate reflection of water body segment water quality, several listings proposed for SCR Reaches 5 and 6, including listings for aluminum, chlorpyrifos, diazinon, and PCBs, rely on sample data and exceedances not from the SCR, but from other water quality segments., such as Bouquet Canyon and Castaic Creeks. While these creeks are within the SCR watershed, sample results in these creeks are not as a scientific matter necessarily indicative of water quality status in the SCR mainstem. Whether the sample data in these creeks is indicative of water quality in SCR reaches 5 and 6 depends upon a number of confounding factors, including hydrologic conditions, flow rates and volumes, and natural water quality function within the various surface water body segments. Pursuant to federal Clean Water Act regulations applicable to listings and the Listing Policy, data relied upon to support addition of a water body segment to the 303(d) list should be measured at one or more sites in the water segment and should accurately reflect the water quality status of the pertinent water body segment.

secondary aesthetic drinking water standard). Aesthetic drinking water standards are not appropriate for use in evaluating ambient surface water quality in SCR Reach 5.

Third, SMCLs are "non-enforceable guidelines that are intended to assist public water systems in managing their drinking water for aesthetic considerations, such as taste, color and odor. Contaminants are not considered to present a risk to human health at the SMCL."[4] Further, SMCLs are intended to be applied to drinking water at the point of delivery, and are an inappropriate standard for natural surface waters, particularly for waters without an MUN designation. Section 6.1.3 of the Listing Policy is instructive with respect to this point as it specifies the use of evaluation guidelines that are "applicable to the beneficial use." Thus the water quality standards used to evaluate data and determine the potential for impairment of beneficial uses must be applicable and appropriate, to assure an accurate determination of water quality impairment.

Finally, to the extent that exceedances of an aesthetic secondary drinking water quality standard for aluminum are used to evaluate impairment, the exceedances should more properly be evaluated as a conventional pollutants rather than as a toxicants. The exceedances of the SMCL doe not indicate toxicity in SCR Reach 5. Therefore, 2 or 3 data points are too few to base a listing on per Table 3.2 of the Listing Policy. For all of these reasons, the listing of this reach for aluminum is not warranted.

- **Ammonia, SCR Reaches 5 and 6:** Available data show that only 1 sample of 83 (SCR Reach 5) and no samples of 41 (SCR Reach 6) exceed the applicable water quality objective for ammonia. Thus, available data meet the data quantity requirements of the Listing Policy, but do not meet the Listing Policy requirements for number of exceedances. As a result, no new listings are warranted for ammonia in SCR Reaches 5 and 6.

- **Chlorpyrifos, SCR Reach 6:** Pursuant to the draft 303(d) fact sheet for this proposed listing SWAMP data for Bouquet Canyon Creek were included in the primary dataset considered to support a listing for SCR Reach 6. In fact, the all 9 observed exceedances relied upon to support a listing of SCR Reach were actually observed in Bouquet Canyon Creek. While Bouquet Canyon Creek is within the SCR watershed, Table 2-1 of the Basin Plan identifies this creek as a separate waterbody, with designated beneficial uses that are independent of those designated for SCR Reach 6 . Therefore Chlorpyrifos data for Bouquet Canyon Creek should be evaluated separately, rather than included in the primary dataset with data collected for SCR Reach 6. Chlorpyrifos data for SCR Reach 6 show *no* exceedances.

  Additional data is also provided in the attached CD for Los Angeles County Department of Public Works (LADPW) monitoring station S29, which is within SCR Reach 6. These data show no exceedances of the California Department of Fish and Game (CDFG) aquatic life chronic (4-day) toxicity criterion of 0.05 ug/L for 6 samples collected between August 2002 and April 2003. Thus available data for SCR Reach 6 do not meet the Listing Policy requirements for number of exceedances, and no new listing is warranted for Chlorpyrifos in SCR Reach 6.

- **Diazinon, SCR Reach 5:** Available data show that only 1 sample of 50 exceeds the applicable threshold for diazinon in SCR Reach 5, and this result was 0.11 ug/L, or marginally greater than the California Department of Fish and Game's chronic toxicity criterion of 0.10 ug/L. Further, this one sample was taken in November 2001, long before completion of the USEPA's

[4] Secondary Drinking Water Regulations: Guidance For Nuisance Chemicals EPA 810/K-92-001 (July 1992); 40 CFR 143 et *seq*.

residential use diazinon phase-out, and its 2004 residential use diazinon ban. Thus, available diazinon data meet the data quantity requirements of the Listing Policy, but do not meet the Listing Policy requirements for number of exceedances, so that no new listing is warranted for diazinon in SCR Reach 5. See attached fact sheet for more information. It should also be noted that diazinon data should be interpreted in the context of the periods during which substantial source controls were implemented for the pollutant (see comments on diazinon in Reach 6 for more discussion on ban). Because there are no exceedances of diazinon out of 47 samples in SCR Reach 5, the proposed listing is not warranted.

- **Diazinon, SCR Reach 6:** More recent data for diazinon should be considered preferentially consistent with EPA guidance and the Listing Policy regarding temporal representation of data[5]. Two substantial source controls for diazinon have been imposed: USEPA's 2004 ban on residential use of the pesticide, and the provisions and conditions of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region (.Order No. R4-2005-0080) (the "Ag Waiver") adopted by the LARWCB in 2005. Post-ban data demonstrate that only 1 of 4 samples exceeded the applicable threshold, indicating that a diazinon listing for this reach is not warranted per the listing policy. Should the SWRCB maintain this proposed listing despite EPA Guidance and the Listing Policy, diazinon in Reach 6 should be listed under the "Water Quality Limited Segments Being Addressed" category due to the existing USEPA ban on diazinon sales for residential use and monitoring and control of diazinon required pursuant to the Ag. Waiver.
- **Nitrate plus Nitrite, SCR Reach 5:** Available data demonstrate that only 10 of 97 samples exceed the applicable water quality objective for nitrate plus nitrite in SCR Reach 5. These data meet the de-listing requirements of Table 4.2 of the Listing Policy, "Maximum Number of Measured Exceedances Allowed to Remove a Water Segment From the Section 303(d) List for Conventional or Other Pollutants". Please also note that the Draft List's fact sheet mistakenly references an MUN use as the basis for this water quality objective (also see previous discussion on aluminum regarding misuse of *conditional potential* MUN, or MUN*, designation for this reach), however historic background concentrations actually serves as the basis for this objective and therefore this pollutant should be evaluated using the "conventional or other pollutants" category (i.e., delisting Table 4.2) rather than the "toxicants" category.
- **Nitrite, SCR Reach 6:** Available data from SCR Reach 6 show no exceedances in 43 total samples. Thus, SCR Reach 6 should not be listed for nitrite.

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[5] USEPA initiated a phase-out of residential diazinon use in 2000 and the phase-out was complete by December 31, 2004. Diazinon has a short half-life (2-4 weeks) in soils, so the phase-out has had a near-immediate effect in reducing concentrations available for wash off into receiving waters. As noted in EPA's *Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act* (July 2005), EPA notes that "older data should be evaluated with care." The Guidance goes on to give an example involving relatively old data. At the time the data were collected, the pollutant exceeded the applicable water quality standards, but, after the time of data collection, source reduction measures were instituted to reduce the levels of the pollutant discharges, and no activities had occurred that would increase loading of the pollutant in the watershed. The Guidance points out that, under such conditions, it would be reasonable to rely on more recent data reflecting the source reduction measures and indicating that the water segment was meeting applicable standards. Further, section 6.1.5.3 of the Listing Policy states, "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered." Applying the Guidance and Listing Policy, SWRCB should take into account the EPA ban (a management measure) and rely preferentially on post-ban data.

- **PCBs, SCR Reach 5:** Pursuant to the draft 303(d) fact sheet for this proposed listing, s SWAMP data for Castaic Creek was included in the primary data set supporting the proposed listing for SCR Reach 5. Table 2-1 of the Basin Plan identifies Castaic Creek as a separate water body with designated uses that are independent of SCR Reach 5. Therefore PCB data for Castaic Creek should be evaluated separately and should not be included in the primary data set considered in determining a listing for SCR Reach 5. SCR Reach 5 data shows that only 1 of 2 samples exceeded the water quality standard Thus available SCR Reach 5 data do not meet the Listing Policy requirements for number of exceedances, and no new listing is warranted for PCBs in SCR Reach 5.

  Furthermore, Section 6.1.5.3 of the Listing Policy states, "If the majority of samples were collected on a single day or during a single short-term natural event (e.g., a storm, flood, or wildfire), the data should not be used as the primary data set supporting the listing decision." However, the proposed PCBs listing is based on just three samples taken at two SWAMP monitoring station (with one sample being taken from a separate reach), all of which were sampled during storm flows, which are not representative of typical or long-term conditions within this water body. Therefore, not only are there too few exceedances in SCR Reach 5 to list PCBs, but the samples are not representative of multiple conditions and do not meet Listing Policy guidelines for temporal representativeness. See Attachment "A" for discussion.

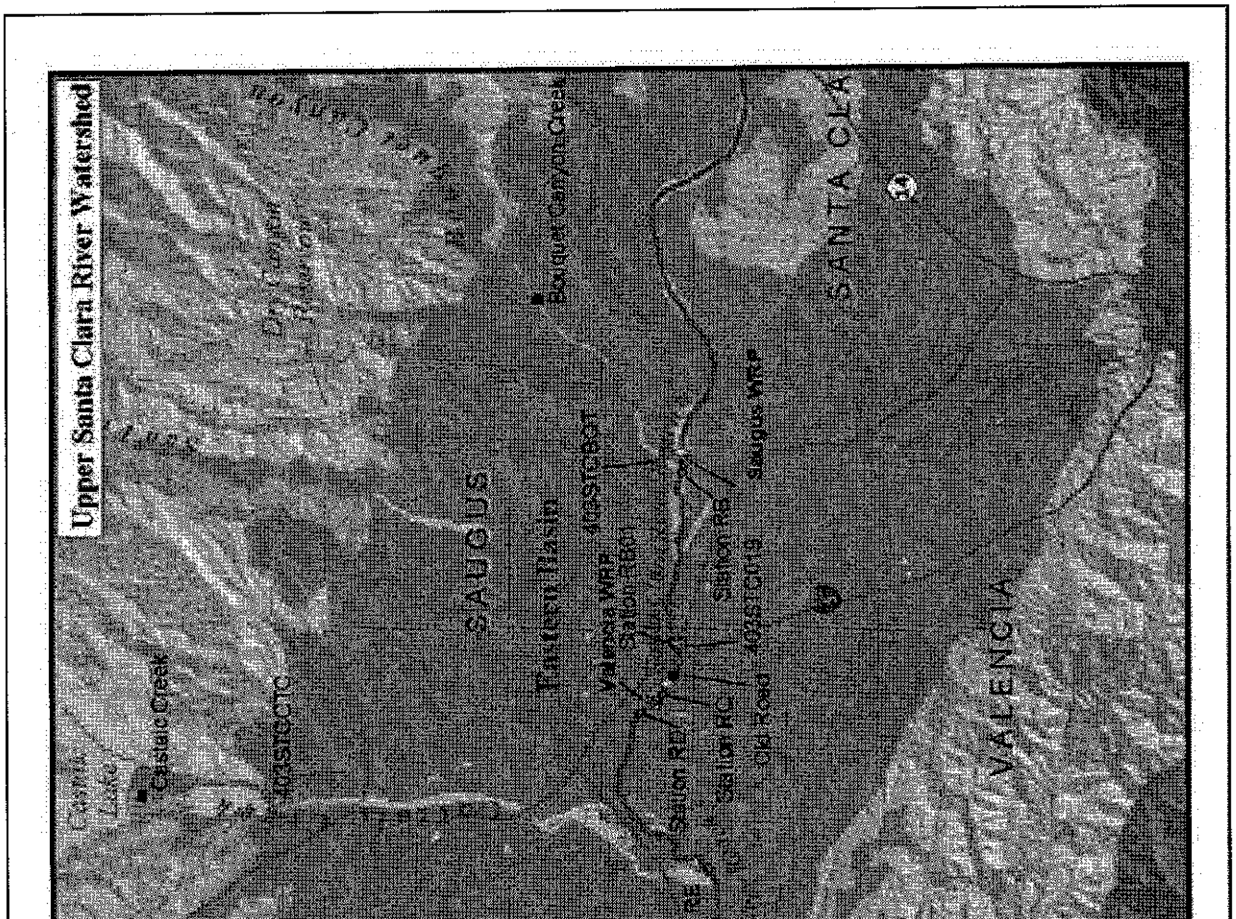
- **Toxicity, SCR Reach 6:** Section 3.6 of the Listing Policy states, "If the pollutant causing or contributing to the toxicity is identified, the pollutant shall be included on the section 303(d) list as soon as possible (i.e., during the next listing cycle)." Appendix B of the 2005 SWAMP report *Water Quality in the Calleguas Creek and Santa Clara River Watersheds* identifies diazinon as the probable cause of toxicity in the Reach 6 (Bouquet Creek) samples. Therefore, the proposed toxicity listing in Reach 6 should be replaced with diazinon, consistent with these scientific findings and the guidelines of the Listing Policy. However, due to the existing USEPA diazinon ban, diazinon should either not be listed (since by preferentially using post-ban data only, listing would not be warranted), or be listed under the "Water Quality Limited Segments Being Addressed" category (see above comments on Reach 6 proposed diazinon listing).

Thank you again for the opportunity to comment on the Draft List. We realize that our comments are lengthy and potentially confusing, and would be happy to discuss them in a follow-up meeting with SWRCB staff and/or SWRCB counsel. Please contact me at 661-255-4259 to discuss our comments or any address questions you may have.

Sincerely,
NEWHALL LAND & FARMING COMPANY

Matt Carpenter
Director, Environmental Resources

cc: R. DeShazo
J. Bishop


Upper Santa Clara River Watershed
SAUGUS
VALENCIA
SANTA CLA
Eastern Basin
Castaic Creek
403STCCTC
Bouquet Canyon Creek
403STCBQT
Valencia WRP
Saugus WRP
Station RE
Station RC
Station RB
Station RF
Old Road
403STC004
403STCNRB
403STCN68
NR1
NR3
Blue Cut (old)
Blue Cut (new)
Piru Creek
LOS ANGELES COUNTY
VENTURA COUNTY
Legend
GEOSYNTEC CONSULTANTS
SANTA BARBARA, CALIFORNIA

NEWHALL LAND

THE NEWHALL LAND AND FARMING COMPANY
A LENNAR/LNR COMPANY

TRANSMITTAL

DATE: January 31, 2006

TO: Selica Potter, Acting Clerk to the Board
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814
Fax: (916) 341-5620
Email: commentletters@waterboards.ca.gov"

FROM: Matt Carpenter

SUBJECT: Written comments on the proposed changes to the section 303(d) list

☑ For your use ☑ Sent via: Email and US Mail

REMARKS: If you have any questions, please contact me at 661-255-4259.

ENCLOSURE
- Newhall Land Comment Letter and Attachments
- Supplemental Data on CD

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ATTACHMENT A

SUMMARY OF SWRCB'S ADMINISTRATIVE LAW DUTIES IN MAKING 303(D) LISTING DETERMINATIONS

ATTACHMENT A

Summary of SWRCB's Administrative Law Duties in Making 303(d) Listing Determinations

Although the Listing Policy gives the SWRCB broad discretion to list water bodies as impaired pursuant to section 303(b) of the Clean Water Act (CWA), compliance with the Listing Policy by the SWRCB cannot justify 303(d) listings that are otherwise arbitrary and capricious. In *United States v. State Water Resources Control Board,* (1986) 182 Cal. App. 3d 82, a case involving the SWRCB's adoption of a plan establishing new water quality standards for salinity control and for protection of fish and wildlife, the court explained the standard of review applied to the SWRCB's quasi-legislative actions under the principals of California administrative law:

> In performing its regulatory function of ensuring water quality by establishing water quality objectives, the Board acts in a legislative capacity...A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support. A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.

Similarly, under principals of federal administrative law agency actions taken under the CWA are reviewed under the arbitrary or capricious standard as set forth in section 706(2)(A) of the Administrative Procedure Act (APA). *Texas Municipal Power Agency v. United States EPA*, 836 F.2d 1482 (5th Cir. 1988). Therefore, although the SWRCB does have a fair amount of discretion in the 303(d) listing process, it still is obligated to make reasoned determinations in accordance with the provisions of the CWA and the principles of state and federal administrative law. This "check" ensures that the resources that must be expended to develop TMDLs, and to comply with TMDL regulations that result from 303(d) listings, have actual water quality benefits.

Although Section 303(d) does not contain a specific scientific standard to be applied to listing determinations, the Supplemental Report of the 2001 Budget published by the California Legislature, which provided one basis for the development of the Listing Policy by the SWRCB, required that the SWRCB establish criteria to "ensure that data and information used for identification of impaired water bodies are accurate and verifiable." Section 6.1.4 of the Listing Policy states that "the quality of the data used in development of the section 303(d) list shall be of sufficient high quality to make determinations of water quality standards attainment." Further, EPA regulations, 40 C.F.R. 131.11(a), require that water quality criteria must be based on "sound scientific rationale." Many of the proposed listings at issue, including the proposed listing of Ammonia and PCBs do not appear to be based on either "accurate and verifiable" data or "sound scientific rationale."

EPA Guidance on the 303(d) listing process also shows that with respect to some of the proposed listing recommendations the SWRCB is not relying on appropriate evidence. In EPA's Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act (July 2003), EPA discusses the assessment of data and information representativeness and states that "approaches should strike a balance between the extremes of (1) arbitrarily considering all grab samples to be representative of merely the instant in which, and the cubic foot of water from which, each was taken; and 2) arbitrarily assuming that each such sample is representative of conditions over several years, and over hundreds of stream miles or thousands of lake acres." Further, the guidance document goes on to provide that – although data should not be excluded solely on the basis of age – states may choose to not use certain data if it is determined that the data is not representative of current conditions and in such cases states may chose to schedule follow up monitoring to obtain data that is representative of current conditions. EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) and 314 of the Clean Water Act (July 2005) states that "older data should be evaluated with care." The Guidance goes on to give an example involving 10-year-old data. At the time the data was collected, the pollutant exceeded the applicable WQS, but since that time sources of the pollutant were required to reduce the levels of the pollutant in their effluent and few changes had been made to increase the loading of the pollutant in the watershed. This example seems to be particularly applicable to the recommended listing of diazinon. A phase-out of residential use of diazinon began in 2001 and was completed in 2004 with the ban of all sales of diazinon for outdoor residential use. In addition, the conditional irrigated lands waiver adopted by the LARWQCB in 2005 (Order No. R4-2005-0080) is another source control that should reduced the loading of the pollutant in the watershed. The Guidance points out that, under such conditions, it would be reasonable to rely on more recent data reflecting the source reduction measures and indicating that the water segment was meeting applicable standards. Further, section 6.1.5.3 of the Listing Policy states, "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered." Applying the Guidance and Listing Policy, SWRCB should take into account the EPA ban and other source control measures and rely preferentially on post-ban data, which would then support the finding that a diazinon listing for this reach is not warranted.

Section 6.1.4 of the Listing Policy requires that "the quality of the data used in development of the section 303(d) list shall be of sufficient high quality to make determinations of water quality standards attainment." In addition, Section 6.1.3 of the Listing Policy allows for the use of evaluation guidelines that are "applicable to the beneficial use." Thus, the water quality standards used to evaluate data and determine the potential for impairment of beneficial uses must be applicable and appropriate in order to accurately determine if a water quality segment actually is impaired. Several proposed listings, including listings for aluminum and nitrate plus nitrite, reference an MUN beneficial use designation for Reaches 5 and 6[1] of the SCR. However, Table 2-1 of the

[1] LARWQCB reach numbers are used throughout this document, consistent with those used in the Draft List.

Basin Plan designates these reaches as MUN*, or *conditional potential* MUN, which is a non-enforceable, conditional use designation. Therefore, MUN cannot properly serve as the basis for water quality objectives or CWA 303(d) listings for Reaches 5 and 6 of the SCR. [2] The proposed listing for Aluminum relies on exceedances of a secondary maximum contaminant level (SMCL), which is a *secondary, aesthetic drinking water* standard. SMCLs are not applicable to surface water bodies, but are non-enforceable guidelines that are intended to assist public water systems in managing their drinking water for aesthetic considerations. Further, SMCLs are intended to be applied to drinking water at the point of delivery, and are inappropriate for evaluating ambient water quality in surface waters. It is critical to accurate listings that evaluation standards that are appropriate and applicable to SCR Reaches 5 and 6 and their designated beneficial uses should be chosen in making listing determinations.

With respect to the accurate reflection of water body segment water quality, several listings proposed for SCR Reaches 5 and 6, including listings for diazinon, aluminum, chlorpyrifos and PCBs rely on sample data and exceedances not from the SCR, but from other water quality segments, such as Bouquet Canyon and Castaic Creeks. While these creeks are within the SCR watershed, sample results in these creeks are not as a scientific matter necessarily indicative of water quality status in the SCR mainstem. Whether the sample data in these creeks is indicative of water quality in SCR reaches 5 and 6 depends upon a number of confounding factors, including hydrologic conditions, flow rates and volumes, and natural water quality function within the various surface water body segments. Pursuant to EPA's Guidance for 2004 Assessment, Listing and Reporting Requirements (July 2003), data that is not representative of current water quality conditions should not be used to support listing of a water body. Similarly, the Listing Policy requires use of accurate data to support listings. In addition, federal Clean Water Act regulations provide for the evaluation of listings based on analysis of water quality status associated with water body segments. 40 CFR 130.2(j). Similarly, the Listing Policy makes it clear that "At a minimum, data shall be aggregated by the water body segments as defined in the Basin Plans," and "data must be measured at one or more sites in the water segment in order to place a water segment on the section 303(d) list." These rules make sense because they are designed to assure that the data used to support a listing are representative of, and accurately depict the status of the water body segment proposed for listing. Pursuant to these rules and consistent with appropriate technical practices, samples and exceedances collected and recorded from other water bodies, defined in the Basin Plan separately and distinctly from SCR Reaches 5 and 6, should be evaluated separately, and should not be used as the primary line of evidence supporting a listing for a the SCR mainstem.

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[2] On December 5, 2001, the U.S. Federal District Court issued an order that effectively invalidated EPA's requirement that the asterisked MUN designated uses (MUN* uses) in the Los Angeles Basin Plan be immediately enforced. See Order granting plaintiffs' motion for summary judgment and remanding action to EPA, No. CV 00-08919 R(RZx), City of Los Angeles et al. v. United States Environmental Protection Agency..., dated December 18, 2001. See also letter dated February 15, 2002, from Alexis Strauss, USEPA Region IX, to Celeste Cantu, Executive Director, California SWRCB: "...waters identified with an ("*") in Table 2-1 do not have an MUN as a designated use until such time as the State undertakes additional study and modifies its Basin Plan."

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ATTACHMENT B

FACT SHEETS ON SPECIFIC LISTINGS

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ATTACHMENT B
FACT SHEETS ON SPECIFIC LISTINGS
FACT SHEET NO. 1

LISTING: Ammonia in SCR Reaches 5 and 6

RECOMMENDATION: Do not list

REASON: Current data show attainment of water quality standard
Data do not meet requirements of Table 3.1 for Listing
Data meet requirements of Table 4.1 for De-Listing

We request that Santa Clara River Reaches 5 (Blue Cut to West Pier Hwy 99) and 6 (West Pier Hwy 99 to Bouquet Canyon Road Bridge) be removed from the 303(d) list as impaired due to ammonia. Current water quality data show that the Basin Plan's water quality objectives for ammonia are being met and, therefore, no impairments exists. The data referenced below were compared with the reach-specific ammonia chronic toxicity criteria values shown in the June 2003 Santa Clara River Nitrogen TMDL staff report, which used site-specific 50th percentile pH and temperature data consistent with the EPA's 1999 updated ammonia criteria document. These chronic criteria require mean 30-day ammonia concentrations less than 1.3-3.5 mg/L as N depending on specific location within Reaches 5 and 6. No exceedances of the acute (i.e., 1-hour and 4-hour) criteria for ammonia were found in the data that are provided.

The following table and chart summarizes the available datasets, and listing requirements, for ammonia. No exceedances were observed in SCR Reach 6, and only one sample of 83 exceeded the applicable criteria in SCR Reach 5. Thus, the statistical requirements of Table 3.1, "Minimum Number of Measured Exceedances Needed to Place a Water Segment on the Section 303(d) List for Toxicants," of the SWRCB's 303(d) Listing Policy are not met. Note also that the results for station NR3, located in upper Reach 4, indicate that there have been no observed downstream exceedances, based on 20 months of monitoring.

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Table 1. Ammonia 303d Data Summary Table (monthly averages shown)

Site[1]	RWQCB Reach	Sample Size	Min[2], mg/L as N	Mean[2], mg/L as N	Max[2], mg/L as N	WQS[3], mg/L as N	# Exceed	Min # Exceed Reqd. to List
RB	6	21	0.10	0.62	2.60	3.5	0	--
RB01	6	20	0.10	0.11	0.20	3.5	0	--
Total Reach 6	**6**	**41**	**0.10**	**0.37**	**2.60**	**3.5**	**0**	**4**
RC	2	21	0.10	0.13	0.80	2.2	0	--
RD	5	21	0.10	0.60	2.90	2.3	1	--
RE	5	21	0.10	0.14	0.70	2.3	0	--
NR1	5	20	0.01	0.14	0.38	1.3	0	--
Total Reach 5	**5**	**83**	**0.01**	**0.26**	**2.90**	**1.3-2.3**	**1**	**8**
NR3	4	20	0.01	0.14	0.32	1.3	0	--

[1] RB, RB01, RC, RD, and RE are LACSD NPDES permit monitoring stations, with monthly data shown for the date range January 2004 – October 2005 (i.e., all post-nitrification/denitrification implementation). NR1 and NR3 are Newhall NPDES permit application monitoring stations, with monthly data shown for the date range May 2004 – December 2005. NR3 is located at the upstream end of EPA Reach 4, and is included here only for discussion purposes.

[2] For the purpose of statistical analysis and data summarization, below detection values were conservatively assumed equal to the reporting limit.

[3] Basin Plan Objectives for chronic (i.e., 30-day) toxicity shown, based on values reported in June 2003 SCR Nitrogen TMDL staff report.

A chart showing the raw data grouped by monitoring station is included below for reference. The raw data are also included on a separate CD for SWRCB staff review and for inclusion in the administrative record. Based on review of the chart below, it is clear that ammonia levels throughout Reaches 5 and 6 have been very low over the past two years, and that only one exceedance of the chronic criterion has been observed in 125 samples collected monthly at six different NPDES permit monitoring locations throughout these reaches.

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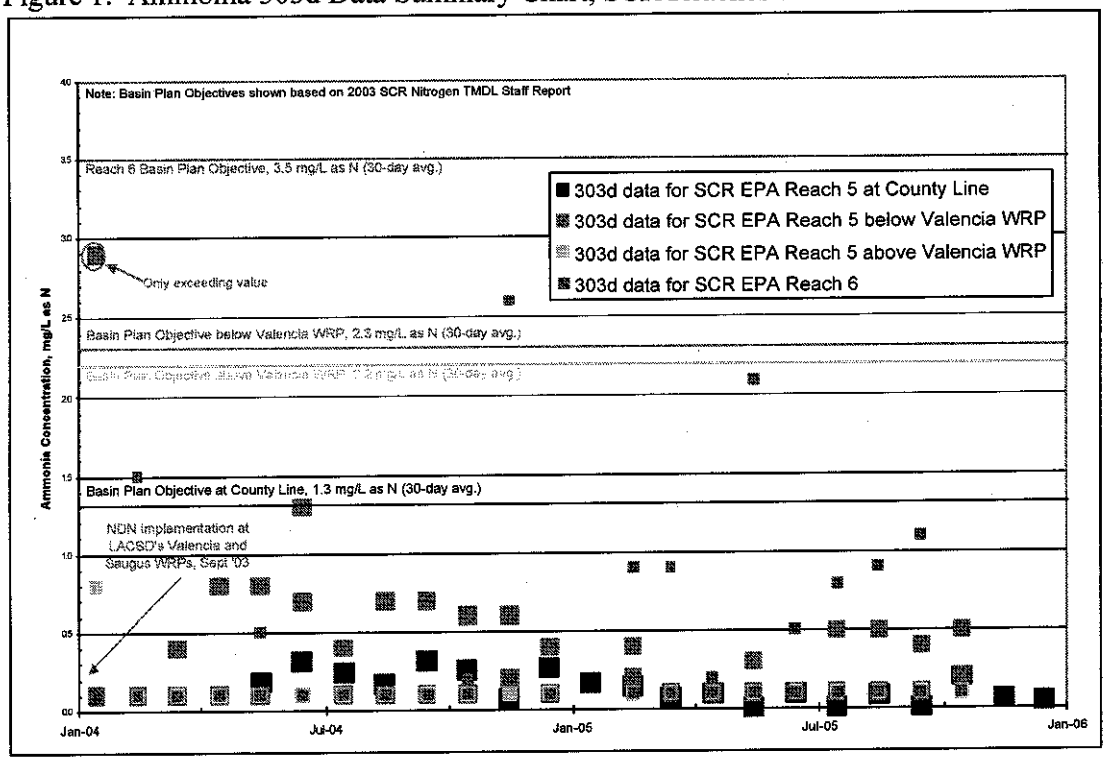
Figure 1. Ammonia 303d Data Summary Chart, SCR Reaches 5 and 6



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FACT SHEET NO. 2

LISTING: Diazinon

RECOMMENDATION: Do not list

REASON: Current data show attainment of water quality standard
Recent data do not meet the requirements of Table 3.1 for Listing
Diazinon has been banned and is not persistent

We request that Santa Clara River Reach 5 (Blue Cut to West Pier Hwy 99) be removed from the 303(d) list as impaired due to diazinon because current water quality data show that the applicable objective for diazinon is met. The California DFG chronic toxicity criterion for diazinon is 0.1 ug/L.

Recent (i.e., post-diazinon ban) water quality data from Santa Clara River Reach 6 (West Pier Hwy 99 to Bouquet Canyon Road Bridge) show that the Basin Plan's water quality objective for diazinon is met. Diazinon has a short half-life in soils (from 2-4 weeks) (Wauchope, R. D., Buttler, T. M., Hornsby A. G., Augustijn-Beckers, P. W. M. and Burt, J. P. SCS/ARS/CES Pesticide properties database for environmental decisionmaking. Rev. Environ. Contam. Toxicol. 123: 1-157, 1992.5-20) so that concentrations have declined rapidly following the ban. Thus, no current impairment exists. However, should this proposed listing remain, Reach 6 should be listed under the "Water Quality Limited Segments Being Addressed" category due to the existing USEPA ban on diazinon sales for residential use.

The following table and chart summarize the available datasets and listing requirements for diazinon. The data from Reach 5 do not meet the statistical requirements of Table 3.1, "Minimum Number of Measured Exceedances Needed to Place a Water Segment on the Section 303(D) List for Toxicants," of the SWRCB's 303(d) Listing Policy, and therefore do not support the hypothesis for listing of this existing listing. Reach 4 results are also shown for reference and to demonstrate downstream compliance as well.

Table 2. Diazinon 303d Data Summary Table for EPA Reach 4 of SCR

Agency-Site[1]	Sample Size	Min[2], ug/L	Mean[2], ug/L	Max[2], ug/L	WQS, ug/L	# Exceed	Min # Exceed Reqd. to List
Newhall-NR3	20	<0.05	<0.05	<0.05	0.1	0	2

[1] NR3 is a Newhall NPDES permit application monitoring station located in the upper portion of Reach 4; data are shown for this station for the date range May 2004 – December 2005, and is included here only for discussion purposes.

[2] For the purpose of statistical analysis and data summarization, non-detect results were assumed equal to the reporting limits. "<" qualifier indicates below detection results, with reporting limit values shown.

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Table 3. Diazinon 303d Data Summary Table for EPA Reach 5 of SCR

Agency-Site[1]	Sample Size	Min[2], ug/L	Mean[2], ug/L	Max[2], ug/L	WQS, ug/L	# Exceed	Min # Exceed Reqd. to List
LACSD-RC	9	<0.05	<0.05	<0.05	0.10	0	--
LACSD-RD	9	<0.05	<0.05	<0.05	0.10	0	--
LACSD-RE	9	<0.05	<0.05	<0.05	0.10	0	--
SWAMP-403STC004	1	0.03	0.03	0.03	0.10	0	--
Newhall-NR1	20	<0.05	<0.05	<0.05	0.10	0	--
SWAMP-403STCNRB	2	0.05	0.08	0.11	0.10	1	--
Total Reach 5	**50**	**0.03**	**0.05**	**0.11**	**0.10**	**1**	**5**
Total Reach 5 (post-12/04)	**47**	**<0.05**	**<0.05**	**<0.05**	**0.10**	**0**	**4**

[1] RC, RD, and RE are LACSD NPDES permit monitoring stations located in the upper portions of Reach 5; data are shown for these stations for the date range January 2004 – July 2005. NR1 is a Newhall NPDES permit application monitoring station located in the lower portion of Reach 5; data are shown for this station for the date range May 2004 – December 2005. 403STCNRB and 403STC004 are SWAMP monitoring stations located at the bottom of Reach 5 and between NR3 and RE, respectively; data are shown for this station for the October/November 2001 monitoring events, with duplicate samples combined for statistical summary purposes.

[2] For the purpose of statistical analysis and data summarization, non-detect results were assumed equal to the reporting limits. "<" qualifier indicates below detection results, with reporting limit values shown.

Reach 6 diazinon data are summarized in the table below. USEPA's phaseout of diazinon began on December 31, 2000 and was complete by December 31, 2004. Since diazinon has a short half-life in the environment (2-4 weeks in soils), the phaseout has resulted in a rapid decline in concentrations in the environment and in receiving waters. Thus, only recent (post-ban) data should be considered in evaluating this listing. As Section 6.1.5.3 of the Listing Policy, supporting a determination that this proposed listing is not warranted. Section 6.1.5.3 of the Listing Policy states, "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered." Thus, diazinon in SCR Reach 6 should not be listed.

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Table 4. Diazinon 303d Data Summary Table for EPA Reach 6 of SCR

Agency-Site[1]	Sample Size	Min[2], ug/L	Mean[2], ug/L	Max[2], ug/L	WQS, ug/L	# Exceed	Min # Exceed Reqd. to List
LACSD-RB	8	<0.05	0.16	0.51	0.10	2	--
SWAMP-403STC019	1	0.04	0.04	0.04	0.10	0	--
LADPW-S29	6	<0.01	0.13	0.43	0.10	2	--
Total Reach 6	**15**	**<0.01**	**0.14**	**0.51**	**0.10**	**4**	**2**
Total Reach 6 (post-12/04)	**4**	**<0.05**	**0.18**	**0.51**	**0.10**	**1**	**2**

[1] RB is a LACSD NPDES permit monitoring station located immediately downstream of the Saugus WRP; data are shown for this station for the date range January 2004 – July 2005. 403STC019 is a SWAMP monitoring station located near the bottom of Reach 6; data are shown for this station for the October 2001 SWAMP monitoring events. S29 is an LADPW mass emission monitoring station located at the bottom of Reach 6; data are shown for this station for the date range August 2002 – April 2003.
[2] For the purpose of statistical analysis and data summarization, non-detect results were assumed equal to the reporting limits. "<" qualifier indicates below detection results, with reporting limit values shown.

A chart showing the raw data grouped by monitoring station is included below for reference. The data are also included on a separate CD for SWRCB staff review and for inclusion in the administrative record. Based on review of the chart below, it is clear that exceedances are infrequent, limited only to Reach 6 stations, and mostly occur prior to the end of the USEPA diazinon phase-out period.

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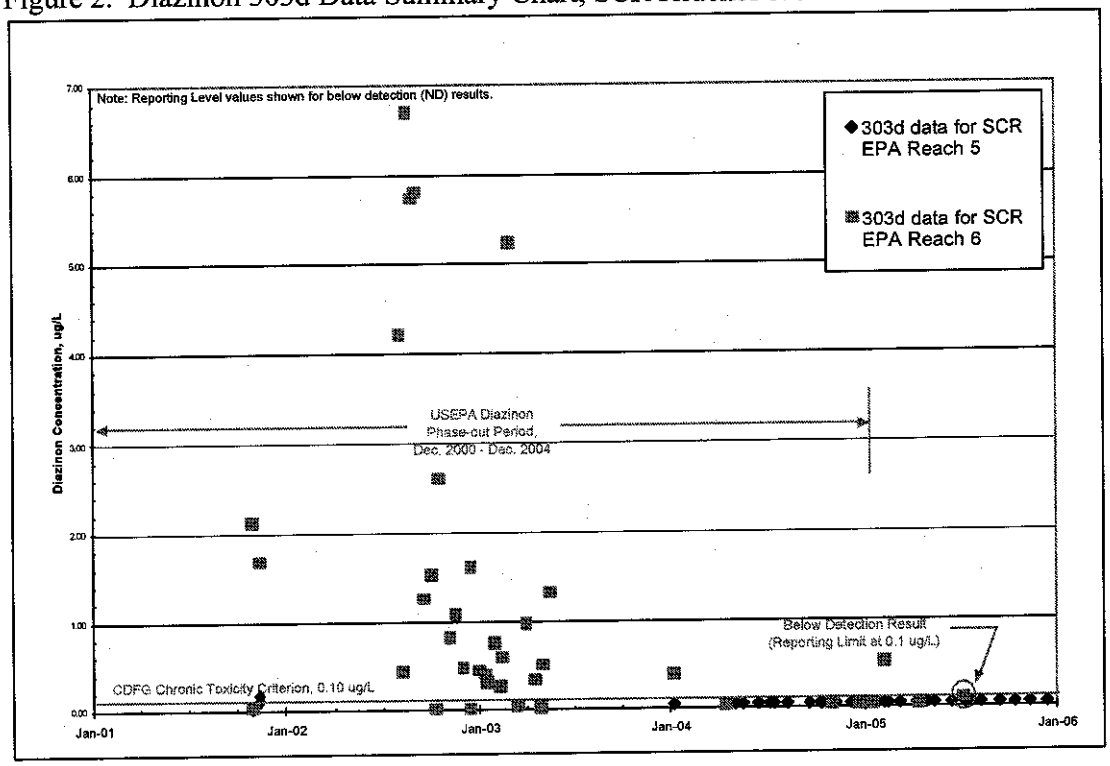
Figure 2. Diazinon 303d Data Summary Chart, SCR Reaches 5/6



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FACT SHEET NO. 3

LISTING (Existing): Nitrate plus nitrite

RECOMMENDATION: De-list

REASON: Current data show attainment of water quality standard
Data do not meet the requirements of Table 3.2 for Listing
Data do meet the requirements of Table 4.2 for De-Listing

We request that Santa Clara River Reach 5 (Blue Cut to West Pier Hwy 99) be removed from the 303(d) list as impaired due to nitrate plus nitrite because current water quality data show that the Basin Plan's water quality objective for nitrate plus nitrite is being met and, therefore, no impairment exists. The water quality objective for nitrate plus nitrite is based on historic water quality conditions and requires a mean 30-day nitrate plus nitrite concentration less than 5.0 mg/L as N. In contrast, the draft 303(d) fact sheet describes an MUN beneficial use as basis for this listing, but there is no applicable MUN beneficial use for this reach of the SCR.

The following table and chart summarizes the available datasets, and listing requirements, for nitrate plus nitrite. Based on this information, it is clear that the very low number of observed nitrate plus nitrite exceedances in Reach 5 (10 of 83 total samples) meet the statistical requirements of Table 4.2, "Maximum Number of Measured Exceedances Allowed to Remove a Water Segment from the Section 303(D) List for Conventional[1] or Other Pollutants," of the SWRCB's Listing/Delisting Policy. Thus, data support delisting nitrate plus nitrite in SCR Reach 5.

[1] Because the MUN designation does not serve as the basis for this listing (the 5.0 mg/L as N objective is instead antidegradation-based), nitrate plus nitrite is to be treated as a "conventional or other pollutant" rather than a "toxicant", and therefore Table 4.2 rather than 4.1 applies.

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Table 5. Nitrate plus Nitrite 303d Data Summary Table

Site[1]	RWQCB Reach	Sample Size	Min[2], mg/L as N	Mean[2], mg/L as N	Max[2], mg/L as N	WQS, mg/L as N	# Exceed	Max # Exceed Reqd. to Delist
RC	5	21	1.37	2.21	3.89	5.0	0	--
RD	5	21	2.09	4.32	6.70	5.0	8	--
RE	5	21	0.51	3.32	6.28	5.0	2	--
NR1	5	20	1.07	2.98	5.00	5.0	0	--
BlueCut	5	14	0.51	2.68	3.49	5.0	0	--
Total	**5**	**97**	**0.51**	**3.17**	**6.70**	**5.0**	**10**	**15**
NR3	4	20	1.36	3.06	4.74	5.0	0	--

[1] RC, RD, and RE are LACSD NPDES permit monitoring stations, with monthly data shown for the date range September 2003 – July 2005. NR1 and NR3 are Newhall NPDES permit application monitoring stations, with monthly data shown for the date range May 2004 – December 2005. NR3 is located at the upstream end of EPA Reach 4, and is included here only for discussion purposes. Blue Cut is a UWCD monitoring station located at the bottom of Reach 5, with monthly data shown for the date range September 2003 – January 2005. All data shown is post-NDN implementation at LACSD's Valencia and Saugus WRPs.

[2] For the purpose of statistical analysis and data summarization, below detection values (applicable to nitrite only, which represents a very minor fraction of the overall nitrate plus nitrite concentration) were assumed equal to the reporting limit. When nitrite data was unavailable (as was the case for some Blue Cut samples; the rest were all below detection), a value equal to the reporting limit was assumed.

A chart showing the raw data grouped by monitoring station is included below for reference. This raw data is also included on a separate CD for SWRCB staff review and for inclusion in the administrative record. Based on review of the chart below, it is clear that exceedances are infrequent and limited only to stations RD and RE (immediately downstream of the Valencia WRP). Furthermore, it should be noted that exceedances have been rarer since the implementation of nitrification-denitrification (NDN) processes at the Valencia and Saugus WRPs, which had come on-line by September 2003. In this case, more recent data (i.e., after NDN implementation) should be used preferentially consistent with Section 6.1.5.3 of the Listing Policy, therefore further supporting the removal of this proposed listing. Section 6.1.5.3 of the Listing Policy states, "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered."

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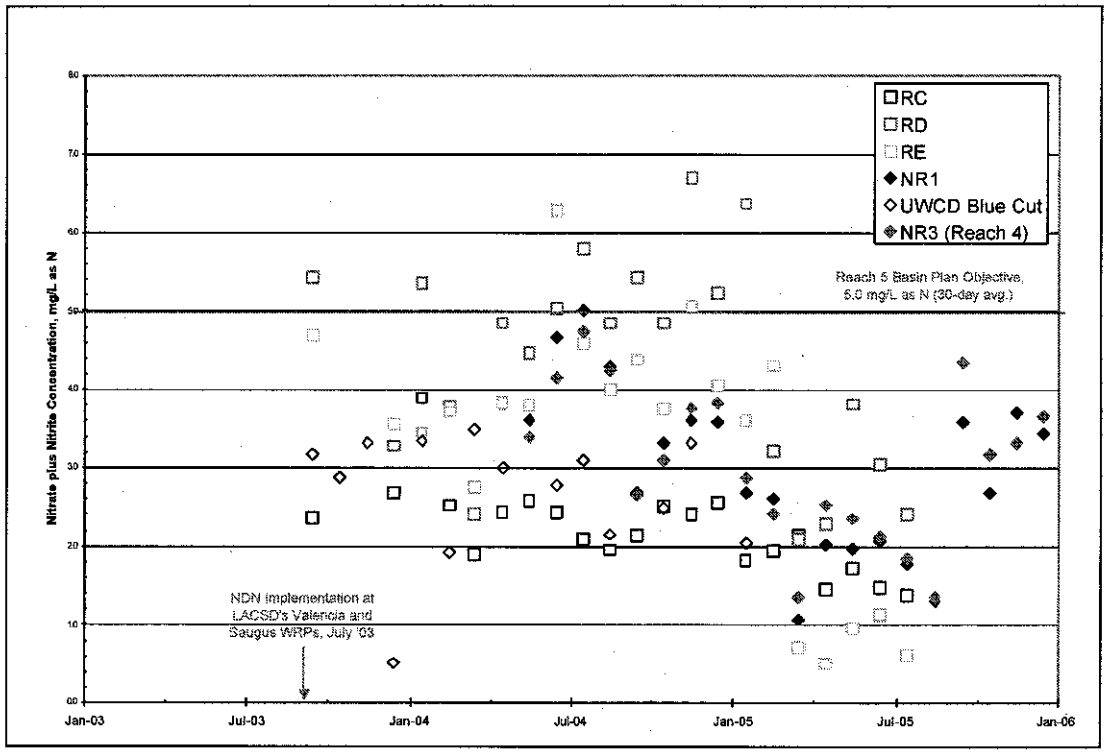
Figure 3. Nitrate plus Nitrite 303d Data Summary Chart, SCR Reach 5



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FACT SHEET NO. 4

LISTING: Nitrite in Santa Clara River Reach 6

RECOMMENDATION: Do not list

REASON: Current data show attainment of water quality standard

Current water quality data from Santa Clara River Reach 6 (West Pier Hwy 99 to Bouquet Canyon Road Bridge) show that the Basin Plan's water quality objective for nitrite is being met and, therefore, no impairment exists. The water quality objective for nitrate plus nitrite requires a mean 30-day nitrite concentration less than 1.0 mg/L as N.

The following table and chart summarizes the available datasets, and listing requirements, for nitrite. No nitrite exceedances in Reach 6 have been observed in the 43 samples collected. Thus, these data do not meet the statistical requirements of Table 3.1, "Minimum Number of Measured Exceedances Needed to Place a Water Segment on the Section 303(D) List for Toxicants," of the SWRCB's 303(d) Listing Policy. Reach 4 results are also shown for reference and to demonstrate downstream compliance as well.

Table 6. Nitrite 303d Data Summary Table

Site[1]	RWQCB Reach	Sample Size	Min[2], mg/L as N	Mean[2], mg/L as N	Max[2], mg/L as N	WQS, mg/L as N	# Exceed	Max # Exceed Reqd. to Delist
RB	5	21	<0.02	0.13	0.77	5.0	0	--
RB01	5	22	0.02	0.03	0.05	5.0	0	--
Total	**5**	**43**	**0.02**	**0.08**	**0.77**	**5.0**	**0**	**4**

[1] RB and RB01 are LACSD NPDES permit monitoring stations, with monthly data shown for the date range September 2003 – July 2005. All data shown is post-NDN implementation at LACSD's Valencia and Saugus WRPs.

[2] For the purpose of statistical analysis and data summarization, below detection values were assumed equal to the reporting limit.

A chart showing the raw data grouped by monitoring station is included below for reference. These raw data are also included on a separate CD for SWRCB staff review and for inclusion in the administrative record. No Reach 6 nitrite exceedances have been observed since September 2003 for when LACSD's the new NDN treatment processes came on-line at their Valencia and Saugus WRPs.

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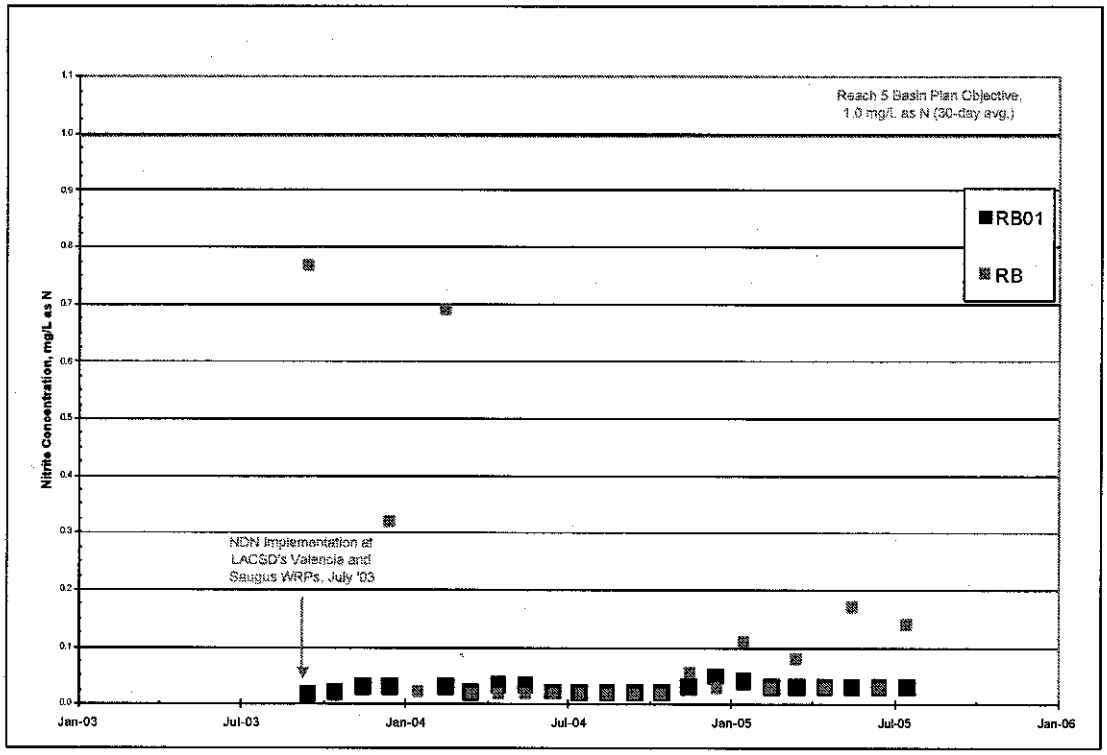
Figure 4. Nitrite 303d Data Summary Chart, SCR Reach 6



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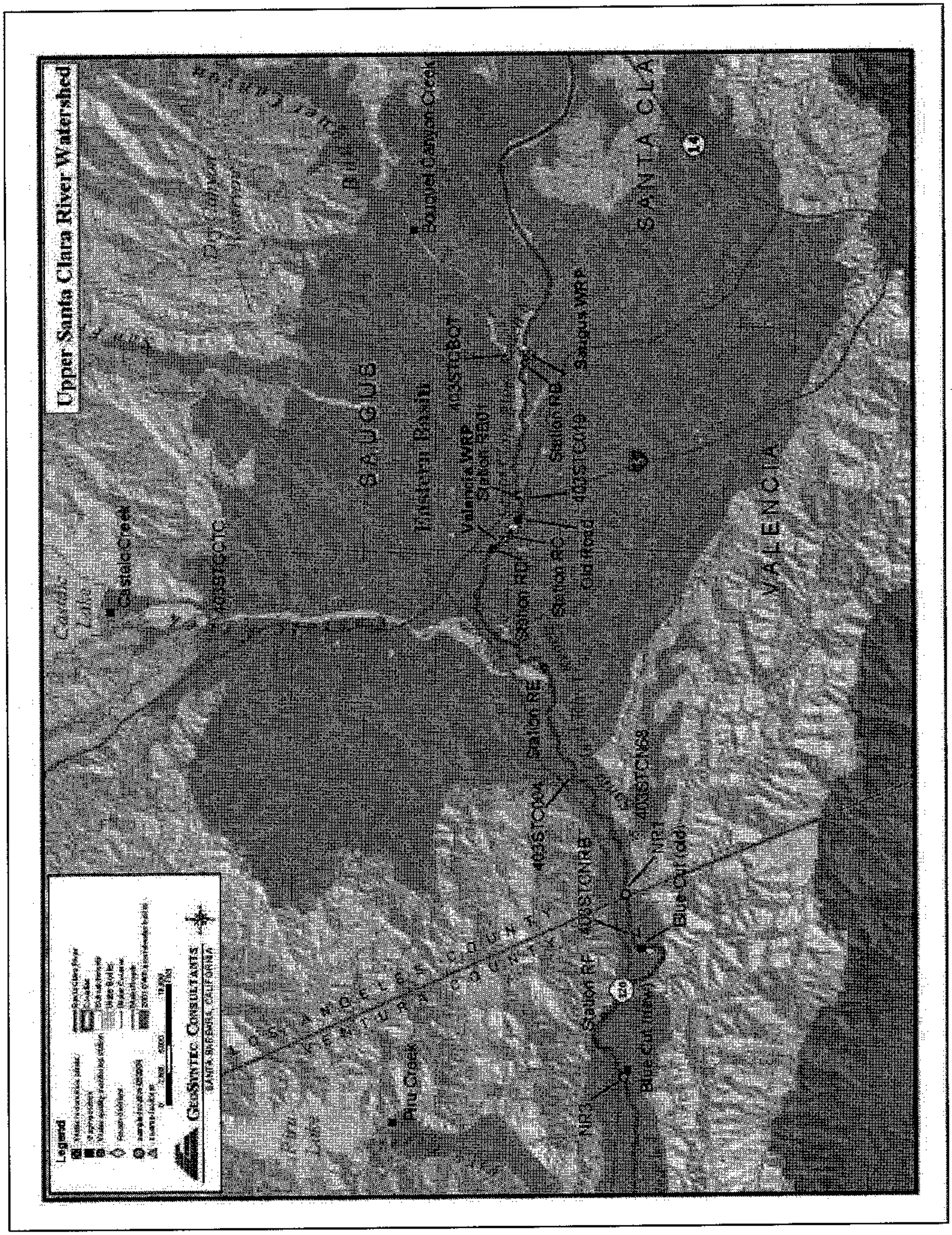

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