



California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair

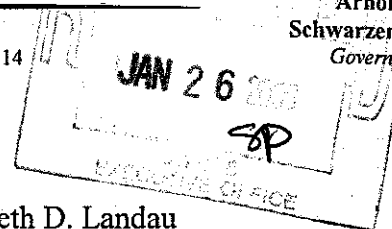
303 (d) Deadline: 1/31/06



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Arnold
Schwarzenegger
Governor



TO: Selica Potter, Acting Clerk to the Board
State Water Resources Control Board

FROM: Kenneth D. Landau
Acting Executive Officer

DATE: 24 January 2006

SIGNATURE: *Kenneth D. Landau*

SUBJECT: COMMENTS ON THE PROPOSED REVISION TO FEDERAL CLEAN WATER ACT SECTION 303(D) LIST OF WATER QUALITY LIMITED SEGMENTS FOR CALIFORNIA (303(D) LIST)

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) appreciates the opportunity to comment on the State Water Resources Control Board's (State Water Board) proposed revisions to the 303(d) List. We also appreciate the changes State Water Board staff made in response to our comments on earlier draft fact sheets.

We have focused our review on those fact sheets that suggest changes to our Region's listed waters and pollutants. Our understanding is that a water body and pollutant that is currently listed will remain listed, unless the fact sheets recommend a change. Should the State Water Board consider additional changes to the list based on comments from interested parties, the Central Valley Water Board would like an opportunity to review those proposed changes prior to a final decision.

We have indicated in the attached detailed comments our recommendations with respect to your staff's draft recommendations. In addition to those detailed comments, we have identified four general issues related to the implementation of the Listing Policy – 1) "exotic" species; 2) temperature; 3) evaluation of attainment of water quality objectives; and 4) identification of Delta waterways.

"Exotic" species – The Listing Policy does not address "exotic"¹ species, nor does any Regional Water Board or State Water Board water quality plan make a distinction between protection of "native" versus "non-native" aquatic species. We believe it is premature for the State Water Board, through a 303(d) listing, to identify "non-native" species as a "pollutant". We recommend that prior to any such listing, the Listing Policy be amended to explicitly identify the legal and analytical basis for identifying "exotic" species as causing non-attainment of water quality standards.

¹ The fact sheets identify "exotic" species as the pollutant, but discuss "non-native" species in the description of the impairment. The term "non-native" species will generally be used in our comments. In the context of the 303(d) list, our discussion of non-native species refers to those species that are not indigenous to the Central Valley's aquatic ecosystems.

Temperature – Although the State Water Board proposes to list only two Central Valley waterways for non-attainment of temperature objectives, we are concerned with the precedent being set. The Listing Policy (§ 6.1.5.9) suggests a rather robust analysis of temperature and fisheries information. A review of fisheries resource data, although potentially available from the Division of Water Rights, is not included in the fact sheets. The single annual maximum criterion used in the fact sheets could lead to the unnecessary listing of hundreds of Central Valley waterways. We recommend the fact sheets be changed to include the information required by the Listing Policy for temperature listings.

Evaluation of Attainment of Objectives – The Listing Policy includes use of the binomial distribution with assumed allowable exceedance rates to determine whether a water body is attaining objectives. The Listing Policy also includes a “weight of evidence” listing factor, which is to be used when other Listing Factors would lead to an incorrect decision. We have identified a few instances in which the “weight of evidence” suggests a listing decision when the binomial method suggests delisting. We recommend that the State Water Board apply the “weight of evidence” listing factor in those cases.

Identification of Delta Waterways – Delta impairments are currently listed inconsistently - three areas that cover the whole Delta are identified, as well as eight individual Delta waterways within those three areas. The Delta TMDLs, which we will have before our Board within the year, will identify all of the individual Delta waterways to which our TMDLs and water quality objectives apply. We have digitized the Delta waterways to facilitate incorporation into the State Water Board’s database. We recommend that the individual Delta waterways be identified, rather than areas, to provide consistency within the 303(d) list and with our upcoming Basin Plan Amendments.

Please see the attached for a detailed discussion of our review of the State Water Board’s recommended changes to the Clean Water Act Section 303(d) List.

If you have any questions, please give me a call at (916) 464-4839 or Joe Karkoski at (916) 464-4668.

Attachments: Central Valley Regional Board Staff Comments on Fact Sheets
Memo from Redding Office re : 303(d) Listing for Fall River
Memo from Redding Office re : Proposed 303(d) Listing for North Fork Feather River

cc: Celeste Cantu, SWRCB (w/o attachments)
Tom Howard, SWRCB (w/o attachments)
Craig J. Wilson, SWRCB (w/attachments & CD)
Pam Buford, CVRWQCB, Fresno (w/o attachments)
Dennis Heiman, CVRWQCB, Redding (w/o attachments)
Joe Karkoski, CVRWQCB, Sacramento (w/attachments)
Jerry Bruns, CVRWQCB, Sacramento (w/o attachments)
Jim Pedri, CVRWQCB, Redding (w/attachments)
Lonnie Wass, CVRWQCB, Fresno (w/attachments)
Central Valley Water Board members (w/o attachments)
Regional Board TMDL Program Managers (w/attachments)