NAPA SANITATION DISTRICT

Dedicated to Preserving the Napa River for Generations to Come

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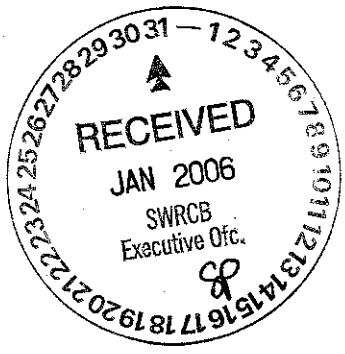


**303 (d)** Deadline:
1/31/06

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

Subject: Comments on the *Revision to Federal Clean Water Act Section 303(d) List of Water Quality Limited Segments for California*

Dear Ms. Potter:

On behalf of the Napa Sanitation District, we would like to thank you for the opportunity to provide comments on the draft *Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments,* released in September 2005. We have reviewed the state's proposed revisions and are concerned that the proposed mercury listing for the Napa River is not supported by the data cited by the State Water Resources Control Board (State Water Board).

The Napa River is proposed to be placed on the 2006 303(d) list for mercury due to exceedances of the Office of Environmental Health Hazard Assessment (OEHHA) Screening Value of 0.3 µg/g in two out of three samples analyzed. All three samples were collected by the Toxic Substance Monitoring Program at two stations in the Napa River (Table 1), approximately 26 miles from one another.

**Table 1. Data Used in Proposed Mercury Listing for Napa River**

| Station Name | Species Common Name | Collection Date | Hg Concentration (µg/g) |
|---|---|---|---|
| Calistoga at Elm St. (upstream) | Bluegill | 10/4/95 | 0.360 |
| | Brown Bullhead | 10/4/95 | 0.320 |
| ½ mile up from JFK Park boat ramp (downstream) | Sacramento Squawfish | 5/22/97 | 0.080 |

The reasons we believe this listing is inappropriate are described on the following pages.

**1. The data used in the proposed listing does not meet the Data Quantity Assessment standards for Temporal Representation.**

Section 6.1.5 of the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List,* adopted September 2004 (Policy), and more specifically, section 6.1.5.3 (page 23) states:

> "Samples should be representative of the critical timing that the pollutant is expected to impact the water body. Samples used in the assessment must be temporally independent. 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 shall not be used as the primary data set supporting the listing decision."

In addition, the Functional Equivalent Document[1] for the Policy indicates that small sample populations can be used as long as the samples are spatially and temporally representative. In other words, data that are not temporally representative should not be used as the primary data set to support listing decisions, and, when the data set is small, it is even more important that the data be temporally representative.

As shown in Table 1, the data used to propose listing of the Napa River for mercury do not meet the temporal representation guidelines contained in the Policy because (1) 67 percent, or a majority of the samples, were collected on a single day, (2) samples were collected at each site (which are 26 miles apart along the same water body) on only one day each, (3) sufficient temporal distribution was not provided for this extremely small data set, (4) the two observed values claimed to be exceedances occurred on only one day, and (4) the water quality fact sheet does not have any description at all about the significance of the sample timing, as required in the listing policy.

**2. Only one exceedance of the OEHHA screening value was observed, not two.**

The OEHHA Screening Value of 0.3 µg/g contains one significant figure. However, the data used as evidence was reported with 3 significant figures (e.g., 0.320 µg/g). Since there is only one significant figure in the OEHHA screening value, a comparison of observed data to the screening value can only be meaningful if the observed values are rounded to the same number of significant figures as the screening value. When this comparison is made, there is only one exceedance of the screening value, because the brown bullhead concentration of 0.320 µg/g would be rounded to 0.3 µg/g and therefore would not exceed the screening value. At a minimum, the one exceedance doesn't meet the minimum required for a listing as indicated in the *Water Quality Control Policy For Developing California's Clean Water Act Section 303(d) List* (September 2004) . In

[1] Final Functional Equivalent Document: Water Quality Control Policy for Developing California Clean Water Act Section 303(d) List. July 2004.

addition, the exceedance is not "...clearly manifested..." as required by the listing policy (Page 23), and therefore there is insufficient data to support a listing

**3. The data are about ten years old and therefore of questionable value at this time.**

The data used in the listing of mercury for the Napa River were collected in 1995 and 1997, more than two listing cycles ago. It seems inappropriate at this time to consider these data representative of the river without collecting additional data, especially since there are such few data to start with.

**4. A mercury listing in the Napa River is redundant with the mercury listing in San Francisco Bay.**

The San Francisco Bay, to which the Napa River is tributary, is currently on the 303(d) list for mercury. Efforts conducted to develop a total maximum daily load (TMDL) for the San Francisco Bay address mercury loads from the Napa River. Therefore, work is already being performed to control contributions from sources in the Napa River, and additional requirements would be redundant with these efforts, and a significant waste of scarce public resources.

**5. Water column data show opposite trend from fish tissue data.**

Additionally, water column data collected in 2002 to fulfill the San Francisco Bay Regional Water Quality Control Board's 13267 monitoring requirements in the Napa River showed that that mercury water column concentrations increase downstream[2], as summarized in Table 2.

**Table 2. Napa River Mercury Water Column Data Collected in 2002.**

| Date | Hg Concentration At Calistoga (upstream) (µg/L) | Hg Concentration At Napa (downstream) (µg/L) |
|---|---|---|
| 4/25/02 | 0.0066 | 0.0110 |
| 7/18/02 | 0.0061 | 0.0065 |
| 10/14/02 | 0.0030 | 0.0031 |

Note: For reference, the water column objective for mercury is 0.0250 µg/L.

This increase does not correlate with the concentrations measured in the tested fish. Fish analyzed at the upstream site exceeded the OEHHA screening level for mercury, while the downstream fish concentrations did not. Detailed data information which meets the requirements of the listing policy data is provided in Attachment 1 to this letter.

[2] Collaborative Napa River Receiving Water Study, 2002.

**In summary, there are multiple reasons why the Napa River should not be listed for mercury.**

Based on the lack of sufficient data, lack of temporal representation, the current listing in San Francisco Bay, the movement of tested species between the Napa River and San Francisco Bay, the conflicting fish tissue and water column data, and the lack of any additional evidence that there is impairment, we urge that the Napa River not be listed at this time for mercury. There is not adequate information to assess whether water quality standards are being met or beneficial uses are impaired, and a listing would be redundant with the San Francisco Bay listing and therefore, a waste of public resources.

Sincerely,

Michael Abramson

Michael Abramson
General Manager

cc: Mr. Dyan Whyte, San Francisco Bay Regional Water Quality Control Board
Ms. Monica Oakley, Larry Walker Associates

Attachment: Submittal of numeric data for consideration in 2006 303(d) list