



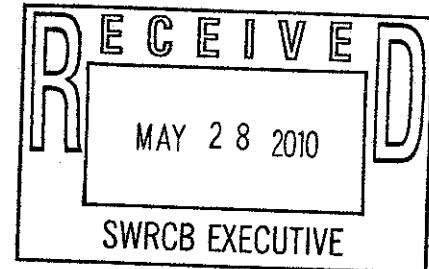
# City of Thousand Oaks

**PUBLIC WORKS DEPARTMENT**  
**MARK D. WATKINS, DIRECTOR**

May 27, 2010

Jeanine Townsend, Clerk to the Board  
California State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**VIA EMAIL:** [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



**Re: Comment Letter - 2010 Integrated Report/Section 303(d) List**

Dear Chair Hoppin and Board Members:

The City of Thousand Oaks appreciates the opportunity to comment on the SWRCB's proposed 2010 Integrated Report/Section 303(d) List.

A small portion of the City of Thousand Oaks lies within the Malibu Creek Watershed. The City and the other principal stakeholders of the Malibu Creek Watershed Management Committee are firmly opposed to the proposed listings for "Benthic Macroinvertebrate Bioassessments" for Malibu Creek and its tributaries (Lindero Creek Reach 1, Las Virgenes Creek and Medea Creek Reach 2).

The City's objection to these listings is based upon three significant elements. The first, and most critical issue, is that the proposed listings do not meet the criteria of the state's Listing Policy. The City's second objection is that the proposed listings are premature because they fail to coincide with the significant state-wide effort toward establishing consistent guidance and direction for developing Biological Objectives for California streams and rivers. The third objection to the listings relates to the unprecedented and unwarranted impact on Malibu Creek Watershed stakeholders as unnamed affected parties due to the recent revision of the *Heal the Bay et al v. Browner* LA TMDL Consent Decree (Consent Decree). These concerns are developed below with more detail.

**Listing Policy criteria for "Degradation of Biological Populations and Communities" (Section 3.9) are not met.**

This section of the Listing Policy states "This water segment shall be placed on the 303(d) list if the water segment exhibits significant degradation in biological populations and/or communities as compared to reference site(s) and is associated with water or sediment concentrations of pollutants including but not limited to chemical concentrations, temperature, dissolved oxygen and trash. This condition requires the diminished numbers of species or individual of a single species or other metrics when compared to a reference site(s). This analysis should rely on measurements from at

least two stations. Comparisons to reference sites shall be made during similar season or hydrologic conditions."

The Los Angeles RWQCB based their proposed "Benthic Macroinvertebrate Bioassessments" listing for Lindero Creek Reach 1 (Decision ID 17208) on the 2005 Malibu Creek Watershed Bioassessment Monitoring Program study. This limited data set of two sample events at the same location (a cement lined drainage channel), is inadequate to justify a 303 (d) listing for this reach of stream. The Listing Policy clearly states that the "analysis should rely on measurements from at least two stations." In addition, 2005 was an extremely wet year. The National Weather Service summary for that period states the following: "The 2004-2005 Rainfall Season brought 37.25 inches of rain to downtown Los Angeles at USC...making it the second wettest season in Los Angeles since records began in 1877...and the wettest in 121 years."

([http://www.wrh.noaa.gov/lox/archive/pns\\_2004-05summary.pdf](http://www.wrh.noaa.gov/lox/archive/pns_2004-05summary.pdf)). The Southern California IBI (the "reference") could not possibly incorporate the unusual hydrologic conditions found in the Malibu Creek Watershed during the 2005 Malibu Creek Watershed Bioassessment Monitoring study period. For these reasons, we request that the SWRCB not list Malibu Creek and its tributaries as impaired based on "Benthic Macroinvertebrate Bioassessments".

#### **The Listing is premature.**

The EPA recommends that states use biological assessments to refine, or tier, their aquatic life uses (TALU). A tiered approach to classification should articulate appropriate ecological expectations for state waters (e.g., reference conditions) and specify goals for individual waterbodies (e.g., tiered, designated aquatic life uses). Appropriate water quality criteria may then be adopted into state standards to protect the specific designated uses. The water quality criteria and any needed implementation procedures should provide for quantifiable measurement of each specified use. This approach will better protect high-quality waters, provide for more accurate evaluation of effectiveness of controls and best management practices, and enhance public confidence and participation in the WQS-setting and waterbody listing process (EPA 2002). There is a statewide regulatory and stakeholder effort underway to develop biological objectives and TALU. The City is encouraged by the process being used by the SWRCB in conjunction with State Fish and Game, Information Management and Analysis, Aquatic Bioassessment Laboratories, SWAMP and SCCWRP to develop and implement a consistent, fully researched and equitable plan to implement workable Biological Objectives. The Malibu Creek Watershed has not been assessed for TALU, nor are regional tiers established. Following EPA's guidance would be the most prudent action and therefore the City requests that you consider the importance and overall benefits (in particular better science and public confidence in the process) before supporting the proposed listing or adopting a TMDL for this alleged impairment. Since State agencies are already collaboratively working on a biological objectives program, it would be more consistent and sensible to allow that process to be completed rather than creating a different process for one watershed.

**April 2010 revisions to *Heal the Bay et al vs. Browner* Los Angeles Region TMDL Consent Decree**

The City understands that the SWRCB is not a party to the TMDL Consent Decree, but we believe that it is important for the SWRCB to understand the implications of listing Malibu Creek as impaired based on "Benthic Macroinvertebrate Bioassessments". Very recently, Heal the Bay/Santa Monica Baykeeper and USEPA reached an agreement whereby 14 TMDL projects would be removed from the Consent Decree, and four TMDLs would be added, resulting in a net decrease of ten TMDLs that EPA is required to establish or approve under the Consent Decree. Of concern to the City is the parties' decision to add a "Malibu Creek benthic-macroinvertebrate bioassessments" TMDL to the list of TMDLs that must be established or approved by March 24, 2013. USEPA stated in its April 12, 2010, request for comments on the Consent Decree revisions that "With respect to the Malibu Creek benthic-macroinvertebrate bioassessments TMDL (due March 24, 2013), if this listing is not included on the final approved 2008-2010 303(d) List, then a Avalon Beach indicator bacteria TMDL (due March 24, 2012) and a LA River Reach 2 & 5 oil TMDL (due March 24, 2013) would be substituted for it."

If the SWRCB approves the proposed listing for Malibu Creek, watershed stakeholders will be placed in the unenviable position of complying with an unprecedented regulatory requirement that will be established, despite its substantial complexity, over an extremely abbreviated period of time. We see this as a waste of the public's limited resources. As noted above, it would be more consistent and sensible to allow the state's biological objectives development process to be completed rather than creating a different process for one watershed.

In summary the City strongly encourages the SWRCB to omit "Benthic Macroinvertebrate Bioassessments" listings for the Malibu Creek and its tributaries (Lindero Creek Reach 1, Las Virgenes Creek, and Medea Creek Reach 2) from the 2010 Integrated Report/Section 303(d) List.

If you have any questions or need additional information, please call Bob Carson at (805)449-2424 or myself at (805)449-2399.

Sincerely,



Mark D. Watkins  
Public Works Director