



San Gabriel Valley Council of Governments

AGENDA AND NOTICE

OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Wednesday, April 19, 2017, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

Water Policy Committee Chair

Diana Mahmud
City of South Pasadena

Vice-Chair

Judy Nelson
City of Glendora

Members

*Claremont
Diamond Bar
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena*

Water TAC

Members

*Alhambra
Arcadia
Covina
Monrovia
Sierra Madre
LA County DPW
Upper San Gabriel
Valley MWD*

Ex-Officio Members

*Foothill MWD
LA County Sanitation
Districts
SG Basin Watermaster*

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvco.org. Copies are available via email upon request (sgv@sgvco.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

CITIZEN PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*)

CONSENT CALENDAR (*It is anticipated that the Water Committee/TAC may act on the following matters*)

4. Water Committee/TAC Meeting Minutes – 3/15/2017
Recommended Action: Approve.

PRESENTATION

5. Upper LA River E/WMP: Presentation by Dawn Petschauer, Water Biologist, City of Los Angeles

ACTION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

6. SB 633 (Portantino)
Recommended Action: recommend that the Governing Board support SB 633.
7. SB 231 (Hertzberg)
Recommended Action: discuss and provide direction to staff.

DISCUSSION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

INFORMATION ITEMS

8. Legislative Updates
 - State Legislation
 - Federal Legislation*Recommended Action: for information.*
9. Regulatory Updates
 - Report on Waste Discharge/MS4 Permit update.
 - LACDPW response to 303(d) list*Recommended Action: for information.*
10. Water Boards Update
 - State Board
 - Regional Board: April 6 meeting*Recommended Action: for information.*
11. Stormwater Outreach Updates
 - EPA/Regional Board/LACDPW meeting*Recommended Action: for information.*
12. LA County Water Resilience Proposal
Recommended Action: for information.
13. Water Supply Update
Recommended Action: for information.
14. Litigation Update
Recommended Action: for information.
15. E/WMP Updates
Recommended Action: for information.

CHAIR'S REPORT

ANNOUNCEMENTS

- May 4, LARWQCB meeting
- San Gabriel Valley Water Association Newsletter

ADJOURN



SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: March 15, 2017
 Time: 10:00 AM
 Location: Upper San Gabriel Valley Municipal Water District
 602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:02 AM.
2. Roll Call

Water Policy Committee Members Present

J. Nelson, Glendora
 G. Crudgington, Monrovia
 J. Capoccia, Sierra Madre
 D. Mahmud, South Pasadena

Water Policy Committee Members Absent

Claremont
 Diamond Bar
 Rosemead

Water TAC Members Present

D. Dolphin, Alhambra
 V. Hevener, P. Crammer, Arcadia
 A. Tachiki, Monrovia
 J. Carlson, Sierra Madre
 P. Alva, M. Adhami, LACDPW
 S. Chapman, M. Gouveia, USGVMWD

Water TAC Members Absent

Covina

Ex Officio Members Present

R. Serna, K Gardner, SG Basin Watermaster
 L. Miller, LACSD

Ex Officio Members Absent

Foothill Municipal Water District

Guests

J. Carver, M. Cansino, Pomona
 R. Tahir, TECS Environmental
 B. Pence, Congresswoman Napolitano
 Dr. G. Amenu, J. Hoo, LACDPW
 B. Inman, Bradbury

W. La, SGMRC
 M. Lyons, Assembly Member Holden
 A. Jung, Assemblymember Chen
 L. Mustafa, Claremont
 J. Shimmin, South Pasadena

SGVCOG Staff

E. Wolf

3. Public Comment. There were no public comments.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 2/15/2017
There was a motion to approve the minutes. (M/S: J. Nelson/G. Crudgington).

AYES:	Glendora, Monrovia, Sierra Madre, South Pasadena, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Rosemead, Foothill Municipal Water District, Covina

PRESENTATIONS

ACTION ITEMS

- 5. SB 589 (Hernandez): Adds Financial Capabilities Assessment to Porter-Cologne.
D. Mahmud reviewed the substance of the bill. J. Nelson urged members to have their cities support this and all the SGVCOG’s legislative agenda.
There was a motion to recommend that the Governing Board support SB 589. (M/S: J. Nelson/J. Capoccia).

AYES:	Glendora, Monrovia, Sierra Madre, South Pasadena, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Rosemead, Foothill Municipal Water District, Covina

- 6. SB 541 (Allen): Requires the Dept. of Education, State Architect and Office of School Public Construction to consult and recommend best water capture design standards for all new, reconstructed, or altered public schools.
D. Mahmud introduced and explained this bill.
There was a motion to recommend that the Governing Board support SB 541. (M/S: J. Nelson/G. Crudgington).

AYES:	Glendora, Monrovia, Sierra Madre, South Pasadena, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Rosemead, Foothill Municipal Water District, Covina

- 7. AB 1180 (Holden): Increase tire fee and deposit the money in the Stormwater Permit Compliance Fund.
D. Mahmud introduced this bill noting that when we visited Sacramento we heard that this may be a difficult bill to pass due to opposition to raising fees. M. Lyons informed the group that the bill would go to the Appropriations committee because it does involve fee changes. He explained that it will require a two-thirds vote and urged members to help generate bipartisan support, as well as support at the city council level. J. Nelson stated that the COG is also seeking support from Contract Cities and the League.
There was a motion to recommend that the Governing Board support AB 1180. (M/S: G. Crudgington/J. Nelson).

AYES:	Glendora, Monrovia, Sierra Madre, South Pasadena, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Rosemead, Foothill Municipal Water District, Covina

DISCUSSION ITEMS

- 8. SB 231 (Hertzberg)
Due to the absence of some of the members, discussion and/or action was postponed until the April meeting.

INFORMATION ITEMS

9. Water Boards Update

D. Mahmud reviewed appointments and openings at the State and Regional Boards. E. Wolf reviewed the State Board's response to the EPA regarding the Unfunded Mandates case. He also informed the committee about the State Board's Climate Change resolution with its heavy reliance on stormwater capture, and how that could work to the advantage of SGV permittees.

10. Stormwater Outreach Updates

Sacramento. D. Mahmud reviewed the Sacramento legislative trip, with a brief overview of our adopted and proposed legislation. She discussed spot bill SB 633, and how that bill is emerging to address the use of existing infrastructure to convey stormwater to more favorable sites for infiltration. She discussed the tension between designated beneficial uses and the WOTUS status of receiving waters on the one hand, and their use as conveyance on the other. Encouragingly, SB 633 has been reviewed by legal counsel for the State Board and will have the help of the Assembly Speaker's water policy advisor working with the office of Legislative Counsel to get introduced. P. Alva stated that county has been circulating the draft legislation for internal review and wants to work with us.

Washington, D.C. E. Wolf discussed the ACE/COG Washington trip, highlighting the meetings with Rep Brownley and the EPA.

Elected Officials Stormwater Funding Group. D. Mahmud discussed the help this group has been in drafting legislative language. She noted that the group includes representation from throughout the county enabling us to reach a broad audience with our legislative proposals. The group is considering adopting the SGVCOG Stormwater Policy.

Meeting with environmental groups. Senator Hernandez' office set up a meeting with environmental groups (NRDC, Heal the Bay, TreePeople, others) to review our proposed legislation and ask for their support. D. Mahmud attended the meeting. She encouraged elected officials to reach out to these groups.

11. Proposed Revisions to the Clean Water Act Section 303(d) List

Dr. Amenu, LACDPW, gave a presentation on the 303(d) listing. He called attention to the 40 waterbody-pollutants that have been delisted in SGV waterways and the 200 additions, bringing to 700 the total combinations that we must mitigate against. He stated that LA County has the most listings of any county in the U.S., driven by our high number of TMDLs. Amenu concluded with a list of concerns that will be part of the county response to the Regional Board. Those include:

- Listings for which there is no established standard
- Listings for which data is unreliable
- Listings for which different labs disagree on the interpretation of the data
- The continued listing of legacy pollutants that have been banned for many years
- The continued listing of pollutants for which the county has previously provided countering evidence—some of it from the EPA—with no action taken on that evidence

R. Tahir recommended other areas the county should look into as they prepare their response. The county's draft response will be ready by March 28th and will be circulated to committee members by request.

12. Legislative Updates

D. Mahmud gave an overview of HR 1261 (Thornberry). This bill would limit the application of WOTUS to water bodies that are navigable *in fact*.

13. Litigation Update

Gardena/Duarte Cases. J. Nelson and R. Tahir updated the Gardena and Duarte cases. The next hearing is on August 28 at the OC Superior Court, at which the cases will be heard separately. The judge is allowing reintroduction of earlier discussion due to the subsequent conclusion of the state supreme court unfunded mandates case. Attorneys for the City of Gardena will be contacting all cities and distributing a questionnaire that will among other things, ask cities to report how much they have spent on compliance with MS4 permits.

Glendale Water Rates case. E. Wolf reviewed the judgement in a case involving violations of Proposition 218 voting requirements. The city of Glendale must repay ratepayers \$57 million.

14. Regulatory Updates

Report on Waste Discharge/MS4 Permit update. R. Tahir recommended that cities use the ROWD process to renegotiate or exit their E/WMPs. He believes cities that are part of the litigation may be putting their legal case in jeopardy if they "voluntarily" join an E/WMP. P. Alva volunteered to update the group on the county's approach to ROWD at the April meeting.

15. E/WMP Updates

16. Water Supply Update

S. Chapman updated the group on actions to repair the Oroville dam. He stated that there is a report of invasive mussels in our watershed. More study is being conducted.

17. Recent communications re MWD

S. Chapman reviewed the long running dispute between San Diego water suppliers and the Municipal Water District over MWD rates, resulting in a pending legal case. Recently, San Diego water suppliers have sent letters to SGV cities urging support for their legal case. Chapman noted that if SD prevails and their rates go down, all other MWD participating agencies will see offsetting rate increases. He stated that if cities have questions about the rates or this case, USGVMWD is available to help answer them.

CHAIR'S REPORT

ANNOUNCEMENTS

- March 9, [Urban Greening Grant Program](#), Lynwood Civic Center
- April 3, [Stormwater Finance Forum](#). Sponsored by USEPA Region 9. The forum will be held at LACDPW, Alhambra.
- April 6, LARWQCB meeting

ADJOURN

The meeting adjourned at 12:11 P.M.

REPORT

DATE: April 20, 2017

TO: SGVCOG Governing Board Delegates and Alternates

FROM: Phil Hawkey, Executive Director

RE: SUPPORT OF SB 633 (PORTANTINO)

RECOMMENDED ACTION

Recommend that the Governing Board adopt Resolution 17-09 in support of SB 633 (Portantino)

BACKGROUND

At the January 2017, Governing Board meeting, members adopted Resolution 17-02 identifying stormwater legislative priorities for 2017 and directing the Water Committee to engage with State and Federal legislators to support these priorities. Since then, committee members have drafted initial state legislation and engaged with San Gabriel Valley representatives who have agreed to sponsor legislation. As a result of these efforts, several bills have been introduced. One bill, SB 633 (Portantino), would require the Los Angeles Regional Water Quality Control Board (Regional Board) to consider opportunities to convey stormwater to a regional site within the watershed for the purpose of improving water quality and enhancing local water supplies.

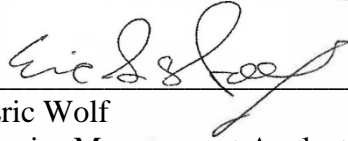
The 2012 National Pollutant Discharge Elimination System (NPDES) stormwater permits for Los Angeles county cities highly encourage stormwater capture and infiltration within cities as a means of limiting downstream pollution caused by dry weather and stormwater runoff. Such stormwater capture also enhances local water supplies. To comply with the permit, most cities must undertake local projects, such as green streets, at much higher costs and less efficiency than regional projects. The Los Angeles County Department of Public Works has projected the cost of construction alone, not including maintenance, at over \$20 billion. This enormous cost is attributed to the numerous small-scale local projects required under the permit.

The flood control system in Los Angeles County is an amalgamation of under-street storm drains, open channels, and river beds, both concrete lined and natural. Most segments of this system are regulated by water quality standards. Pollutants are measured at “receiving waters” and any exceedance of waterbody-pollutant standards constitutes a violation. For this reason, the Regional Board has not allowed use of the existing flood control system to convey polluted stormwater to sites more economical and conducive to capture and infiltration.

SB 633 would require the Regional Board to consider opportunities to convey stormwater to a regional site within the watershed in which the stormwater is captured for the purpose of improving water quality and enhancing local water supply. The board must consider and balance the opportunity to cost-effectively enhance local water supply through stormwater capture when determining past and probable future beneficial uses of stormwater.

Staff is recommending support for SB 633.

Prepared by:



Eric Wolf
Senior Management Analyst

Approved by:



Marisa Creter
Assistant Executive Director

ATTACHMENT

Attachment A – SB 633 (Portantino)

Attachment B – Resolution in Support of SB 633 (Portantino)

AMENDED IN SENATE MARCH 23, 2017

SENATE BILL**No. 633****Introduced by Senator Portantino**

February 17, 2017

An act to add Section 13241.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 633, as amended, Portantino. ~~Stormwater.~~—*Water quality objectives: stormwater.*

Existing law, the Porter-Cologne Water Quality Control Act, requires each California regional water quality control board to adopt water quality control plans and to establish water quality objectives in those plans, considering certain factors, to ensure the reasonable protection of beneficial uses and the prevention of nuisance.

This bill would require a regional board preparing a water quality control plan for a region having a population in excess of 10 million residents to additionally consider opportunities to convey stormwater to a regional site within the watershed in which the stormwater originated for capture and infiltration and to consider and balance the opportunity for stormwater capture when determining past and probable future beneficial uses of water, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Los Angeles region.

~~Existing law, the Stormwater Resource Planning Act, authorizes one or more public agencies to develop a stormwater resource plan that meets certain standards.~~

~~This bill would state the intent of the Legislature to enact legislation relating to stormwater runoff in California.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13241.5 is added to the Water Code, to
2 read:

3 13241.5. (a) In addition to the factors identified in Section
4 13241 to be considered when establishing water quality objectives,
5 a regional board shall consider opportunities to convey stormwater
6 to a regional site within the watershed in which the stormwater
7 originated for capture and infiltration for the purpose of improving
8 water quality and enhancing local water supply in multiobjective
9 projects. A regional board shall consider and balance the
10 opportunity to cost-effectively enhance local water supply through
11 stormwater capture when determining past and probable future
12 beneficial uses of water. For the purposes of this section, a regional
13 board may consider all tools available to the regional board.

14 (b) This section applies only to a water quality control plan
15 prepared for a region having a population in excess of 10 million
16 residents.

17 SEC. 2. The Legislature finds and declares that a special statute
18 is necessary and that a general statute cannot be made applicable
19 within the meaning of Section 16 of Article IV of the California
20 Constitution because of the unique water quality challenges in the
21 Los Angeles region.

22 ~~SECTION 1. It is the intent of the Legislature to enact~~
23 ~~legislation relating to stormwater runoff in California.~~

O

DATE: April 20, 2017
TO: SGVCOG Governing Board
FROM: Phil Hawkey, Executive Director
RE: **SENATE BILL 231 (HERTZBERG)**

RECOMMENDED ACTION

Discuss and provide direction to staff.

BACKGROUND

Compliance with Municipal Separate Sewer Stormwater System (MS4) permits issued by the Los Angeles Regional Water Quality Control Board has imposed significant requirements on LA County cities to construct and operate stormwater treatment facilities. The estimated construction cost for the county is over \$20 billion, and within San Gabriel Valley the cost is in excess of \$6 billion, not including Operations and Maintenance. One option for raising funds to meet these costs is through parcel assessments.

Proposition 218 amended the California Constitution to require that assessments, fees, and charges be submitted to property owners for approval after the provision of written notice and the holding of a public hearing. Article XIII D, Section 6, subdivision (c) states, "*Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area*" (italics added).

The definitions of "water" and "sewer" under Proposition 218 are significant because the voter approval requirements are on fees for services other than water, sewer, and trash services and Proposition 218 did not define those terms. Determining what services fall within the definition of water and sewer services has been the subject of much litigation. In 2002, the California Court of Appeals for the Sixth District, in the case of *Howard Jarvis Taxpayers Association v. City of Salinas*, took up the question of whether Proposition 218 was intended to include "stormwater" systems as an excepted service, along with water, sewer, and refuse collection. In its decision, the court declined to include stormwater systems within the definition of "sewer" based on its conclusion such an extension would be contrary to voter intent in enacting Proposition 218. The court reasoned that the definition of "sewer" in Proposition 218 was ambiguous and that in light of the measure's intent to be construed liberally to enhance taxpayer consent, fees for stormwater management should require voter approval.

SENATE BILL 231

Senator Robert Hertzberg introduced SB 231 that would change the California Constitution to include stormwater, along with water, sewer, and trash, to be considered as a utility. SB 231 is based on a reading of the Public Utilities Code (PUC) which can be interpreted to include stormwater under the

category of “sewer.” This PUC text predates Proposition 218.

If passed, SB 231 would change the California Constitution to allow parcel-based fee increases for purposes of funding stormwater projects using the same procedures required to raise fees for water, sewer, and refuse collection services. These procedures vary by city/district, but generally include a justified recommendation for an increase by the utility provider, followed by notice to property owners with the opportunity to protest the proposed increase through mail-in ballot. If a majority of property owners do not file a protest, then city councils may approve the increased rate. The default in this case is that the fee increase will go into effect *unless expressly protested*.

Currently, except for sewer, water and refuse collection services, imposing or raising fees requires a majority vote of property owners or, at the public agency’s option, a two-thirds vote of the electorate. In this case, the default position is that the fee increase will not take effect *unless expressly approved*.

Passage of SB 231 would not require that cities use the lower threshold described above to raise or adopt a stormwater fee however. It would simply add stormwater to the suite of current parcel-based fees for which a lower threshold exists for raising those fees, providing a more easily obtained funding stream.

SUPPORT AND OPPOSITION

Many local agencies are in support of SB 231 as it gives them an easier way to raise dedicated revenue in support of stormwater cleanup mandates. They argue that currently stormwater cleanup is being funded out of general funds and the time for viewing stormwater as a utility, on par with water and sewer, is past due.

Supporting agencies: Water Foundation (Sponsor); California State Association of Counties; City of Hawthorne; City of Hermosa Beach; City of Industry; City of Norwalk; City of San Gabriel; City of Signal Hill; County of Contra Costa; Los Angeles Gateway Region Integrated Regional Water Management Authority; Save the Bay; Sierra Club; State Building and Construction Trades Council; Tree People, City/County Association of Governments of San Mateo County, City of Alameda, City of Beverly Hills, City of Commerce, City of Petaluma, County of San Joaquin, Inland Empire Utilities District, Santa Clara Valley Water District.

Opponents of the bill argue that Proposition 218 was intended to provide an expansive right for the public to vote on tax increases and only included limited exemptions. They point to the *Salinas* decision as evidence that stormwater was not an oversight when 218 was passed; instead, excluding stormwater was the will of the voters. Opponents argue that SB 231 directly contradicts the intent of Proposition 218 by changing a voter approved and court upheld amendment to the California Constitution.

The California Constitution generally requires the state to reimburse local governments for the costs they incur when implementing programs mandated by the state. However, the state does not have to reimburse local agencies if they can levy service charges, fees, or assessments to cover the cost of the program. SB 231 would make it easier for local governments to levy fees to fund stormwater cleanup. Some opponents argue that SB 231 could undermine an agency’s ability to recoup stormwater compliance costs they believe are state imposed unfunded mandates.

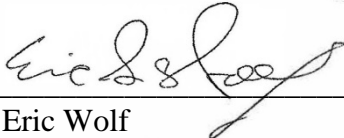
Opposing agencies: City of Glendora; City of Rosemead; City of West Covina; Howard Jarvis Taxpayers Association, City of Claremont, City of Diamond Bar, City of Los Alamitos, City of Sierra Madre.


LEGAL CHALLENGE

Because Proposition 218's restrictions are enshrined in the California Constitution, SB 231's definition will likely be challenged in court. It is unclear if it would be upheld, particularly in light of the *Salinas* decision.

RECOMMENDATION

The Water Policy Committee discussed SB 231 at its April 19th meeting. Staff is seeking direction.

Prepared by: 
Eric Wolf
Senior Management Analyst

Approved by: 
Marisa Creter
Assistant Executive Director

ATTACHMENTS

- Attachment A – SB 231 (Hertzberg)
- Attachment B – SB 231 (Hertzberg) Legislative Analysis

SENATE BILL**No. 231****Introduced by Senator Hertzberg**

February 2, 2017

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as introduced, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the term "sewer" for these purposes. The bill would also make findings and declarations relating to the definition of the term "sewer" for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53750 of the Government Code is
 2 amended to read:
 3 53750. For purposes of Article XIII C and Article XIII D of
 4 the California Constitution and this ~~article~~: *article, the following*
 5 *words have the following meanings, and shall be read and*

1 *interpreted in light of the findings and declarations contained in*
2 *Section 53751:*

3 (a) “Agency” means any local government as defined in
4 subdivision (b) of Section 1 of Article XIII C of the California
5 Constitution.

6 (b) “Assessment” means any levy or charge by an agency upon
7 real property that is based upon the special benefit conferred upon
8 the real property by a public improvement or service, that is
9 imposed to pay the capital cost of the public improvement, the
10 maintenance and operation expenses of the public improvement,
11 or the cost of the service being provided. “Assessment” includes,
12 but is not limited to, “special assessment,” “benefit assessment,”
13 “maintenance assessment,” and “special assessment tax.”

14 (c) “District” means an area that is determined by an agency to
15 contain all of the parcels that will receive a special benefit from a
16 proposed public improvement or service.

17 (d) “Drainage system” means any system of public
18 improvements that is intended to provide for erosion control, for
19 landslide abatement, or for other types of water drainage.

20 (e) “Extended,” when applied to an existing tax or fee or charge,
21 means a decision by an agency to extend the stated effective period
22 for the tax or fee or charge, including, but not limited to,
23 amendment or removal of a sunset provision or expiration date.

24 (f) “Flood control” means any system of public improvements
25 that is intended to protect property from overflow by water.

26 (g) “Identified parcel” means a parcel of real property that an
27 agency has identified as having a special benefit conferred upon
28 it and upon which a proposed assessment is to be imposed, or a
29 parcel of real property upon which a proposed property-related
30 fee or charge is proposed to be imposed.

31 (h) (1) “Increased,” when applied to a tax, assessment, or
32 property-related fee or charge, means a decision by an agency that
33 does either of the following:

34 (A) Increases any applicable rate used to calculate the tax,
35 assessment, fee, or charge.

36 (B) Revises the methodology by which the tax, assessment, fee,
37 or charge is calculated, if that revision results in an increased
38 amount being levied on any person or parcel.

39 (2) A tax, fee, or charge is not deemed to be “increased” by an
40 agency action that does either or both of the following:

1 (A) Adjusts the amount of a tax, fee, or charge in accordance
2 with a schedule of adjustments, including a clearly defined formula
3 for inflation adjustment that was adopted by the agency prior to
4 November 6, 1996.

5 (B) Implements or collects a previously approved tax, fee, or
6 charge, so long as the rate is not increased beyond the level
7 previously approved by the agency, and the methodology
8 previously approved by the agency is not revised so as to result in
9 an increase in the amount being levied on any person or parcel.

10 (3) A tax, assessment, fee, or charge is not deemed to be
11 “increased” in the case in which the actual payments from a person
12 or property are higher than would have resulted when the agency
13 approved the tax, assessment, fee, or charge, if those higher
14 payments are attributable to events other than an increased rate or
15 revised methodology, such as a change in the density, intensity,
16 or nature of the use of land.

17 (i) “Notice by mail” means any notice required by Article XIII C
18 or XIII D of the California Constitution that is accomplished
19 through a mailing, postage prepaid, deposited in the United States
20 Postal Service and is deemed given when so deposited. Notice by
21 mail may be included in any other mailing to the record owner
22 that otherwise complies with Article XIII C or XIII D of the
23 California Constitution and this article, including, but not limited
24 to, the mailing of a bill for the collection of an assessment or a
25 property-related fee or charge.

26 (j) “Record owner” means the owner of a parcel whose name
27 and address appears on the last equalized secured property tax
28 assessment roll, or in the case of any public entity, the State of
29 California, or the United States, means the representative of that
30 public entity at the address of that entity known to the agency.

31 (k) “Sewer” means services and systems provided by all real
32 estate, fixtures, and personal property owned, controlled, operated,
33 or managed in connection with or to facilitate sewage collection,
34 treatment, or disposition for sanitary or drainage purposes,
35 including lateral and connecting sewers, interceptors, trunk and
36 outfall lines, sanitary sewage treatment or disposal plants or works,
37 drains, conduits, outlets for surface or storm waters, and any and
38 all other works, property, or structures necessary or convenient
39 for the collection or disposal of sewage, industrial waste, or surface

1 *or storm waters. “Sewer system” shall not include a sewer system*
 2 *that merely collects sewage on the property of a single owner.*

3 ~~(k)~~

4 (l) “Registered professional engineer” means an engineer
 5 registered pursuant to the Professional Engineers Act (Chapter 7
 6 commencing with Section 6700) of Division 3 of the Business
 7 and Professions Code).

8 ~~(t)~~

9 (m) “Vector control” means any system of public improvements
 10 or services that is intended to provide for the surveillance,
 11 prevention, abatement, and control of vectors as defined in
 12 subdivision (k) of Section 2002 of the Health and Safety Code and
 13 a pest as defined in Section 5006 of the Food and Agricultural
 14 Code.

15 ~~(m)~~

16 (n) “Water” means any system of public improvements intended
 17 to provide for the production, storage, supply, treatment, or
 18 distribution of water from any source.

19 SEC. 2. Section 53751 is added to the Government Code, to
 20 read:

21 53751. The Legislature finds and declares all of the following:

22 (a) The ongoing, historic drought has made clear that California
 23 must invest in a 21st century water management system capable
 24 of effectively meeting the economic, social, and environmental
 25 needs of the state.

26 (b) Sufficient and reliable funding to pay for local water projects
 27 is necessary to improve the state’s water infrastructure.

28 (c) Proposition 218 was approved by the voters at the November
 29 5, 1996, statewide General Election. Some court interpretations
 30 of the law have constrained important tools that local governments
 31 need to manage storm water and drainage runoff.

32 (d) Storm waters are carried off in storm sewers, and careful
 33 management is necessary to reduce pollution. But a court decision
 34 has excluded storm water from those provisions of Proposition
 35 218 that apply to property-related fees for sewer and water,
 36 preventing many important projects from being built.

37 (e) The court of appeal in *Howard Jarvis Taxpayers Ass’n v.*
 38 *City of Salinas* (2002) 98 Cal.App.4th 1351 concluded that the
 39 term “sewer,” as used in Proposition 218, is “ambiguous” and
 40 declined to use the statutory definition of the term “sewer system”

1 which was part of the then-existing law as Section 230.5 of the
2 Public Utilities Code.

3 (f) The court in *Howard Jarvis Taxpayers Ass'n v. City of*
4 *Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing
5 principles of statutory construction by disregarding the plain
6 meaning of the term “sewer.” Courts have long held that statutory
7 construction rules apply to initiative measures, including in cases
8 that apply specifically to Proposition 218 (see *People v. Bustamante*
9 (1996) 57 Cal.App.4th 693, *Keller v. Chowchilla Water Dist.*
10 (2000) 80 Cal.App.4th 1006). When construing statutes, courts
11 look first to the words of the statute, which should be given their
12 usual, ordinary, and commonsense meaning (*People v. Mejia*
13 (2012) 211 Cal.App.4th 586, 611). The purpose of utilizing the
14 plain meaning of statutory language is to spare the courts the
15 necessity of trying to divine the voters’ intent by resorting to
16 secondary or subjective indicators. The court in *Howard Jarvis*
17 *Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351
18 asserted its belief as to what most voters thought when voting for
19 Proposition 218, but did not cite the voter pamphlet or other
20 accepted sources for determining legislative intent. Instead, the
21 court substituted its own judgment for the judgment of voters.

22 (g) Numerous sources predating Proposition 218 reject the
23 notion that the term “sewer” applies only to sanitary sewers,
24 including, but not limited to:

25 (1) Section 230.5 of the Public Utilities Code.

26 (2) Section 23010.3, which was first added by Chapter 1193 of
27 the Statutes of 1963.

28 (3) The Street Improvement Act of 1913 (repealed by Chapter
29 346 of the Statutes of 1963).

30 (4) The California Supreme Court stated in *Los Angeles County*
31 *Flood Control District v. Southern California Edison Co.* (1958)
32 51 Cal.2d 331, that “no distinction has been made between sanitary
33 sewers and storm drains or sewers.”

34 (5) The term, “sewer” has been used interchangeably to refer
35 to both sanitary and storm sewers in many other cases, including,
36 but not limited to, *County of Riverside v. Whitlock* (1972) 22
37 Cal.App.3d 863, *Ramseier v. Oakley Sanitary Dist.* (1961) 197
38 Cal.App.2d 722, and *Torson v. Fleming* (1928) 91 Cal.App. 168.

39 (6) Dictionary definitions of sewer, which courts have found to
40 be an objective source for determining common or ordinary

SB 231

— 6 —

1 meaning, including Websters (1976), American Heritage (1969),
2 and Oxford English Dictionary (1971).

3 (h) Prior legislation has affirmed particular interpretations of
4 words in Proposition 218, specifically Assembly Bill 2403 of the
5 2013–14 Regular Session (Chapter 78 of the Statutes of 2014).

6 (i) The Legislature reaffirms and reiterates that the definition
7 found in Section 230.5 of the Public Utilities Code is the definition
8 of “sewer” or “sewer service” that should be used in the Proposition
9 218 Omnibus Implementation Act.

O

SENATE RULES COMMITTEE
 Office of Senate Floor Analyses
 (916) 651-1520 Fax: (916) 327-4478

SB 231

THIRD READING

Bill No: SB 231
 Author: Hertzberg (D)
 Introduced: 2/2/17
 Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 5-2, 4/5/17
 AYES: McGuire, Beall, Hernandez, Hertzberg, Lara
 NOES: Nguyen, Moorlach

SUBJECT: Local government: fees and charges

SOURCE: Water Foundation

DIGEST: This bill defines “sewer” for the purposes of Proposition 218.

ANALYSIS:

Existing law:

- 1) Imposes constitutional limits on local officials’ ability to impose, increase, and extend fees, including property-related fees (Proposition 218, 1996).
- 2) Defines a property-related fee as any levy other than an *ad valorem* tax, a special tax, or an assessment imposed by an agency on a parcel or on a person as an incident of property ownership, including a user fee for a property-related service.
- 3) Specifies definitions and procedures related to Proposition 218 in the Proposition 218 Omnibus Implementation Act (SB 919, Rainey, 1997). The Act requires local officials to, before imposing a new property related fee or increase an existing one:
 - a) Identify the parcels to be charged.
 - b) Calculate the fee for each parcel.

- c) Notify the parcels' owners in writing about the fees and the hearing.
 - d) Hold a public hearing to consider and count protests.
 - e) Abandon the fees if a majority of the parcels' owners protest.
- 4) Requires new or increased property-related fees to:
- a) Be less than the proportional cost of service to each parcel.
 - b) Receive approval by a majority-vote of the affected property owners, two-thirds registered voter approval, or weighted ballot approval by the affected property owners.
- 5) Exempts property-related fees for water, sewer, and refuse collection from the voter approval requirements of Proposition 218.
- 6) Defines "sewer" in the Public Utilities Code.

This bill:

- 1) Defines "sewer" for the purposes of Proposition 218, using the existing Public Utilities Code definition, to mean:
- a) Services and systems provided by all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters, but excluding a sewer system that merely collects sewage on the property of a single owner from the definition of "sewer."
- 2) Provides that the terms in the Proposition 218 Omnibus Implementation Act should be interpreted in light of findings codified by the bill, including findings that:
- a) State that storm waters are carried off in storm sewers, and describe the importance of storm water management.
 - b) State that the court of appeal in *Salinas* (2002) concluded that the term "sewer," as used in Proposition 218, is "ambiguous" and declined to use the

statutory definition of the term “sewer system” which was part of the then-existing law as Section 230.5 of the Public Utilities Code.

- c) Argue that the court failed to follow long-standing principles of statutory construction by disregarding the plain meaning of the term “sewer” and instead substituted its own judgment for the judgment of voters.
- d) Identify numerous sources predating Proposition 218 that reject the notion that the term “sewer” applies only to sanitary sewers.
- e) Identify AB 2403 (Rendon, Chapter 78, Statutes of 2014) as a case where prior legislation has affirmed particular interpretations of words in Proposition 218.
- f) Reaffirm and reiterate that the definition found in Section 230.5 of the Public Utilities Code is the definition of “sewer” or “sewer service” that should be used in the Proposition 218 Omnibus Implementation Act.

Background

Proposition 218’s vote requirements don’t apply to property-related fees for sewer, water, or refuse collection services, but the measures didn’t define those terms. Thus, determining what services fall within the definition of “water” and “sewer” services has been the subject of litigation. An appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* 98 Cal. App. 4th 1351 (2002) found that a city’s charges on developed parcels to fund storm water management were property-related fees and were not covered by the exemption for sewer or water services. The court reasoned that the definition of “sewer” in Proposition 218 was ambiguous and that in light of Proposition 218’s intent to be construed liberally to enhance taxpayer consent, fees for storm water management should require voter approval.

In light of these court rulings and local governments’ continued struggles to finance storm water management, groundwater augmentation, water conservation, and similar activities, in 2014 the Legislature amended the Proposition 218 Implementation Act to define “water” in a manner that is consistent with *Griffith v. Pajaro Valley Water Management Agency* (AB 2403, Rendon). AB 2403 clarified local agencies’ ability to impose some storm water management fees—where the management programs capture storm water for domestic and irrigation supply—without having to subject those fees to a vote.

Because of the *Salinas* decision, fees for projects that treat and discharge storm water still must receive voter approval, despite other sections of law that include

storm drainage in the definition of sewer. Specifically, the Public Utilities Code defines “sewer system” to include all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters (Chapter 1109, Statutes of 1970). The definition excludes a sewer system which merely collects sewage on the property of a single owner. However, the *Salinas* court declined to use this definition.

Since the 2002 *Salinas* decision, state and federal water quality regulators have imposed increasingly costly requirements on cities and counties to clean up their storm water discharge under the Municipal Separate Storm Sewer System (MS4) permitting program. For example, the costs of complying with the most recent MS4 permit for Los Angeles County and the 88 cities in the county are expected to exceed \$20 billion over the next 20 years. Local governments that fail to comply can face fines of up to \$250,000 per day.

Finding the money to pay for these costs is challenging. Because storm water cleanup fees are subject to voter approval, some local governments, such as Culver City, have put storm water assessments or special taxes on the ballot that were subsequently approved. Others have tried and failed; Los Angeles County sought to put a storm water measure on the ballot in 2013, but it never made it past the Board of Supervisors. The author of this bill and the sponsor want to make it easier for local governments to levy fees to pay for storm water cleanup.

Comments

- 1) *Purpose of the bill.* In 2002, an appellate court ruled that the meaning of sewer in Proposition 218 was “ambiguous,” and proceeded to develop a new definition of sewer service that did not include storm water without citing any sources for that definition. As a result, storm water programs must meet a higher standard than other water and sewer services to raise capital, and local governments are struggling to fund the projects they need to meet state and federal water quality regulations. These governments face the prospect of redirecting scarce general fund dollars to pay for storm water programs or could get hit with expensive fines if they don’t comply. Storm water is plainly a part of managing water and sewer and should follow the same procedures. SB 231 addresses this problem by providing a definition of sewer that definition

predates Proposition 218 and treats fees for storm water like all other water and sewer fees. SB 231 does not change the Constitution's mandate for rigorous oversight of water and sewer fees, including reports, hearings, and protest votes. As with setting other fees, public officials remain ultimately accountable to the voters for their re-election. SB 231 won't provide all the funding that local governments need to fund their storm water programs, but it is a step in the right direction.

- 2) *Who's right?* Opponents of the bill argue that Proposition 218 was intended to provide an expansive right for the public to vote on tax increases and only included limited exemptions from this requirement to maintain basic public health and safety services, such as providing drinking and irrigation water and disposing of sanitary sewage and refuse. Cleaning up storm water and discharging it simply to benefit the environment shouldn't fall within those categories, and, thanks to the *Salinas* court decision, it doesn't. SB 231 directly contradicts this decision. Should the Legislature override the courts, and potentially the will of the people, by allowing local governments to raise fees for storm water cleanup projects without a vote?

Related/Prior Legislation

- 1) SB 231 is similar to SB 1298 (Hertzberg, 2016), which would have added a similar definition of sewer to the Proposition 218 Omnibus Implementation Act, supported by less expansive findings. SB 1298 was held on the Assembly Floor.
- 2) In 2014, the Legislature amended the Proposition 218 Omnibus Implementation Act to define "water" to include water from any source (AB 2403, Rendon, Chapter 78, Statutes of 2014). AB 2403 clarified local agencies' ability to impose some storm water management fees—where the management programs capture storm water for domestic and irrigation supply—without having to subject those fees to a vote.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/7/17)

Water Foundation (source)

California State Association of Counties

City/County Association of Governments of San Mateo County

City of Alameda

City of Beverly Hills

City of Commerce
City of Hawthorne
City of Hermosa Beach
City of Industry
City of Norwalk
City of Petaluma
City of San Gabriel
City of Signal Hill
County of Contra Costa
County of San Joaquin
Inland Empire Utilities District
Los Angeles Gateway Region Integrated Regional Water
Santa Clara Valley Water District
Save the Bay
Sierra Club California
State Building and Construction Trades Council of California
Tree People

OPPOSITION: (Verified 4/7/17)

City of Claremont
City of Diamond Bar
City of Glendora
City of Los Alamitos
City of Rosemead
City of Sierra Madre
City of West Covina
Howard Jarvis Taxpayers Association

Prepared by: Anton Favorini-Csorba / GOV. & F. /
4/10/17 11:57:17

**** **END** ****



MARK PESTRELLA, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

March 30, 2017

IN REPLY PLEASE
REFER TO FILE: **WM-9**

Mr. Samuel Unger, P.E.
Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Attention Jun Zhu

Dear Mr. Unger:

COMMENT LETTER – REVISIONS TO THE LOS ANGELES REGION 303(D) LIST

The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide comments on the proposed revisions to the Clean Water Act Section 303(d) List of Impaired Waters in the Los Angeles Region. Enclosed are our comments for your review and consideration.

If you have any questions, please contact me at (626) 458-4300 or ageorge@dpw.lacounty.gov or your staff may contact Mr. Paul Alva at (626) 458-4325 or palva@dpw.lacounty.gov.

Very truly yours,

MARK PESTRELLA
Director of Public Works

ANGELA R. GEORGE
Assistant Deputy Director
Watershed Management Division

GA:ba

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Enc.

cc: County Counsel (Grace Chang, Lillian Salinger, Michael Simon)

Item #9
Page 1 of 14

THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT COMMENTS ON THE PROPOSED REVISIONS TO THE 303(d) LIST FOR THE LOS ANGELES REGION

I. Waterbodies With Water Quality Attainment Should Be Delisted As Requested By The Los Angeles County Flood Control District During The 2010 Data Solicitation Period And Pursuant to the 303d Listing Policy

In August 2010 in response to the State Water Resources Control Board's (State Water Board's) data solicitation for the 2012 Integrated Report for Clean Water Act Sections 303(d) and 305(b), the Los Angeles County Flood Control District (LACFCD) submitted all the data and information that it collected since the State's previous data solicitation in 2007. As part of the 2010 data submission, the LACFCD conducted a detailed analysis of the new data and found 15 listed waterbody-pollutant combinations that had attained their water quality standards and met the delisting criteria set forth in Section 4 of the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (303(d) Listing Policy). To this end, LACFCD provided a detailed analysis of this data and identified those waterbodies that should be delisted pursuant to the *State's 303(d) Listing Policy*. Those waterbody-pollutant combinations are listed below.

WATERBODY	POLLUTANT	Addressed in Current Proposed Revisions?
Coyote Creek	Diazinon	No
Dominguez Channel (lined portion)	Diazinon	Yes
Legg Lake	Ammonia Copper Lead	No
Los Angeles River Reach 1	Diazinon	No
Peck Road Park Lake	Lead Dissolved Oxygen	No
Santa Clara River Reach 6	Chlorphyrifos Diazinon Copper Iron	No
Santa Fe Dam Park Lake	Copper Lead pH	No

As set forth in the above table, none of the identified waterbody-pollutant combinations are currently proposed for delisting as part of the 2016 303(d) list, except for the Dominguez Channel Diazinon, despite meeting the delisting criteria under the *State's Listing Policy*. Based on a review of the fact sheets for these waterbodies in Appendix G, it appears that the post-2007 data and analysis submitted by the LACFCD was not taken into consideration by the Los Angeles Regional Water Quality Control Board (Regional Board).

The County and the LACFCD request that the Regional Board consider the data set forth in the LACFCD's 2010 submission. Attached is a copy of the LACFCD comment letter and technical report from the 2010 data solicitation for your review and consideration. The County and the LACFCD further request that the Regional Board delist these waterbodies as requested.

II. The Regional Board Should Wait For The Completion Of The State's Biointegrity Policy Development Before Listing Waterbodies For Benthic Community Effects

Currently, there is no officially established California water quality objective or guideline for listing waterbodies for benthic community effects. As such, the State Water Board is currently developing statewide biological objectives to assist in addressing this gap. The 2010 State Water Board's initial notice letter¹ for development of these biological objectives states the following:

“State and Regional Water Board plans and policies do not contain numeric objectives or guidance for using biological data in regulatory decision-making. Therefore, biological objectives are needed to provide the narrative or numeric benchmarks that describe conditions necessary to protect aquatic life beneficial uses. The initial effort will focus on wadeable perennial streams and rivers.”

Similarly, the CEQA public scoping document² released in 2012 for this project states the following:

“Benchmarks for identifying biological impairments and interpreting narrative water quality objectives are not formally adopted in Water

¹ http://www.swrcb.ca.gov/plans_policies/docs/biological_objective/kickoff_ltr.pdf

² Pages 6 and 8 of http://www.swrcb.ca.gov/plans_policies/docs/biological_objective/bioobj_ceqa.pdf

Board plans or policies and, therefore, not readily used as enforceable requirements ...” [Page 6 of the scoping document]
“The State Water Board will develop [biological objectives and] program of implementation that describes how biological objectives will be incorporated into permits and other regulatory actions, such as assessing attainment of aquatic life beneficial uses for 303(d) listing.” [Page 8 of the scoping document]

Thus, there is no established objective in California for assessing biological data, such as benthic macroinvertebrate data, for regulatory decision-making. This includes 303(d) listings.

The State Water Board is currently making progress on compiling available information and conducting necessary scientific studies to develop applicable objectives and implementation policy (also known as Biointegrity Policy). The State Water Board has hired the Southern California Coastal Water Research Project (SCCWRP) and the California Department of Fish and Wildlife to develop technical information to aid development of the policy. To ensure that a range of public interests are represented during the development process, the State Water Board has reached out to interested stakeholders. The County and LACFCD is actively participating in these meetings.

Although the State Water Board is currently developing biological objectives for benthic communities, the Regional Board has listed multiple waterbodies for benthic community impairment prior to the development of those objectives and its implementation guideline. The following table summarizes the waterbodies being proposed for benthic community listings by the Regional Board in the County.

WATERSHED	WATERBODY SEGMENT	CONCRETE CHANNEL?
Ballona Creek	Ballona Creek	Yes
Dominguez Channel	Dominguez Channel	Yes
Los Angeles River	Alhambra Wash	Yes
	Arroyo Seco Reach 3	No
	Los Angeles River Reach 3	Yes
	Los Angeles River Reach 4	Yes
Malibu Creek	Medea Creek Reach 1	No

	Triunfo Creek Reach 1	No
San Gabriel River	San Gabriel River – East Fork	No
Santa Clara River	Santa Clara River Reach 5	No

Adopting these benthic community impairment listings without first awaiting the State Water Board's development of water quality objectives and implementation guidance is premature. First, in assessing biological data and justifying the proposed listings, the Regional Board used the Index of Biological Integrity (IBI) and the California Stream Condition Index (CSCI). The benchmarks/thresholds used are 40 for IBI and 0.79 for CSCI. While IBI and CSCI are available tools for evaluating the relative biological condition of perennial wadeable streams, the associated benchmarks/thresholds used by Regional Board staff for justifying the listings have not been officially adopted by the State Water Board or the Regional Board for purposes of determining 303(d) listings. Thus, to ensure statewide consistency, the appropriate benchmarks should be set by the Biointegrity Policy being developed by the State Water Board.

Second, the CSCI was developed to replace the IBI and is expected to be used in the Biointegrity Policy. Thus, the IBI and its associated benchmark should not be used for assessing stream conditions for purposes of regulatory decisions, such as 303(d) listing.

Third, many of the listings set forth in the table above are for concrete/modified channels, which are being treated the same as natural channels. This is inconsistent with the approach that the State Water Board has been taking in developing the Biointegrity Policy, which provides that in highly altered conditions, the standard should be based on "best attainable conditions". In this regard, the State Water Board's 2012 CEQA Scoping document³ for biological objectives states the following:

“One of the difficulties of defining reference conditions in California is that many waterbodies in the State have been severely altered from their natural condition. Some of these alterations are not a result of the controllable environmental factors.... In highly altered systems where biological conditions are limited by uncontrollable factors, the focus is on expectations for the ‘best attainable’ conditions.”

³ Page 3 of http://www.swrcb.ca.gov/plans_policies/docs/biological_objective/bioobj_ceqa.pdf

Concrete/engineered flood control channels in urban environments are among the systems that the State Water Board considers highly altered. For those systems, the State's goal is to establish standards that are reasonably expected to be attainable, which is different than standards for natural channels. The State Water Board is using a gradient approach where the biological expectations for altered stream channels are based on the level of alteration. Since altered stream channels have limited habitat, it is improbable to expect a thriving benthic community in these channels the same way as in natural stream channels. This conclusion is well demonstrated in the stream survey report published in 2016 by the Southern California Stormwater Monitoring Coalition (SMC) – the *2015 Report on the SMC Regional Stream Survey⁴, with Special Study on Engineered Channels*.

For the reasons described above, the Regional Board should not list waterbodies, and particularly those with concrete or engineered channels, for benthic impairments until the State Biointegrity Policy is developed and adopted. However, if the Regional Board lists any waterbody for benthic impairment, then the listings should be listed under Category 4c, and not under Category 5, since it is uncertain that these impairments are caused by pollutants.

III. Toxicity Listings Are Based On Unreliable Data and Should Be Removed

Ten County waterbodies are newly listed for toxicity, nine of which are streams or rivers, and one is an estuary. The majority of toxicity data used in the listings are from water toxicity tests conducted using the *Ceriodaphnia dubia* or other species.

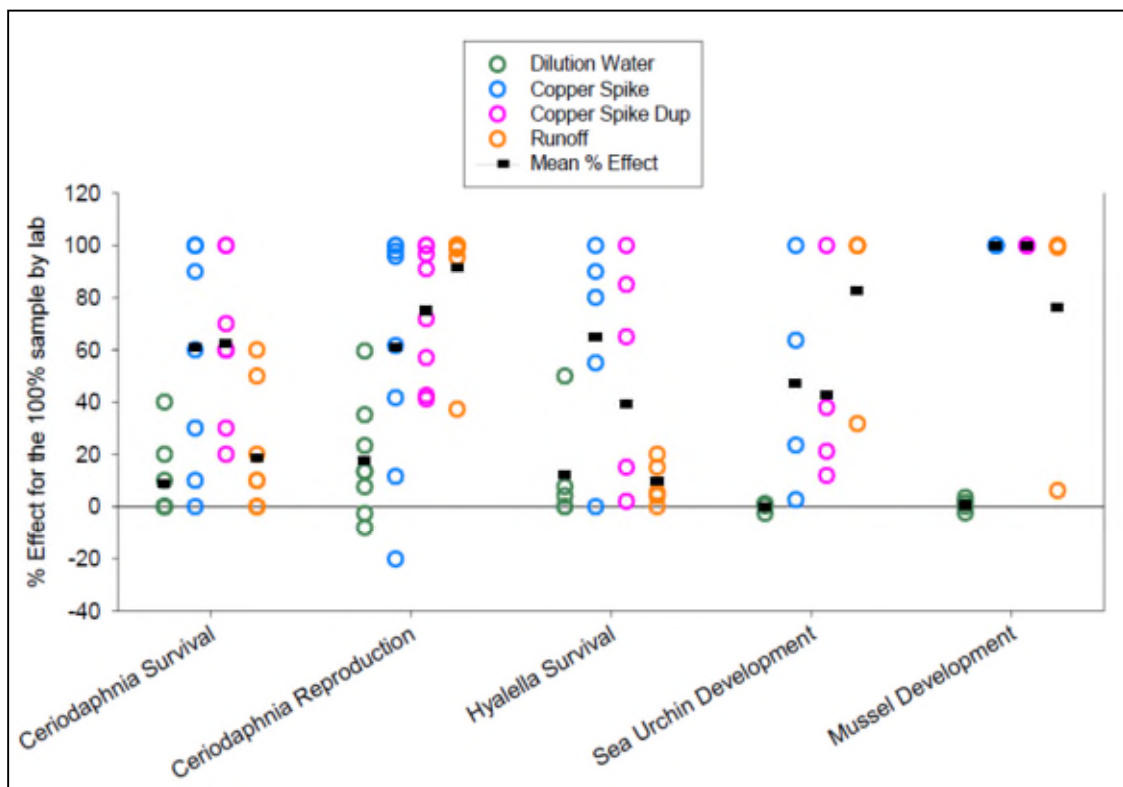
WATERSHED	WATERBODY SEGMENT	TEST SPECIES
Los Angeles River	Bull Creek	C. dubia, Fathead
	LA River Reach 4	
	LA River Reach 5	
	LA River Reach 6	C. dubia, Fathead, Hyaella
San Gabriel River	SG River Estuary	Topsmelt, Fathead
	SG River Reach 3	C. dubia, Fathead
	San Jose Creek Reach 2	

⁴ http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/963_2015_SMC_Report_EnginChannels.pdf

	South San Jose Creek	
Santa Clara River	Piru Creek	C. dubia
	SC River Reach 5	C. dubia

These toxicity tests, however, have recently been found to be unreliable by a laboratory intercalibration study conducted by SMC⁵. The study utilized 10 laboratories in Southern California that are certified by the State of California for toxicity testing. (Almost all toxicity tests in Southern California are conducted by these laboratories.) Although standard methods and protocols were followed by all the laboratories, the test results for the same sample varied significantly between laboratories.

The below chart summarizes the results of the study. Each symbol in the chart represents the result from a single laboratory.



⁵ SMC Toxicity Testing Laboratory Guidance Document
http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/956_StrmWtrMonitCoalitToxTestingLabGuid.pdf

As can be seen from the chart, there is high variability in the toxicity results between different laboratories for all the test species despite the fact that analytical procedures were performed on identical samples. For example, the results for *Ceriodaphnia survival* vary between 0 percent and 100 percent for the same sample depending on the laboratory used. Also, a sample of lab dilution water, which is expected to be non-toxic was found to be toxic by many labs. Such high magnitudes of inconsistency and incomparability between the labs makes the existing toxicity data invalid or not useful. It is thus very probable that the proposed 303(d) listings for toxicity are the result of false positive toxicity tests, resulting in unimpaired waterbodies being wrongly listed for toxicity.

It is incumbent upon the State to ensure that the laboratories it certifies produce consistent and accurate toxicity test results. The uncertainties and variability reflected in testing results between laboratories, as shown in the SMC study, can have a profound effect on the regulatory actions placed on a waterbody.

For these reasons the proposed water toxicity listings are not supported by reliable data. The County and the LACFCD therefore request that all toxicity listing based off of water toxicity testing be removed from the list. We also request that the State continue to re-evaluate its laboratory certification protocols and address the problems identified by SMC.

IV. The Proposed Temperature Listings Are Based On An Inapplicable Standard And Therefore Should Be Removed

The following four waterbodies in the County are proposed listings for temperature-related impairment: Los Angeles River Reach 3, San Gabriel River Reaches 1 and 2, and Santa Clara River Reach 6. These listings should not be adopted for the following reasons:

First, natural temperatures for waterbodies in the Los Angeles Region are not known. Chapter 3 of the Los Angeles Region Basin Plan states the following for temperature:

“For waters designated WARM, water temperature shall not be altered by more than 5°F above the natural temperature. At no time shall these WARM-designated waters be raised above 80°F as a result of waste discharges.”

“For waters designated as COLD, water temperature shall not be altered by more than 5°F above the natural temperature.”

The current Basin Plan does not have an established "natural temperature" baseline for waterbodies, nor does it have guidance for estimating natural temperatures. This precludes the use of alteration of natural temperature as a basis for assessing waterbodies in the region.

The Regional Board therefore appears to have used the 80°F objective as the basis for the proposed temperature listings. This standard, however, is not appropriate for two reasons: (1) Under the Basin Plan, the 80°F threshold is to be used only when there is evidence that the temperature rise was "as a result of waste discharges." The Regional Board did not provide evidence that any of the temperatures above 80°F were caused by waste discharges. (2) The 80°F threshold was applied to all waterbodies without considering the physical attributes or the historical ambient air temperatures of the waterbodies, which are uncontrollable. In the Los Angeles Region, ambient air temperatures can vary drastically, which would easily alter or raise the temperature above 80°F, especially in concrete channels during warmer months. Concrete channels are very susceptible to fluctuations in temperature due to the material's ability to absorb heat. Even if the water is at a reasonable temperature when it enters a concrete channel, the water temperature may naturally rise as it travels through the channel, and not as the result of waste discharges.

Second, Basin Plans of other Southern California Regions, which have similar habitats as in the Los Angeles Region, do not use 80°F as a water quality objective for WARM-designated waters. For example, the Santa Ana Region Basin Plan⁶ uses 90°F during warmer months of the year (June through October) and 78°F during the rest of the year. The San Diego Region does not have any temperature water quality objectives for WARM-designated waters.

Therefore, the use of 80°F for purposes of assessing temperature-related impairments and listing waterbodies is unreasonable and unsupported, especially in concrete channels during dry seasons. The Regional Board should not list waterbodies for temperature until applicable standards are established for the Region.

⁶ www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/docs/2016/Chapter_4_Feb_2016.pdf

V. Alondra Park Lake Is Not A Water of the United States And Therefore Should Be Removed From The Proposed 303(d) List

Alondra Park Lake is a man-made lake that was created in the late 1940s as part of County's plan to establish Alondra Park. The lake does not receive any runoff discharge from areas outside of the park and is not connected to the Dominguez Channel or any other surface waterbody. The lake's source of water is entirely groundwater that is pumped from the West Coast Groundwater Basin. This water is used to irrigate the park and the nearby golf course.

In addition, Alondra Lake is not identified in the Basin Plan and, thus, does not have any beneficial use designation assigned to it. This confirms that the lake is not a receiving waterbody.

The Section 303(d) list applies only to waters of the United States⁷. Alondra Park Lake is a man-made enclosed lake not connected to any other waterbody. Any listings associated with Alondra Park Lake should therefore be removed from the proposed 2016 303(d) list.

VI. Data Being Used For Legacy Pollutant Listings Do Not Satisfy The Temporal Representativeness Requirements of The State's Listing Policy

The data being used to support proposed listings of waterbody-pollutant combinations for legacy pollutants does not satisfy the temporal requirements of the State's 303(d) Listing Policy as described below. Thus, these proposed listings should be removed.

Section 6.1.5.3 of the State's 303(d) Listing Policy states:

“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. Samples should be available from two or more seasons or from two or more events . . .”

⁷ 33 U.S.C §1313(d)

Section 6.1.5.6 of the Listing Policy states:

“To be considered temporally independent, samples collected during the averaging period shall be combined and considered one sampling event. For data that is not temporally independent (e.g., when multiple samples are collected at a single location on the same day), the measurements shall be combined and represented by a single resultant value.”

Section 3.1 of the Listing Policy requires a minimum of two exceedances to place a waterbody on the 303(d) list for toxic pollutants.

The data used to support some of the new listings was collected only on a single day. Therefore, pursuant to Sections 6.1.5.3 and 6.1.5.6 of the Listing Policy, these samples are not temporally independent and should be combined and considered as a single data point. Moreover, under Section 3.1 of the Listing Policy, a minimum of two exceedances are needed to place a waterbody on a 303(d) list. Thus, the following listings do not meet these Listing Policy guidelines:

WATERSHED	WATERBODY SEGMENT	POLLUTANT(S)
Dominguez Channel	Alondra Park Lake	PCBs
Malibu Creek	Malibou Lake	Dieldrin
Los Angeles River	Echo Park Lake	Chlordane, Dieldrin
	Lincoln Park Lake	PCBs
San Gabriel River	Legg Lakes	DDT, PCBs
	Santa Fe Dam Park Lake	PCBs
Santa Clara River	Castaic Lagoon	PCBs
	Castaic Lake	PCBs
	Elderberry Forebay	Dieldrin, PCBs
	Pyramid Lake	Chlordane, DDT, Dieldrin, PCBs

The County and the LACFCD request that these listings be removed until more samples are collected to satisfy the temporal representativeness of data of the State's Listing Policy.

VII. Legacy Pollutants (PCBs, DDT, Dieldrin, Chlordane) Should be Listed As a Category 4b, Not as Category 5

Many of the pollutants that are being considered for incorporation into the 303(d) list are legacy pollutants that have been banned by the U.S. Environmental Protection Agency (EPA) decades ago and are no longer manufactured or used in the United States. These pollutants include PCBs, DDT, Dieldrin, and Chlordane. PCBs were banned in 1979, DDT in 1980, Dieldrin in 1987, and Chlordane in 1988.

The newly proposed listing includes several waterbodies in the County that are listed for impairments associated with these pollutants:

WATERSHED	WATERBODY SEGMENT	POLLUTANT(S)
Dominguez Channel	Alondra Park Lake	PCBs
Malibu Creek	Malibou Lake	Dieldrin
Los Angeles River	Echo Park Lake	Chlordane, Dieldrin
	Lincoln Park Lake	PCBs
San Gabriel River	Legg Lakes	DDT, PCBs
	Santa Fe Dam Park Lake	PCBs
Santa Clara River	Castaic Lagoon	PCBs
	Castaic Lake	PCBs
	Elderberry Forebay	Dieldrin, PCBs
	Pyramid Lake	Chlordane, DDT, Dieldrin, PCBs

The complete ban on these pollutants three decades ago, which is the strongest regulatory action an agency can take, has effectively addressed the true sources of these pollutants in the environment. Since these chemicals are no longer manufactured or used, the regulatory program already in place by the U.S. EPA is reasonably expected to result in the attainment of the water quality standard for these pollutants over time.

As indicated in comment VI, waterbodies that contain legacy pollutants should not be listed because the data used for their listing does not satisfy the Listing Policy. However, if the Regional Board does list these waterbodies, we request that they be listed as Category 4b, not Category 5, because a regulatory program is already in place to address them.

VIII. The State Should Rely On The Most Updated Guideline to List Waterbodies Based On Fish Tissue Contamination

In assessing waterbodies for fish tissue contamination, the Regional Board used the following two guidelines:

- a. The 2008 Office of Environmental Health Hazard Assessment (OEHHA) fish contaminant goal⁸, and
- b. The 1972 National Academy of Sciences (NAS) guidelines.⁹

The OEHHA guideline, developed in 2008 is not only up-to-date but also specific to California and, thus, reasonable to use for this particular assessment. On the other hand, the NAS guideline is half a century old and out of date. In the absence of an up-to-date NAS guideline, the assessment should be based exclusively on the OEHHA standard's line of evidence.

Based on the OEHHA guideline, the following waterbodies meet water quality standards and, therefore, should be removed from the proposed listing:

- Castaic Lagoon for PCBs
- Elderberry Forebay for Dieldrin
- Pyramid Lake for Chlordane, DDT, Dieldrin, PCBs
- Alondra Park Lake for PCBs
- Echo Park Lake for Chlordane and Dieldrin
- Legg Lakes for DDT and PCBs.

IX. ADDITIONAL COMMENTS

A. Wilmington Drain-Copper should be delisted

Per Appendix G fact sheets, two lines of evidences (LOE) were used to support the listing for copper in Wilmington Drain. However, the information used for the second LOE is data collected in Compton Creek, which is a different waterbody. This data should not be used to evaluate Wilmington Drain. Removal of this LOE would lead to only 2 exceedances out of 33 data points. This would satisfy the delisting criteria of the State's Listing Policy. Therefore, copper should be delisted for Wilmington Drain.

⁸ http://www.waterboards.ca.gov/water_issues/programs/tmdl/records/state_board/2008/ref2456.pdf

⁹ http://www.waterboards.ca.gov/water_issues/programs/tmdl/records/state_board/2006/ref19.pdf

B. The listings in Appendix A should be corrected to reflect the listing and delisting decisions in Appendix G

As already acknowledged in the February 24 Regional Board notice letter, Appendix A does not accurately capture all the listing and delisting decisions detailed in the fact sheets in Appendix G. For example, for Ballona Creek, Chlordane, DDT, Dieldrin, and PCBs were delisted during the previous listing cycle. However, these listings continue to be identified in Appendix A as part of the 2016 303(d) list. This is true for many of the waterbodies summarized in Appendix A. This error should be corrected to avoid any confusion and misinterpretation of the information by the general public.

C. Waterbodies that are on the 303(d) list and being addressed by a USEPA approved TMDL should be moved to Category 4a from Category 5

Many of 303(d)-listed waterbodies from the previous listing cycle now have TMDLs. This requires a change in their status from Category 5 (TMDL required list) to Category 4a (being addressed by US EPA approved TMDL). Some of these status changes are not reflected in the revised list and need correction.

Similarly, some of the newly proposed listings are already being addressed by an existing TMDL for that watershed. In those cases, it is appropriate to put them also under Category 4a as opposed to Category 5. Examples, include:

- LA River Reach 3 and Rio Hondo Reach 2 for Indicator Bacteria, which are being addressed by the Los Angeles River Watershed Bacteria TMDL
- LA River Reach 6 for Copper and Compton Creek for Zinc, which are being addressed by the Los Angeles River Metals TMDL.



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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GRACE ROBINSON HYDE
Chief Engineer and General Manager

March 30, 2017
File No. 31-370.40.4A

Via Electronic Mail

Dr. Jun Zhu
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Dear Dr. Zhu:

**Comments on the February 2017 Proposed 2016 Los Angeles Region
Clean Water Act Section 303(d) List of Impaired Waters**

The Sanitation Districts of Los Angeles County (Sanitation Districts) appreciate the opportunity to comment on the February 2017 proposed 2016 Los Angeles Region Clean Water Act Section 303(d) List of Impaired Waters (Draft List) prepared by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). The Sanitation Districts are a consortium of 24 independent special districts serving the wastewater and solid waste management needs of over five million people and 3,300 industries in Los Angeles County, California. The Sanitation Districts currently operate and maintain over 1,400 miles of trunk sewers and 11 wastewater treatment plants that collectively treat over 450 million gallons per day of wastewater. Of the 11 wastewater treatment plants, nine are located in the Los Angeles Region. Seven of these treatment plants discharge to inland surface waters in the San Gabriel River, Santa Clara River, and Rio Hondo watersheds; one discharges to the Pacific Ocean; and one does not discharge to surface waters but instead solely supplies recycled water for irrigation.

The Sanitation Districts commend Regional Board staff for their diligent implementation of the State Water Resources Control Board's (State Board's) Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy) to produce a Draft List that is generally well-documented and scientifically valid. In addition, the Sanitation Districts greatly appreciate the efforts of the Regional Board staff to make the listing process more transparent, particularly by making the data used to assess listings available on the Regional Board's website and by producing clear fact sheets on each water body/pollutant combination. Staff were also very helpful in addressing questions and meeting with us during the preparation of these comments and their assistance was greatly appreciated.

However, the Sanitation Districts have concerns on some aspects of the Draft List, particularly where the listing thresholds used in the Staff Report appear to differ from receiving water quality objectives contained in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) or other regulatory programs. Additionally, there appear to be data errors that impact some listing decisions. General comments relating to these concerns are provided below and detailed specific comments for each listing are provided in Attachment 1 and appendices to this letter.

1. *Data Were Incorrectly Attributed to Some Reaches*

The Draft List contains a number of newly proposed listings based, in part, on data collected from incorrect reaches. Specific listings where this appears to have occurred include the benthic community and toxicity listings for Santa Clara River Reach 5; the temperature listing for Santa Clara River Reach 6; the toxicity, DO, and iron listings for Rio Hondo Reach 2; and the toxicity listing for San Jose Creek Reach 2.

2. *Not All of the Data Submitted for Listing Consideration Were Used in Making the Listing Decision*

The Draft List contains a number of newly proposed listings where only a subset of the data submitted for listing consideration were evaluated; these data are included in the data files appended to the Staff Report but were not used in the listing analysis. Specific listings where this appears to have occurred include the toxicity listing for Santa Clara River Reach 5 and the temperature listing for Santa Clara River Reach 6.

3. *The Draft List Includes Inappropriate Impairment Listings for “Benthic-Macroinvertebrate Bioassessments”*

The Draft February 2017 version of the 2016 303(d) List contains a number of newly proposed listings for “Benthic-Macroinvertebrate Bioassessments.” The proposed listings are based on application of the Southern California Coastal Index of Biological Integrity (SCIBI) and, in some cases, the California Stream Condition Index (CSCI). These include listings for Santa Clara River Reach 5, Los Angeles River Reach 3, and Medea Creek Reach 1. The Sanitation Districts believe these proposed listings should be removed, for the reasons listed below.

Listings Based on the SCIBI and CSCI Are Inconsistent With State Policy.

The Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List (Listing Policy) indicates that water bodies should only be listed for degradation of biological populations if they have significant degradation **relative to reference sites** [emphasis added]. Although the scientists that developed the SCIBI attempted to incorporate reference conditions into the index itself, the reference conditions used to develop the index did not include any low elevation, low gradient locations in Los Angeles County similar to the Los Angeles River and the Santa Clara River reaches of concern.¹ Although the CSCI at least partially addresses some of the problems with the SCIBI by employing a modeled reference condition as opposed to the regional reference pool used by the SCIBI, the lack of any reference sites in large watersheds, low gradient, and low elevation systems still limits the identification of appropriate thresholds using the CSCI.

Section 6.1.5.8 of the Listing Policy also states that when “evaluating biological data and information, RWQCBs shall evaluate all readily available data and information and shall...**evaluate physical habitat data** and other water quality data, when available, to support conclusions about the status of the water segment.” [Emphasis added.] All of the reaches mentioned in this comment letter represent reaches that have undergone various levels of physical habitat modifications and there is no indication that an evaluation of the physical habitat was conducted. It is well recognized by the scientific community that a single standard or threshold is not applicable to all waterbodies of the State due to unmanageable

¹ Ode, P.R., A.C. Rehn, J.T. May. 2005. A Quantitative Tool for Assessing the Integrity of Southern Coastal California Streams. Environmental Management Vol. 35, No 4, pp. 493-504.

non-pollutant physical habitat alterations that would preclude many streams from ever having biological assemblages similar to reference. The threshold used as the listing criterion for these reaches is therefore likely inappropriate for these modified waterbodies.

Appropriate Thresholds for Interpretation of the CSCI Have Not Yet Been Determined.

The State Board has not yet developed any recommended thresholds for the CSCI. The proposed threshold of 0.79 used in the Draft List is the 10th percentile of the reference pool and was used as an arbitrary point of reference for a regional monitoring program with no regulatory vetting. Use of this threshold for impairment listings would result in 10% of the unimpaired reference streams being erroneously listed as impaired. Additionally, it is well recognized by the scientific community that a single standard or threshold will not be applicable to all waterbodies of the State since unmanageable non-pollutant features such as habitat condition/modifications are likely to preclude many streams from ever having biological assemblages similar to reference.

The Sanitation Districts believe that it is inappropriate to make impairment decisions using the SCIBI and premature to rely on the improved, but still limited CSCI for making impairment decisions, particularly in reaches where surrounding development and instream physical habitat limitations are recognized. Therefore, the Sanitation Districts respectfully recommend that the Regional Board delay making decisions regarding benthic macroinvertebrate community impairments in this listing cycle, and instead continue to work with stakeholders, scientists, and the State Board that are currently engaged in efforts to address these and other issues as part of the Biointegrity/Bio-stimulatory Policy.

4. *The Draft List Includes Inappropriate Impairment Listings for Temperature*

The Draft List contains a number of newly proposed listings for temperature. The Sanitation Districts believe the proposed temperature listings for San Gabriel River Reach 2, San Jose Creek Reach 1, and San Gabriel River Reach 1 should be removed because the impairment listings are inconsistent with the Basin Plan water quality objective for temperature, which states, “at no time shall these WARM-designated waters be raised above 80°F **as a result of waste discharges.**” [Emphasis added.] This water quality objective clearly distinguishes between exceedance of the 80°F standard caused by “waste discharges” and those associated with other causes. Evidence indicates that summertime excursions greater than the 80°F are not caused by wastes discharged but are likely due to elevated ambient air temperature, conductive and radiative heating associated with hardened landscapes, a lack of riparian cover, and increased ambient temperatures related to climate change. Additionally, the Draft List does not contain any analysis or evidence indicating that the elevated temperatures occurred as result of wastes discharged.

Additionally, the Sanitation Districts believe that the proposed temperature listing for Santa Clara River Reach 6 is inappropriate. Measurements for this listing were taken immediately downstream of the Saugus Water Reclamation Plant (WRP), where tertiary treated effluent is discharged along one bank of the Santa Clara River bed. The flow remains isolated from the main channel of the Santa Clara River and percolates rapidly into the soil; groundwater resurfaces downstream near Reach 5 of the Santa Clara River. The predominant natural condition of this stretch of river is dry and would not be expected to support aquatic life without the Saugus WRP discharge; therefore, application of the 80°F water quality objective is unnecessary and inappropriate. The only reasonable alternative for meeting the water quality objective would be to eliminate the discharge flows; however, the California Department of Fish and Wildlife would likely prohibit that option, due to the effluent’s contribution to the groundwater and subsequent downstream flows. Upon resurfacing near Reach 5, the water temperature averages 69°F, demonstrating that elevated temperatures in this isolated discharge area are not detrimental to beneficial uses in reaches where water occurs naturally in the river. Finally, elevated ambient temperatures regularly

exceed 90 °F during the summer months, and heavily influence both the Saugus WRP discharge and the immediate downstream receiving water location. As indicated for the other temperature listings, the water quality objective for temperature in the Los Angeles Region Basin Plan clearly distinguishes between temperature exceedances caused by “waste discharges” and those associated with other causes. However, the Draft List does not contain any analysis to distinguish the relative contributions by the temperatures of the ambient air and wastes discharged on the receiving water.

5. Thresholds Used For Toxicity Impairment Listings Are Inconsistent With Basin Plan Objectives

The Draft List contains a number of newly proposed listings for toxicity that include San Gabriel River Estuary, San Gabriel River Reach 3, Rio Hondo Reach 2, and Santa Clara River Reach 5. These listings should be removed for the reasons below.

The Acute Toxicity Impairment Criterion is Inconsistent With the Basin Plan Water Quality Objective for Acute Toxicity

The Staff Report fact sheets for the specific listings mentioned above state that “<100% survival (acute) was considered an exceedance.” However, the Basin Plan states that “the acute toxicity objective for discharges dictates that the average survival in undiluted effluent for any three consecutive 96-hour static or continuous flow bioassay tests shall be at least 90%, with no single test having less than 70% survival when using an established USEPA, State Board, or other protocol authorized by the Regional Board.” Therefore, a single-test threshold of less than 70% survival should be used to determine impairments; even a threshold of less than 90% survival would still be more conservative than Basin plan objective.

The Chronic Toxicity Impairment Criterion is Inconsistent With Water Quality Objective Interpretations Provided in NPDES Permits

The Staff Report fact sheets for the specific listings mentioned above indicate that a single NOEC result of less than 100% receiving water represents an exceedance of the water quality objective. Although the Basin Plan provides no numeric chronic toxicity objectives, recently adopted Los Angeles Region NPDES permits do provide very specific direction on interpretation of the narrative water quality objectives for chronic toxicity. In a number of these permits, a footnote associated with the Receiving Water Monitoring Requirements Table of the Monitoring and Reporting Program states; “The **median monthly summary result is a threshold value** for a determination of meeting the narrative receiving water objective and shall be reported as ‘Pass’ or ‘Fail’.”² [Emphasis added.]

In addition to aligning with the NPDES permit language, use of a monthly median will also address concerns regarding false positive error rates. The USEPA has determined that the expected false positive error rate for chronic toxicity testing using the NOEC is 5%. With this error rate, on average, one in 20 individual chronic toxicity tests will be erroneously identified as “toxic” using the NOEC, and there is a nearly 34% probability that 2 or more individual chronic toxicity test exceedances would be observed within a set of 24 discrete measurements in a completely non-toxic stream reach. When there are two or more exceedances out of 24

² Pomona WRP - ORDER R4-2014-0212-A01 NPDES NO. CA0053619, Long Beach WRP - ORDER NO. R4-2015-0123 NPDES NO. CA0054119, Los Coyotes - ORDER NO. R4-2015-0124 NPDES NO. CA0054011, San Jose Creek WRP - ORDER R4-2015-0070 NPDES NO. CA0053911, Saugus WRP- ORDER R4-2015-0072 NPDES NO. CA0054313, Valencia WRP- ORDER R4-2015-0071 NPDES NO. CA0054216, Whittier Narrows WRP ORDER R4-2014-0213-A01 NPDES NO. CA0053716

measurements, the Listing Policy specifies that a reach be listed as impaired. Therefore, using single chronic toxicity exceedances as the 303(d) criterion would eventually result in more and more non-toxic stream reaches being erroneously listed over time. However, using a monthly median chronic toxicity exceedance threshold would reduce the likelihood of inappropriate reach listings due to false positive chronic toxicity results to less than 1%.

6. Specific Comments on Individual Reach/pollutant Listing Decisions

In addition to these general comments, the Sanitation Districts have comments on some specific listing decisions. As stated above, detailed comments are provided in the appendices to this letter. Because the implications of erroneous listings are substantial, the Sanitation Districts urge the Regional Board to consider this information in making the appropriate changes to the Draft List.

In conclusion, the Sanitation Districts would like to thank the Regional Board for its efforts up to this point in revising the proposed 2016 303(d) List. We urge the Regional Board to consider the information and analysis contained in this letter to complete the development of a scientifically and legally defensible list with a sound and consistent basis. If you have any questions regarding our comments or the information and data we are providing to you, please contact Phil Markle at (562) 908-4288, extension 2808, pmarkle@lacsds.org.

Very truly yours,



Philip L. Friess
Department Head
Technical Services

PLF:PJM:nm
Attachments

cc: LB Nye, Jun Zhu, Kangshi Wang, Regional Board, Los Angeles Region



Water Boards

Governor Edmund G. Brown Jr. Announces Appointments to State Water Board



Office of Governor
Edmund G. Brown Jr.



FOR IMMEDIATE RELEASE:
Wednesday, March 15, 2017

Contact: Governor's Press Office
(916) 445-4571

Governor Brown Announces Appointments

SACRAMENTO – Governor Edmund G. Brown Jr. today announced the following appointments:

Tam Doduc, 50, of Sacramento, has been reappointed to the State Water Resources Control Board, where she has served since 2005. Doduc served in several positions at the California Environmental Protection Agency from 2000 to 2005, including deputy secretary for environmental quality, assistant secretary for air and chemical programs, assistant secretary for agriculture and chemical programs and assistant secretary for technology certification. She was an air resources engineer at the California Air Resources Board from 1997 to 2000 and served as special assistant to the secretary at the California Environmental Protection Agency from 1995 to 1997 and from 1993 to 1994. Doduc was a water resources engineer at the State Water Resources Control Board from 1994 to 1995 and from 1989 to 1992. She has been a registered professional civil engineer since 1995. Doduc earned a Master of Business Administration degree from the University of California, Berkeley School of Business and a Master of Science degree in civil engineering from California State University, Sacramento. This position requires Senate confirmation and the compensation is \$142,095. Doduc is a Democrat.

Joaquin Esquivel, 34, of La Quinta, has been appointed to the State Water Resources Control Board. Esquivel has served as assistant secretary for federal water policy at the California Natural Resources Agency since 2015. He served in several positions in the Office of U.S. Senator Barbara Boxer from 2007 to 2015, including research assistant, legislative aide and legislative assistant for water and agriculture issues, and director of information and technology. Esquivel was a center youth manager for Gay Associated Youth from 2002 to 2004. This position requires Senate confirmation and the compensation is \$142,095. Esquivel is a Democrat.

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