



January 15, 2025

Eric Dubinsky
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United States Environmental Protection Agency
Region IX
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SUBJECT: Comments on California's 2024 List of Impaired Waters under Clean Water Act (CWA) Section 303(d)

Dear Mr. Dubinsky:

Clean Water SoCal appreciates the opportunity to submit comments in response to the US Environmental Protection Agency's (EPA) review of California's 2024 List of Impaired Waters. Specifically, Clean Water SoCal shares here its general concerns in response to EPA's findings and determination to add 44 waterbodies for benthic community effects onto California's list of impaired waterbodies, of which nine (9) are located in southern California in the Los Angeles and Santa Ana Regions.

Clean Water SoCal is an association of cities, special districts and other public agencies, which was formed in 1992 to concentrate resources to effect reasonable local, state and federal regulations impacting POTWs and collection systems. Comprised of over 80 wastewater and collection system agencies, together our membership collects and/or treats the wastewater of over 20 million southern Californians in seven counties – including counties located within the Los Angeles and Santa Ana regions.

Generally, Clean Water SoCal is concerned with EPA's determination, which results in the California Stream Condition Index (CSCI) and a score of .79 as a statewide criteria for determining if WARM or COLD aquatic life beneficial uses are impaired. Under the Porter-Cologne Water Quality Control Act, water quality standards in California must be adopted in accordance with Water Code, section 13200, et seq., which requires in part



that regional water quality control boards (regional water boards) need to establish water quality objectives in water quality control plans that will ensure reasonable protection of beneficial uses. Water quality objectives are the criteria that should be used to evaluate beneficial use impairment. (Wat. Code, § 13050(h).) When adopting water quality objectives, regional water boards must consider specific factors as set forth in statute. (Wat. Code, § 13241.) The State Water Resources Control Board (State Water Board) is subject to the same requirements when it adopts water quality objectives for waters of the United States. (Wat. Code, § 13170.)

Here, unfortunately, the state's statutory requirements and process for adopting water quality objectives are being circumvented by the State Water Board's use of a CSCI score of .79 to find impairment to WARM and COLD beneficial uses and by EPA's decision to de-couple use of the CSCI score of .79 along with a pollutant for finding that a waterbody should be listed as impaired on the Clean Water Act's 303(d) list as a Category 5 TMDL required water. The State Water Board has been engaged in a process to develop biological objectives in a statewide water quality control policy for many years. As part of this decade's long process, use of a CSCI score of .79 as a statewide criterion has not been subject to a formal public process to determine if it is a proper water quality objective pursuant to Water code section 13241 to reasonably protect WARM and COLD beneficial uses statewide. Rather, the State Water Board used its 303(d) listing policy and process to claim that it is an appropriate evaluation guideline as long as it can be linked to a pollutant causing degradation to the biological community. (See Listing Policy, § 3.9.) With respect to the 44 waterbodies in question, the State Water Board followed its policy and did not place these waterbodies in "Category 5 TMDL required" because there was a lack of data or information to associate a pollutant with the biological impairment based on the CSCI score.

Now, based on EPA's partial disapproval, the Listing Policy's limitations for using the CSCI score of .79 are being disregarded. As a result, a CSCI score of .79 becomes a "de facto" statewide water quality criteria for evaluating impairment of WARM and COLD beneficial uses with no deliberative, public process to determine if it is an appropriate water quality criteria for application statewide to all types of waterbodies.¹ Moreover,

¹ Notably, the applicability of a CSCI score of .79 statewide has recently been called into question by the Southern California Coastal Water Research Project in its study of Central Valley waterways in *A Technical Foundation for Biointegrity and Eutrophication Indicators and Thresholds for Modified Channels, Intermittent Streams, and Streams on the Central Valley Floor*. In this study, SCCWRP has indicated that a use of the CSCI scores in various northern California waterways, including intermittent streams and streams on the valley floor should not be assessed using CSCI thresholds derived from perennial streams (i.e., CSCI score of 0.79).



nowhere in the State Water Board's or EPA's evaluation of the data for each of these 44 waterbodies is there a site specific analysis to determine that the .79 is an appropriate score to determine impairment of the applicable WARM or COLD beneficial use for the nine southern California waterbodies.

Until there is a formal, public process by either the State Water Board or EPA that properly evaluates applicability and appropriateness of using a CSCI score of .79 as a statewide criterion, EPA needs to refrain from using a score of .79 as a determination of impairment to list the 44 waterbodies on the 2024 Integrated Report as well as future Integrated Reports. Rather, EPA should accept the State Water Board's findings and the State Water Board's proper application of its Listing Policy, which requires an association with a pollutant.

With respect to specific comments on the nine southern California waterbodies, Clean Water SoCal joins and supports comments submitted by wastewater and collection system agencies that are directly impacted by EPA's decision to place these waterbodies in Category 5 TMDL required on California's 303(d) list.

For the reasons provided above, Clean Water SoCal requests that EPA remove the nine southern California waterbodies from Category 5 and approve the State Water Board's original identification of such waterbodies in Category 3.

Thank you for considering our comments. If there are any questions or concerns regarding this transmittal, please contact me directly at (760) 415-4332 or sjepsen@cleanwatersocal.org

Sincerely,

Steve Jepsen

Executive Director - Clean Water SoCal