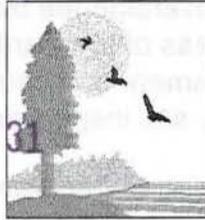


Jayne → L.H.

CALIFORNIA STATE LANDS COMMISSION
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SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD



2013 APR 4 PM 12 31

JENNIFER LUCCHESI, Executive Officer

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SDRWQCB File #s 65040/650429/650431

April 2, 2013

David W. Gibson
Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court
San Diego, CA 92123-4353

Subject: Basin Plan Amendment to Incorporate Total Maximum Daily Loads (TMDLs) for Contaminants in Sediment, Mouths of Paleta, Chollas, and Switzer Creeks, San Diego Bay

Dear Mr. Gibson:

Thank you for your letter dated February 19, 2013, to Jennifer Lucchesi, Executive Officer, California State Lands Commission (CSLC), initiating consultation with the CSLC staff on the subject California Regional Water Quality Control Board, San Diego Region (SDRWQCB) Basin Plan amendment. As proposed, the amendment would incorporate TMDLs for chlordane, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) in sediment at the mouths of Paleta, Chollas, and Switzer Creeks in San Diego Bay.

Upon receipt of the consultation request, CSLC staff conducted a review of the CSLC's records pertaining to the proposed TMDL areas. Staff subsequently determined that the CSLC does not have ownership of lands in the proposed TMDL areas, and as such, would act as a trustee agency for the TMDLs. The CSLC's specific jurisdiction in these particular areas is provided below.

CSLC Jurisdiction in TMDL Area

1. **General Jurisdiction Information.** The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Commencing in 1851 and continuing to the present, the California Legislature has periodically transferred State sovereign lands to local governmental entities for management purposes. The great majority of these legislative grants are held in trust for public trust purposes, including water-related commerce, navigation, and fishing. The usual granting language utilized by the Legislature has the effect of conveying the State's legal title to the described tide and submerged lands, subject to certain terms and conditions and subject to the statutory and Common Law public trusts.

2. **Chollas Creek.** The Chollas Creek TMDL area is located within:

- Lands in San Diego Bay located landward of the U.S. Pierhead line within lands originally granted to the city of San Diego pursuant to Chapter 700, Statutes of 1911 ("Ch. 700"), and subsequently transferred to the San Diego Unified Port District pursuant to Chapter 67, Statutes of 1962 ("Ch. 67"), and as amended; and
- Federal lands deeded to the U.S. Shipping Board from the city of San Diego on September 3, 1919 and subsequently deeded to the U.S. from the U.S. Shipping Board.

3. **Paleta Creek.** The Paleta Creek TMDL area is located within:

- Lands condemned by the United States; and
- Lands originally granted to the city of National City under Chapter 28, Statutes of 1917, and subsequently transferred to the San Diego Unified Port District pursuant to Ch. 67, Stats. 1962, and as amended.

4. **Switzer Creek.** The Switzer Creek TMDL area is located within:

- Lands originally granted to the city of San Diego pursuant to Ch. 700, and subsequently transferred to the San Diego Unified Port District pursuant to Ch. 67, Stats. 1962, and as amended.

TMDL Description

The SDRWQCB's objective in developing the subject TMDLs is to address concentrations of total chlordane, total PAHs, and total PCBs in sediment at the mouths of Paleta, Chollas, and Switzer Creeks that do not meet narrative sediment quality objectives for the protection of benthic communities and human health and that unreasonably impair and threaten beneficial uses of San Diego Bay, including marine habitat, estuarine habitat, wildlife habitat, commercial and sport fishing, and shellfish harvesting (SDRWQCB Draft Technical Report, February 19, 2013; www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/sediment_toxicity.shtml).

Staff notes that in Appendix H of the Draft Technical Report (Environmental Analysis and Checklist), under section H2.4.2, California State Regulatory Agencies (p. H-21), it states:

"CSLC's jurisdiction within San Diego Bay includes the main shipping channel, extending to a line along the pierhead/bulkhead line (U.S Navy and Port of San Diego 2011, Map 3-3). While the three creek mouth areas within San Diego Bay are not within the CSLC's jurisdiction, potential sediment dredging and capping activities associated with this Basin Plan amendment may affect the "sovereign lands." CSLC will be notified and given an opportunity to comment on this project."

CSLC staff concurs with the SDRWQCB's jurisdictional determination, but is concerned that activities resulting from the proposed Project may further spread contaminants onto sovereign lands under CSLC jurisdiction. Legacy contaminants that have been discharged into onshore and offshore waters and that settle into bottom sediments have become an increasing concern for the CSLC, which is entrusted with the management of sovereign lands, on behalf of the State, consistent with the Public Trust. Any future remediation activities on granted lands must be thoroughly analyzed, and the latest technology (e.g., vacuum dredges, etc.) and feasible best management practices must be implemented to assure that the suspension and spread of contaminants are controlled to the maximum extent possible.

Thank you for the opportunity to initiate consultation on the subject TMDLs. Please send additional information related to this issue to the CSLC as the TMDLs become finalized. If you have any questions concerning this letter, please feel free to contact me at (916) 574-1880 or via email at cy.oggins@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Ms. Lisa Honma
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