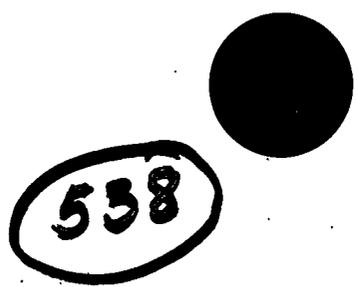




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901



SEP 30 2005

Ms. Celeste Cantú
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Cantú:

This letter is to clarify U.S. Environmental Protection Agency's actions in reviewing California's submission in July 2002 of total maximum daily loads (TMDLs) for trash for the Los Angeles River watershed and its identification of the Los Angeles Estuary as water-quality limited.

Under Sec. 303(d)(1)(A) of the Clean Water Act, States are required to identify waters that are not meeting water quality standards. Under Section 303(d)(1)(C), total maximum daily loads (TMDLs) must be developed for these waters. Under Section 303(d)(2), States must submit to EPA "the waters identified and the loads established."

In July 2002, California submitted to EPA Region 9 TMDLs for impaired segments of the Los Angeles River watershed. Included in this submission was the identification of the Los Angeles River Estuary as an impaired segment. The State documented the impaired condition of the Estuary with photographs, a written inventory of the items of trash observed in the Estuary, and a characterization of the nature and quantity of trash pollution in the Estuary. The State also informed EPA that it would have included the Estuary on the 1998 list of impaired waters if the evidence of impairment had been available at that time (letter dated July 29, 2002).

On August 1, 2002, EPA Region 9 approved the State TMDLs for trash. In our approval package, we indicated that the State's submission also included the identification of the Estuary as impaired, and that we found that to be reasonable and consistent with the requirements of CWA 303(d). We did not consider it necessary to separately approve the identification of the segment because the identification was submitted concurrently with the TMDL addressing the pollutant for which the segment was identified as impaired.

We are aware that it is not the usual practice for States to concurrently submit the identification of an impaired segment and the TMDL addressing that impairment, as the usual practice is for the State to first submit its biennial "303(d) list" of impaired waters required by EPA regulations, and subsequently to submit TMDLs for those waters. However, the Clean Water Act itself, by requiring submission of "the waters identified and the loads established," expressly provides that a State may concurrently submit an

identification of an impaired water and a TMDL established for that water. Although EPA regulations require a State to submit a "303(d) list" of impaired waters every two years, those regulations establish minimum requirements, and do not preclude States from making additional identifications as they deem appropriate and sending them to EPA for review. Therefore, there was no conflict between the State's action with regard to trash in the Los Angeles River Estuary and either the Act or the EPA regulations.

It was also not necessary for EPA or the State to formally add the Estuary to the State's 303(d) list at time it was identified as impaired, as EPA's regulations require that a State list only those impaired waters for which TMDLs have yet to be established. Specifically, 40 CFR 130.7(b) requires that the biennial list include "those water quality-limited segments still requiring TMDLs..." Nothing in EPA's regulations requires a State to include on its biennial 303(d) list a water for which a TMDL for the relevant pollutant has already been established.

We also wish to clarify that we consider the State to have satisfied the requirement in CWA Section 303(d)(1) to establish a priority ranking for the impaired waters it identified. Where, as here, the State jointly submits the identified water and its concomitant TMDL between adopting of successive 303(d) lists, the fact of the TMDL's development alone is an indication of its priority to the State. Additionally, EPA regulations at 40 CFR 130.7(b)(4) require a priority ranking for "segments still requiring TMDLs."

While each water included on the 303(d) list has been identified as impaired, the converse is not necessarily true. Given the temporal incongruity between the continuous identification process and the biennial reporting requirement, it is possible that the set of impaired waters identified by a State may occasionally be broader than the State's most recent 303(d) listing. The list is intended to be a comprehensive inventory of the waters known to be impaired at a particular time. In this case, California's 303(d) list identified all trash-impaired waters discovered as of 1998.

Interpreting EPA's regulations to preclude development of a TMDL for a segment not previously included on a 303(d) list would frustrate the goals of the CWA by unnecessarily delaying the development of TMDLs. In contrast, allowing California to submit the identification and TMDL for the Estuary, as was done for the TMDLs for trash, is consistent with the statutory objective and Congress's intent that a State submit identifications and TMDLs "from time to time," as stated in CWA 303(d)(2). California's inclusion of the Estuary in the watershed TMDL is also consistent with EPA's longstanding view that TMDLs should be developed for entire watersheds, instead of in piecemeal fashion. As stated in EPA's 1991 TMDL guidance, "EPA recommends that States develop TMDLs on a geographical basis (e.g. by watershed) in order to efficiently and effectively management the quality of surface waters."

We hope this letter adequately clarifies EPA's action in approving the Los Angeles River TMDLs, including for the Los Angeles River Estuary, and our rationale for doing so. If you have questions, do not hesitate to contact me at (415) 972-3572, David Smith of my staff (415-972-3416), or Suzette Leith in our Office of Regional Counsel (415-972-3884).

Sincerely yours,



Alexis Strauss
Director
Water Division

30 Sept. 2005