

January 18, 2019

San Francisco Bay Regional Water Quality Control Board
Attention: Richard Looker
1515 Clay Street, Suite 1400
Oakland, CA 94612

Delivered by email: Richard.Looker@waterboards.ca.gov

SUBJECT: Comment Letter – Proposed Revisions to the Clean Water Act Section 303(d) list of impaired water bodies in the San Francisco Bay Basin – Lower Los Gatos Creek Temperature

Dear Mr. Looker:

Thank you for the opportunity to provide comments on the Proposed Revisions to the Clean Water Act Section 303(d) list of impaired water bodies in the San Francisco Bay Basin released for public review on December 21, 2018.

The Santa Clara Valley Water District (District) is a special district with jurisdiction throughout Santa Clara County. The District is the county's primary water resource agency and acts as a steward for its streams and creeks. The District is the groundwater management agency for Santa Clara County and actively manages our groundwater basins, replenishing them with local and imported water through our percolation ponds and stream beds. The Water District comments relate to the listing of lower Los Gatos Creek as impaired by temperature.

The District has the following comments and clarifications to offer:

- **Flawed Steelhead Migration and Habitat Analysis**

The Line of Evidence in the listing fact sheet indicates that data collected hourly from 2000 through 2012 at monitoring stations along lower Los Gatos Creek by the Santa Clara Valley Water District was used to develop the listing. The fact sheet indicates that "data from migration period - March 15 through June 15 and September 1 through October 31 were assessed." Los Gatos Creek is not considered critical steelhead habitat by the National Marine Fisheries Service. In addition, "California winter steelhead enter coastal streams after rains increase flows... Fish may move upstream any time during the period December-March, although the peaks for such activity are typically in January and February." (Moyle 2002). The migration period September 1 through October 31 is typical for chinook salmon not steelhead in local systems. Outmigration of juvenile steelhead may occur between February and late May. The analysis therefore does not accurately reflect timing of steelhead migration in our area, is based on erroneous criteria and draws flawed conclusions.

- **Inappropriate Temperature Thresholds**

The threshold of 17°C from Sullivan is a comparison to maximum growth which does not provide for evaluation of steelhead survival and habitat usage. Habitat usage would be a more appropriate measure for our region rather than growth rate. Carter (2008) showed a



range of steelhead habitat usage up to 24°C which is relevant to this region. More recent studies show steelhead possess a greater ability to withstand high temperatures than summarized in Carter, particularly if acclimated. Sloat and Osterback (2013) showed steelhead were able to persist in streams >30°C through summer months. Like the steelhead streams studied in Sloat and Osterback, Los Gatos Creek is in the southern portion of the steelhead range where steelhead are commonly exposed to elevated water temperature. Temperature thresholds used in the listing should be peer-reviewed per the listing policy.

- **Current Programs Exist**

Based on the comments above, listing for temperature is not appropriate. However, if the listing proceeds, it should not be in the "TMDL required" category. Los Gatos Creek is in the Guadalupe River Watershed, which already has ongoing action to improve aquatic spawning and rearing habitat and fish passage for migration to and from the watersheds. The Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) Settlement Agreement (Settlement Agreement) was initiated in 2003, by the District and nine other parties including: the Guadalupe-Coyote Resource Conservation District (GCRCD) - the water rights complainants, and the regulatory agencies – California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) to address the 1996 water rights complaint filed by the GCRCD with the State Water Resources Control Board (SWRCB). The FAHCE Settlement Agreement includes actions regarding temperature issues as they relate to fisheries. Given this ongoing effort, the listing should not be categorized as "TMDL required" but instead should be listed in Category 4b: TMDL is not needed because other pollution control requirements are expected to result in the attainment of an applicable water quality standard in a reasonable period of time.

The District supports and incorporates by reference comments made by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) regarding the evaluation guidelines used as the regulatory basis for listing.

Given the flawed steelhead migration analysis, inappropriate temperature thresholds, the ongoing FAHCE Settlement actions, and questionable regulatory basis for the evaluation guidelines detailed in comments by SCVURPPP, the Santa Clara Valley Water District urges the San Francisco Bay Regional Water Quality Control Board to delay consideration of the proposed listing of Los Gatos Creek for temperature. Please feel free to contact Kirsten Struve at (408) 630-3138, should you have any questions.

Sincerely,



Melanie Richardson
Chief Operating Officer, Watersheds

Cc: N. Camacho, N. Hawk, R. Callender, District Counsel, V. Gin, K. Arends