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State Water Resources Control Board

Division of Water Quality

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Gray Davis
Governor

March 28, 2002

Members and Alternates:

MEETING OF THE AB 982 PUBLIC ADVISORY GROUP

The AB 982 Public Advisory Group (PAG) will meet on April 8, 2002 at the Radisson Hotel Sacramento, 500 Leisure Lane, in Suite 302, in Sacramento, California.

Please find enclosed the meeting agenda and the documents to support many of the agenda items. If you are planning to have handouts, please bring at least 40 copies for the PAG members and audience.

If you have any questions regarding the PAG or the meeting, please call me at (916) 341-5560. You may also call the liaison to the PAG, Laura Sharpe at (916) 341-5596.

Sincerely,

Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
Division of Water Quality

Enclosures

cc: Interested Parties

AB 982 Public Advisory Group

Monday, April 8th 2002
9 a.m. to 4 p.m.

Radisson Hotel
500 Leisure Lane
Sacramento, California

A G E N D A

1. *Convene Meeting – Co-Chairs* 9 a.m.—9:05 a.m.

2. *Introduction* 9:05 a.m.—9:10 a.m.
 - Steve Ekstrom
 - Description of the Meeting: Continue development of concepts for the SWRCB’s Listing and De-listing Policy and the upcoming Legislative Report.

3. *February 15, 2002 Meeting Summary* 9:10 a.m.—9:15 a.m.

Action Item: Consider approval of Meeting Summary (Attached)

4. *Update on the 2002 Section 303(d) List* 9:15 a.m.—10:00 a.m.
 - Craig J. Wilson
 - Brief description of draft Staff Report describing revisions to the 303(d) list.
 - Dialogue

5. *Concepts for the Listing/De-listing Policy* 10:00 a.m.—12:00 p.m.
 - Craig J. Wilson
 - Presentation of issues and comments (attached) received at several meetings with PAG members, the Storm Water Quality Task Force, and a California Farm Bureau water quality group.
 - Dialogue/discussion on the issues and comments.

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| 6. <i>Lunch</i> | 12:00 p.m.—1:15 p.m. |
| 7. <i>Concepts for the Listing/De-listing Policy (Continued)</i> <ul style="list-style-type: none">• Dialogue/discussion on the issues and comments | 1:15 p.m.—2:30 p.m. |
| 8. <i>Break</i> | 2:30p.m. —2:45 p.m. |
| 9. <i>Content of the Legislative Report</i> <ul style="list-style-type: none">• Laura Sharpe, Craig J. Wilson• Dialogue/ Discussion on 2001 Legislative Report along with concepts and ideas for the content of the upcoming 2002 Legislative Report. | 2:45 p.m.—3:45 p.m. |
| 10. <i>Wrap-up and Next Steps</i> | 3:45 p.m.—3:55 p.m. |
| 11. <i>Public Comment</i> <ul style="list-style-type: none">• Any person wishing to address the PAG may do so during this item. | 3:55p.m. —4:00 p.m. |
| 12. <i>Adjourn</i> | 4:00 p.m. |

Agenda Item 3

February 15, 2002 Meeting Summary

AB 982 Public Advisory Group

California State Chamber of Commerce
1215 K Street
Sacramento, California

Meeting Summary

Friday, February 15, 2002

Convene Meeting: Co-Chairs Craig Johns and Linda Sheehan (substituting for David Beckman) opened the meeting at 10:35 a.m. and declared a quorum.

Introductions: Steve Ekstrom, PAG facilitator, asked members to introduce themselves. He also noted that the primary purpose of this meeting was for PAG to comment on the 2002 list, offer advice on listing/de-listing policy development, and comment on the update of the TMDL action plan.

Summary of the October 10, 2001 meeting: The summary was accepted as presented.

The Clean Water Act, Section 303(d) 2002 list: Craig J. Wilson gave a brief presentation on the 2002 list, noting that staff plan to release their report in early April, 2002. There will be hearings on the report in mid to late May in northern and southern California. Finally, there will be a workshop in September 2002, as well as a Water Board meeting on this topic in the same month. The 303(d) list will be submitted to U.S. EPA in October 2002.

Of particular interest to members were the 14 items staffs propose to use to assess water bodies, and the concept of a watch list.

Comments and questions from the PAG included:

- Why is pollutant source (item 13) used when it's not a criterion for listing?
- Showing the pollutant source could help with prioritizing.
- The state shouldn't prioritize, but the regional boards should.
- There's a difference between how to list and how to prioritize. Listing should be done first, then bring in other information in order to prioritize.
- How will you memorialize the assessment of these criteria? Fact sheet? Spreadsheet?
- Are the 14 items weighted?
- Perhaps staff could categorize the 14 items into a shorter list.
- The listing process is supposed to be precautionary – fewer assessment items should be used.
- Look to the language of the CWA for help.
- Items 1, 2 and 3 are the main focus; the others could perhaps be folded into these three.

- In item 14, the word “alternative” is problematic.
- It’s appreciated that this will be a transparent process to the public.
- A “watch list” could turn into a loophole. How can it be used with being abused?
- Perhaps the watch list could be used as a placeholder list for items where compromise may be needed.
- If an item is on a watch list, it warrants monitoring.
- The environmental caucus supports the plan to use the 1998 list in its entirety.
- A possible watch list compromise: create one; state the information that’s needed to pull a water body off the watch list; if no information is forthcoming for two years, put it on the 303(d) list.
- We should make sure that we are sticking to the Federal regulations closely in the 303(d) process.
- If alternative enforceable programs that have kept water bodies off the 303(d) list in the past haven’t worked, the water bodies should be listed and a TMDL should be completed.
- What TMDL priority should be given to waters that already have programs in place to handle pollutants?
- The key question to ask during the listing process: Is the water body meeting or in violation of the standards?
- The State Board should include as much information as possible for the listing of a water body.
- A lot of best professional judgements (BPJ) will be made, can’t the State Board give new ideas to how the process could get away from having to rely on BPJ?
- Tier the criteria for listing so the process sides on the side of protection.
- Either the water body is impaired or is it not? Too much information given on a water body in question could also be bad for the State Board decision making process.
- The State Board should “standardize” the Regional Board’s listing processes.
- How will the State Board show exceedances of narrative water quality objectives for biological factors?
- What are the criteria going to be to place a water body on a Watch List? How will funding be tied the monitoring that would be needed for watch-listed water bodies?
- Documenting the decision making process is an important step forward for the State Board, as is the transparency of the process.

Members of the public were invited to comment.

Consensus point: The PAG agrees that the listing process should be transparent.

Update on Implementation of the TMDL Initiative and Action Plan: Tom Mumley reviewed the implementation of the TMDL Initiative and Action Plan.

There was a concern about last year’s report to the Legislature and the fact that PAG hasn’t seen it, nor do they know how or whether their comments were incorporated. Following discussion, Tom Mumley stated he would distribute the action plan to PAG

members, indicating how the Water Board responded to PAG's comments. Tom Howard will look into distributing the entire report to PAG.

A question arose about how much money is available for TMDLs in FY 2001-02. A total of \$11.4 million (combined federal and state) is available for TMDL development and \$2.97 million for TMDL implementation.

Members of the public were invited to comment.

Concepts for the Listing/De-listing Policy: Craig asked the PAG for input to aid the development of a listing/de-listing policy, stating that the goal is to have the policy completed by January, 2003. He then presented four of six topics for discussion, including comments he'd received from interviews held with the environment and regulated caucuses and other groups. At the end of each topic presentation, the PAG held a discussion and looked for consensus points.

Policy Scope

No consensus items were reached on this item.

Listing Concepts

***Consensus point:** The public participation process should be transparent; in addition it should be a) specific and b) well advertised with active outreach to diverse geographic areas and those with environmental justice interests.*

***Consensus point:** To the greatest extent possible, there should be a consistent, standardized set of tools and principles used across Regions to evaluate data. Additionally, site-specific information should be taken into consideration.*

De-listing Concepts:

***Consensus point:** Assuming a water body is listed for the right reasons, it should not be de-listed before water quality standards are achieved.*

Weight of Evidence

The following points were made:

- This is the core of the list/de-list policy
- Use the highest level of certainty we can afford.

Discussion on "weight of evidence" will be continued at the next meeting.

Wrap-up and Next Steps: It was felt that another meeting was needed to complete the input on list/de-list policy development, and possibly address other items. It was agreed that the PAG will meet all day on April 8, 2002, in Sacramento.

An agenda will be developed with the co-chairs shortly and distributed to PAG members.

Public Comment: Members of the public were invited to address the PAG.

Adjournment: The meeting was adjourned by the Co-Chairs at 4:30 p.m.

Agenda Item 5

Concepts for the Listing/De-listing Policy

Issues and Discussion Regarding Listing/De-listing Policy

February 15, 2002
PAG Meeting

Where did the comments come from?

- Environmental Caucus (4 meetings)
- Regulated Caucuses (2 meetings)
- Storm Water Quality Task Force
- California Water Quality Coalition
- Meetings held December 2001-February 2002

More on the Environmental and Regulated Community Comments

- The comments presented here are summarized from the discussions
- The topics discussed in the meetings covered a variety of topics
- A summarized list of all comments grouped by major topic is available
- In the comment sections “E” signifies an Environmental Community comment and “R” a Regulated Community comment

The SWRCB Seeks Advice on These Major Issues

- Scope of the Policy
- Listing Concepts
- De-listing Concepts
- Weight of Evidence
- Watch List
- Sources of Pollutants
- Other Issues Identified by the PAG

Policy Scope

- *ISSUE*: What factors should be addressed by the Listing/De-listing Policy?
- *ISSUE*: Incorporate guidance on:
 - » listing/de-listing factors?
 - » beneficial use designation/de-designation?
 - » water quality standards revision or development?

Comments on Scope

- R: Policy should include provisions for development of list and revision of standards and beneficial uses
- R/E: Develop list of Water Quality Limited Segments still requiring TMDLs
- E: Divorce listing decision from management decisions (development of the TMDLs)
- E: List should be a scientifically-based decision on impairment

PAG Dialogue

- *ISSUE*: Scope of the Policy
 - » Dialogue
 - » Consensus
 - » Future Direction

Listing Concepts

- *ISSUE*: How specific should the Policy be?
- *ISSUE*: Should the SWRCB specify public participation process, types of data to solicit, and how data will be evaluated?

Comments on Listing (1)

- E: Overarching policy principle should be to protect the environment and human health
- E: Base on Best Professional Judgement (BPJ), each circumstance is so different
- E: Should be precautionary

Comments on Listing (2)

- E: Should not be too specific
- E: Burden of proof on regulated community to prove why WQS are not met
- E: List even if the pollutant is not identified
- E: Do not consider the TMDL in Listing Process

Comments on Listing (3)

- R: Establish core principles in the Policy
- R: Should be predictable
- R: Specify BPJ
- R: Should be objective, specific, and rigorous
- R/E: Data needs to be scientifically defensible

Comments on Listing (4)

- R: Process needs more integrity
- R: Process should be transparent
- R: Don't reinvent process, use other State approaches
- E: Establish open process, previous list process in CA poor
- E: Avoid poor communication between public, RB, and SB

PAG Dialogue

- *ISSUE*: Listing
 - » Dialogue
 - » Consensus
 - » Future Direction

De-listing Concepts

- *ISSUE*: Should de-listing be allowed?
- *ISSUE*: What factors should trigger de-listing?
- *ISSUE*: After TMDL completed, should water body be removed from the list?

De-listing Comments

- E: It is illegal to de-list
- E: Keep waters on list until WQS met or BU restored
- R: Need to review the entire existing list
- R: Specify how to get waters off the list
- R: Remove from list if TMDL completed
- R: Remove if the data are bad

PAG Dialogue

- *ISSUE*: De-listing
 - » Dialogue
 - » Consensus
 - » Future Direction

Weight of Evidence

- Budget Act requires use of Weight of Evidence (WOE) approach
- *ISSUE*: What are the components of the approach?
- *ISSUE*: How specific should the WOE be?

Comments on WOE (1)

- Use multiple lines of evidence
 - » R/E: Biology, toxicity, and chemistry
 - » R: BU assessment, bioassessment, toxicity, and chemical WQS attainment
- R: Establish rigorous QA/QC requirements that all data must meet
- R: Use only credible data
- R: Use a credible amount of data

Weight of Evidence (2)

- R: Any numeric value must be adopted as numeric WQO, otherwise do not use
- R: Adopt translator and use it consistently
- E: Single line of evidence should be used if WQS not met
- E: Some communities may not be able to list or de-list if they can't afford monitoring (Environmental Justice issues)
- E: Use sliding scale of quality for all data and information

Comments on WOE (3)

- E: Use numeric values to interpret narrative standards
- E: Allow all data but require minimum QA procedures
- E: Use all data, not some predetermined type or amount
- E: Don't worry about listing clean waters, most water bodies are impaired
- E: Use all information: pictures and opinions show obvious pollution
- E: Use qualitative data to support quantitative lines of evidence

Comments on WOE (4)

- Confidence in the decision should be:
 - » E: Low when listing
 - » E: High when de-listing
 - » R: High when listing
 - » R/E: the same when listing or de-listing

Comment on WOE (5)

- R: Use FL approaches for developing the list (e.g., binomial model, 2-part list, etc.)
- E: FL approach sets the bar too high
- E: Consistency not needed if circumstances warrant
- R: Consistency needed throughout State

PAG Dialogue

- *ISSUE*: Weight of Evidence
 - » Dialogue
 - » Consensus
 - » Future Direction

Watch List

- *ISSUE*: Should the SWRCB create a “Watch List”(WL)?
- *ISSUE*: What waters should be placed on a watch list?
- *ISSUE*: What should happen to waters placed on a watch list?

Comments on WL (1)

- E: WL is a mechanism to avoid listing, lots of potential for abuse
- R: WL is a mechanism to focus on getting the information to list
- E: When in doubt, list
- R: When in doubt, get more information
- E: Watch-listed waters should focus on watershed management

Comments on WL (2)

- E: Watch-listed waters should be posted as areas to avoid
- R: Watch List should not be part of 303(d) list (no regulatory force)
- R: FL planning list is appropriate
- E: FL planning list is not appropriate
- R: NAS preliminary list is supportable
- E: NAS preliminary list is not supportable
- E: Watch list accommodates the regulated community

PAG Dialogue

- *ISSUE*: Watch List
 - » Dialogue
 - » Consensus
 - » Future Direction

Natural Sources of Pollutants

- *ISSUE*: Should waters be listed if the source of pollutants is natural?
- *ISSUE*: Should TMDLs be required for natural sources of pollutants?

Comments on Natural Sources

- R: Don't list, TMDL is not necessary
- R: Don't list, we can't do anything about WQS exceedance caused by natural conditions
- E: List, TMDL is necessary to prevent future degradation
- E: List, illegal to avoid listing if WQS not met.
- E: List, make low priority, change WQS or BU to remedy issue

PAG Dialogue

- *ISSUE*: Natural Sources of Pollutants
 - » Dialogue
 - » Consensus
 - » Future Direction

PAG Input in the Future

- Do you want to have more detailed input into the Policy?
- Options
 - » schedule more meetings
 - » convene subcommittees
 - » other options