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SANTA ROSA

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August 24, 2004

Chairman Arthur Baggett, Jr.  
Members of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Re: Comments on the July 22, 2004 Draft "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List"**

Dear Chairman Baggett and Members of the Board:

The City of Santa Rosa ("City") appreciates the opportunity to comment on the State Water Resources Control Board's (State Board) July 22, 2004 Draft "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List" (Draft Listing Policy).

The City continues to support the State Board's efforts to establish a statewide approach to assessing California's Surface Waters. Further, we appreciate the extraordinary efforts your staff has made to work with all interested parties in developing, for the most part, a very objective and scientifically-sound Listing Policy. However, the City has a few concerns about the current draft which need to be addressed to make the Policy reasonable, fair and workable.

**Review of Historical Listings.** (§4, California Delisting Factors, p. A-17)

Anyone familiar with the State's historical practice of listing waters is also aware that the process has been inconsistent and, in many cases, has lacked scientific rigor. Indeed, we understand that some historical listing decisions have been made with little or no scientifically defensible data that could satisfy the statistical and other criteria proposed in the July Draft Listing Policy.

The City supports the July Draft Listing Policy's recognition that a process must be available for interested parties to seek review of these so-called historical listings. However, while it is important that historical listings be subject to scrutiny using the Draft Listing Policy, the fourth paragraph added to Section 4, California Delisting Factors at page A-17 seems to place a substantial burden on a delisting proponent. For instance, what must a delisting proponent do in the case where there is "no data" in the files that justify the original listing?

According to the Functional Equivalent Document (FED) discussion of this issue (FED at p. 216-218), State Board staff recommends Alternative 3, which provides, "Reevaluate existing listings on the section 303(d) list as resources allow *with no requirement for new data and information*. (FED at p. 217, emphasis added.) The City supports Alternative 3 as presented in the FED.

**Situation-Specific "Weight of Evidence"**. (§3.1.11 at p. A-10 - A11; §4.11 at p. A-19 - A-20)

In previous drafts of the Listing Policy, this section was referred to as "alternative data evaluation." The purpose of the section is to allow listing when other listing factors (or delisting when other delisting factors) did not result in listing a water segment, but information suggests non-attainment of standards. The December 2003 draft did not contain a section for delisting based on this alternative data evaluation, but the July 2004 Draft Final Policy does. As rewritten, this section is very subjective, especially without a definition of weight of evidence and how it is used, and what "substantial basis in fact" means and would require. These terms should be carefully defined. Otherwise, this section may become a loophole for those wanting to list (or delist) a water segment when more objective criteria militates against listing.

With regard to using "situation-specific weight of evidence" for purposes of determining whether *delisting* a water segment is appropriate, Section 4.11 presents a nearly insurmountable burden. The concern is that it is harder to prove a "positive" rather than a "negative." In other words, a water can be listed using the situation specific weight of evidence for listing, even when multiple lines of evidence show that the water is not impaired (*i.e.* "When all other Listing Factors do not result in listings of a water segment."). It is easy to say that one line of evidence "may" point to impairment, and therefore the water should be listed in this instance. However, the corollary - - "when all other delisting factors do not result in the delisting of a water segment..." - - is much harder to prove, because one must show that the other data is faulty rather than the water body "may" be clean. As stated above, this listing and delisting factor is very ambiguous and should be removed or further refined to remove all ambiguity.

**Use of Guidelines vs. Legally-Adopted WQOs for Listing Decisions**. (§§3.1.3, 3.1.4, 3.1.6, 3.1.7, 3.1.8, and 3.1.10 at pp. A-6 - A-10)

The July Draft Listing Policy continues to allow use of guidelines instead of adopted WQOs as a basis for listing a water segment. Such listings can fall under health advisories, bioaccumulation in aquatic life tissue, water/sediment toxicity, nuisance, adverse biological response, degradation of biological communities, trends in water quality, and situation-specific weight-of-evidence. The problem with this approach is that guidelines are not legally adopted water quality objectives and therefore have not undergone the public review and comment and determination if they are appropriate based on Water Code §13241 and 13242 factors which balance the proposed standards

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with other factors such as economics and the need for recycled water. In addition, guidelines can and have been used in lieu of legally adopted standards.

The City recognizes that the July Draft Listing Policy seeks to underscore that evaluation guidelines selected "are not water quality objectives and shall only be used for the purpose of developing the section 303(d) list." (§6.1.3 at p. A-30.) However, the City also notes that previous drafts of the Listing Policy required that narrative water quality objectives be evaluated using numeric evaluation guidelines. The July 2004 Draft does not require the evaluation guidelines to be numeric in nature anymore. In addition, the July 2004 Draft allows narrative guidelines to interpret narrative objectives, leading to a very subjective listing mechanism. For this reason, the City recommends that the Board restore the language from previous drafts requiring the use of numeric evaluation guidelines.

Thank you for this opportunity to provide these comments. Should you wish any further information about either of these issues, please contact David Smith at (925) 284-6490.

Sincerely yours,



GREG SCOLES  
Deputy City Manager

GDS:rca

c: Members, Santa Rosa City Council  
Members, Santa Rosa Board of Public Utilities  
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