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SOUTHERN CALIFORNIA ALLIANCE OF
PUBLICLY OWNED TREATMENT WORKS

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March 22, 2002

Celeste Cantu
Executive Officer
State Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95812 0100

DWQ Received
Division Chief's Office

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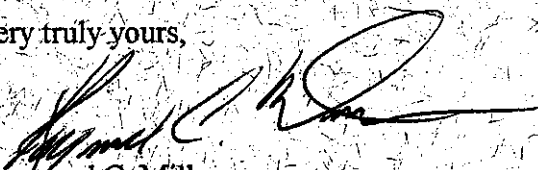
**Re: Southern California Alliance of Publicly Owned
Treatment Works – Comments on 303d
Listing Methodology and Protocol**

Dear Ms. Cantu:

Forwarded herewith are comments provided by the member agencies of the Southern California Alliance of Publicly Owned Treatment Works (SCAP). SCAP represents some 56 cities and agencies that provide water and wastewater services to over sixteen million residents throughout southern California. We appreciate the opportunity to provide input to the State Water Resources Control Board on this process.

If you have any questions, please contact SCAP's Regulatory Consultant, Mary Jane Forster Foley at (949) 493-8466.

Very truly yours,



Raymond C. Miller
Executive Director

cc: Art Baggett, Chair
Pete Silva, Board Member
Richard Katz, Board Member
Craig Wilson, Sr. Scientist
Tom Howard, Deputy Director
Laura Sharpe, Environmental Scientist

SCAP

303(d) List of Impaired Waterbodies Listing Methodology and Protocol

On February 21, 2002, the City of Los Angeles and members of the Southern California Alliance of POTWs were fortunate to have Craig J. Wilson, Chief of the Monitoring and TMDL Unit of the State Water Resources Control Board, in attendance for a 303(d) Listing Policy Workshop. We anticipate that Mr. Wilson will use the comments made at the workshop to develop a statewide 303(d) listing policy. Contained herein are combined comments made by some of the workshop attendees, with additional comments from the City of Los Angeles, and the recent U.S. EPA Listening Session on 303(d) listing and TMDL issues. In addition, our recommendations close with a summary of our position with respect to the AB982 Environmental Caucus recommendations. Because the comments came from different sources, it was difficult to prioritize and categorize the issues (some of which overlap), and make the text "flow," but we hope that we convey our intent to address impairments in our waterbodies in the most effective way possible. We look forward to working with the SWRCB and participating in the development of the 303(d) listing procedures.

General 303(d) Listing Policy Comments

The Listing Policy should address both process issues and technical issues related to listing (e.g., criteria for listing, minimum data requirements). Only by doing this will we achieve a transparent, defensible listing process with an appropriate balance between consistency among Regional Boards and flexibility for site-specific conditions. The State needs to develop a standard that is uniformly applied throughout the state for placing stream segments on 303(d) lists, thereby minimizing the potential for litigation that would result from our Regional Boards' discretionary and "professional judgment-based" decisions.

A meeting attendee suggested that there should be a systematic procedure for making listing/de-listing decisions in order to minimize arbitrary or discretionary judgments in the listing process. A statewide Technical Advisory Committee (TAC), which can help develop the procedure with good science, is recommended. The Florida Department of Environmental Protection formed such a TAC, which built the basic methodology for its Impaired Waters Rule.

Some general characteristics of an acceptable listing policy are listed here:

- The Policy should be transparent and predictable, and be reproducible; environmental groups and the regulated community should be able to assess the same data and arrive at the same listing/de-listing decisions reached by the Regional Water Quality Control Boards (RWQCB) or the State Water Resources Control Board (SWRCB).

- The process needs more integrity (lacks integrity if comments are ignored or dismissed). More time needs to be built into the system to allow for substantive comments and responses.
- The scope of the policy should include:
 - Guidance for listing
 - Guidance for de-listing
 - Analysis of beneficial use designation/de-designation (not necessarily a Use Attainability Analysis [UAA], but perhaps an analysis that would flag obviously incorrect beneficial use designations, trigger a UAA and allow the waterbody in question to be placed on a watch list until the UAA is completed)
 - Examination and recommendation of water quality standards for appropriateness and whether or not the standards were legally promulgated
- Core principles should be established in the Policy, e.g., decision-making procedures, assimilative studies, assessment of beneficial uses, review of criteria for each beneficial use, and site specificity.
- There should be guidance on staffing at the State and Regional level, to address staffing deficiencies, which have caused difficulties and delays in reviewing data and disseminating reports and information in a timely manner.
- List approval should be local (i.e., by RWQCBs), with final approval of a statewide list by the SWRCB. However, if the SWRCB wants to make changes, it should be allowed to do so without remanding back to the Regional Board.
- At the U.S. EPA Listening Session on 303(d) Listing, City of Los Angeles staff commented that the 305(b) assessment, from which the 303(d) list is derived, is not just a list. The 305(b) assessment includes items such as environmental impact assessments, socio-economic benefit assessments, and a description of the nature and extent of nonpoint sources of pollutants, with recommendations of control programs. The State of California has yet to fully comply with these requirements. This assessment should receive a higher priority, since ideally it sets the stage for the 303(d) list and ultimately for the TMDL program.

Watch Lists

- Watch lists would be used for cases where there are insufficient or inadequate data indicating possible impairment; more intensive data gathering would be warranted before placing the waterbody on the 303(d) list. States of Texas and Florida both support "watch lists," a.k.a. "planning lists" or "preliminary lists." The AB982 PAG is considering using Florida's listing procedure as guidance for proposing California's listing procedure. Furthermore, several Regional Boards (1,2, and 6) are using watch lists.

- Creation of a watch list for waterbodies with weak data support allows the state to focus resources on waterbodies with impairments supported by good data. Moving questionable listings to a watch list means restoration efforts will not be challenged as much, resulting in less resources going towards defending state actions; therefore, more resources will be available to IMPROVE WATER QUALITY.
- Watch lists are an excellent solution to the Best Professional Judgment quandary. BPJ is inappropriate as a sole listing criteria, but very appropriate for a watch list. The Environmental Caucus' concern that a watch list is a formula for inaction can be met with the inclusion of sunset clause (no action or no additional data within the listing cycle triggers a transfer to the action list). More details on the use of watch lists should be described in the Policy, such as how to get on or off the watch list, duration on the watch list, etc.
 - The National Research Council's report, "Assessing the TMDL Approach to Water Quality Management," also advocates the two-list system. The use of a "preliminary list" (equivalent to a watch list) and an "action list" (the 303[d] list) would reduce the uncertainty that often accompanies listing/de-listing decisions and provide flexibility to the TMDL program. Using a two-list process will give us an opportunity to perform a full assessment on water quality and waterbody health. In addition, if there are any concerns about beneficial uses and/or water quality objectives, various options such as use attainability analysis and site-specific objectives can be discussed through the two-list process.
 - The Environmental Caucus believes that watch lists (or "planning lists" [Florida] or "preliminary lists" [National Research Council]) are inappropriate and not supportable. We believe that the Caucus' concerns can be addressed with more details; the watch list concept cannot be simply dismissed as inappropriate if the NRC recommends them and Florida is using them. The Regulated Caucus believes that these lists are appropriate and supportable. Watch lists allow us to focus on true impairments of highest priority, rather than dilute the effort and resources on questionable impairments so that positive results are not measurable. The State Water Resources Control Board should not reinvent the process; rather, use other state approaches. There are fundamental listing principles beneficial to all states.

In the meeting, there seemed to be a concern about the number of waterbodies (472), which need 800 TMDLs. So far we have done 10. We don't know how many of the 472 waterbodies should go on a watch list. In California's Listing Policy, management of this huge number of waterbodies should be addressed, so that both environmental and regulated group's concerns are considered. The State's Policy should lead to a more focused, scientifically defensible list, which will result in a more doable task.

Use of Improperly Promulgated Criteria

Although some improperly promulgated criteria may be scientifically valid, they are underground regulations if they are used in the listing process. Underground regulations are undesirable because they invite any criteria to be used under the guise of best

professional judgment. Instead of listing on the 303(d) list, such criteria, if supported by good science, may be used to place the waterbody on a watch list, for further data gathering and comparison with properly promulgated water quality standards. Or, alternatively, promulgate the criteria using proper administrative procedures.

An example of improperly promulgated criteria is *Sacramento Co. v. SWRCB et al.*, 1998 — this case is under appeal, but the principle described in the case (not using postings and advisories for 303(d) listing purposes unless properly promulgated as water quality standards) is still valid. Instead of using postings and advisories, look at the data that caused the postings, and verify that the data is still valid. Compare the data with state-promulgated water quality standards to make listing decisions. Allowing usage of non-promulgated or improperly promulgated standards opens the door for inappropriate or inconsistent application of these standards for impairment decisions and represents underground regulations.

Examination of Water Quality Criteria

- The State needs to require a periodic review of the water quality standards and criteria used for listing and de-listing.
- This is a significant concern in the Los Angeles Region, where a number of water quality standards issues have been raised, and where there is a consent decree in place driving the schedule for TMDLs (and constraining both the use of resources and the time available for addressing standards issues “up front”). A number of us are very concerned that standards issues get short shrift in this environment. The SWRCB needs (either explicitly through the Listing Policy or through some other explicit mechanism) to let stakeholders know that legitimate standards issues will be addressed in a timely manner, and what procedures or considerations will be used to address timeliness. If funding for Basin Planning activities is the main constraint, many of us will be willing to step up to the plate to assist in providing resources
- Trophic Status – There should be criteria for eutrophic, mesotrophic and oligotrophic waterbodies. More discussion and research is required to define which waterbodies go under which category. These trophic categories were developed for coastal waters and closed waterbodies such as lakes and reservoirs. Also, they are used to mean different things; some use them simply to indicate the relative level of nutrient concentrations, others use them (particularly the “eutrophic” adjective) as shorthand for the effects of severe nutrient enrichment (e.g., low DO, high organic detritus levels, fish kills, pH exceedances, etc.). These terms should not be used without explanation. Too often a water body gets a “eutrophic” listing simply because it receives anthropogenic sources of nitrogen and phosphorus, with no demonstration of actual impairment of beneficial uses. This triggers a TMDL for nutrients, with no verification of the implied impairment and no verification that N and P are responsible. Malibu Creek is a good example of this.

Standards For Data Quality and Quantity to Make Impairment Decisions

Standards should include but not be limited to:

- The minimum number of samples required for an impairment decision — in the past some Regional Boards have placed stream segments on the 303(d) list based on one sample. Determining the health of a stream solely based on one grab sample (not composite) does not appear to be good science.
- Number of allowable exceedances per number of samples
- Sediment and tissue samples—scientifically and statistically, what is an acceptable number of samples for decision-making (also, sediment and tissue standards must be properly promulgated criteria)?
- Calibration of modeled data with monitored data—it is not acceptable to extrapolate models from one waterbody to another without verification with empirical data.
- Proper selection of toxicity organisms
- Seasonality and temporal considerations
- Spatial and hydrologic variations
- QA/QC data should have rigorous requirements

Pollutant Identification

- In general, listings should not be based on symptoms, e.g., algae. Quantity of symptoms is usually subjective, especially the amount which defines impairment. Furthermore, any impairment might be caused by pollution, not pollutants. Waterbodies should not be listed on the 303(d) list for pollution; such waterbodies should be separately categorized in the 305(b) assessment or in a watch list.
- Listings should not be done until the pollutant has been identified. For example, if abundant algae exist with low nutrient content, the major cause of growth might be sunlight (due to the destruction of riparian vegetation along stream banks), lack of scour flows, and temperature. A recent study of Malibu Creek found that nutrient removal would have no impact on algal impairments; although low concentrations of nutrients are present naturally, algal growths causing subjective impairment decisions are highest in areas lacking shade. Substantial time and effort has been wasted because the algae listing presumed a nutrient linkage.

Nutrient listings are often based on the *presumption* that nutrients are the cause of an aquatic life impairment (e.g., low DO) or a recreational impairment (e.g., nuisance algae). The 303(d) list just within the Malibu Creek watershed includes listings for nutrients, algae, and eutrophication, all of which have more to do with the destruction of the riparian canopy and the resultant loss of shade than rising nutrient levels. Several studies, including a recent study by the LARWQCB, have found no unequivocal linkage between the listed impairments and nutrient inputs, but clear correlations with available light and more riparian cover.

De-listing

Since waterbodies in past and current 303(d) listings were listed without a standard listing or de-listing procedure, the entire existing list needs to be reviewed for correctness after the de-listing procedure has been approved and promulgated. There are widely varying policies on de-listing throughout the state; the low number of de-listings do not reflect the actual progress of the TMDL program. Furthermore, de-listing is politically sensitive; we need to move it away from the political process by establishing standardized statewide criteria and procedures.

We suggest the following elements for a de-listing procedure:

- Both the Regulated and Environmental Caucuses agree that de-listing should occur when new data shows attainment of criteria.
- The Regulated Caucus adds that de-listings should occur when there are incorrect listings, or incorrect beneficial use designation.
- De-listing should occur if there is insufficient (e.g., fish tissue and sediment data) or bad data – instead, place the waterbody on a watch list for public information and gather more data to verify the impairment. At the U.S. EPA Listening Session, an attendee mentioned that many streams are put on various lists using insufficient data, but then are more difficult to de-list due to stringent requirements for de-listing. Other attendees agreed that many waterbodies shouldn't be on the list at all, especially those placed on the 303(d) list to get 319 funding.
- Keep waters on the list until Water Quality Standard or Beneficial Use are restored; however, on a case-by-case basis, it may be acceptable to de-list or place on a watch list when control measures are already in place, or when a TMDL is developed. Region 4 Board's staff has already used this concept for de-listing. This would be acceptable if aquatic life and human health issues are addressed properly.
- De-listing should also occur when a Water Effects Ratio is developed that indicates that the waterbody segment is not impaired for a given pollutant.
- De-list or do not list when the waterbody fully supports the beneficial use, but is threatened (see below under threatened waterbodies).

Decision-Making Procedures

- We need detailed definitions and procedures for:
 - Best Professional Judgment
 - Weight of Evidence Approach
 - Adaptive Management or Iterative Process
 - Flexibility

• Best Professional Judgment

The PAG Environmental Caucus supports Best Professional Judgment, but not for the same reasons as the regulated community. For example:

- Listing policy should not be too specific
- Listings should be precautionary
- List even if a pollutant is not identified
- All data used regardless of quantity or quality (weight of evidence)

The Environmental Caucus' BPJ definition allows too much freedom to list a waterbody for even the slightest reason. This will eventually cause virtually all waterbodies to be listed, which defeats the purpose (i.e., value or usefulness) of the list (prioritization for TMDLs and public information). At the U.S. EPA Listening Session on 303(d) Listing, City of Los Angeles staff mentioned that a lack of guidance on BPJ and other concepts, such as weight of evidence, is like a blank check, potentially causing confusion and ensuring increased litigation.

Best Professional Judgment (BPJ) is a commonly used term, which sounds appealing on the surface, until one realizes that sufficient definition, procedure, and protocol have not been created for BPJ. Here are some elements of a BPJ procedure and protocol:

- When to use Best Professional Judgment (and when not to use)— When there is sufficient data, a BPJ is not necessary because one can apply a standardized methodology to examine the data, criteria, site specific considerations and beneficial uses to make a decision. BPJ should only be used under extenuating circumstances, i.e., when there is not enough good data *but* there is enough immediate concern for public health or aquatic life that focus must be taken away from other waterbodies to address the BPJ waterbody. If there are no extenuating circumstances, the preferred alternative is to place this type of waterbody on a watch list until sufficient data is available for a determination. This would make BPJ a moot point.
- A panel of qualified professionals and stakeholders with different backgrounds can convene periodically to discuss a list of possible BPJs.

The group did not seem to want this item, due to feasibility, complications and time constraints. Perhaps, the example of the City of Los Angeles' Integrated Plan for the Wastewater Program (IPWP), in which stakeholders of diverse backgrounds form a committee to air their concerns and make decisions by consensus rather than conflict whenever possible, could be used. The IPWP looks at the big picture and overall direction of planning; some elements of that program could be used in the listing process.

- Have qualified consultants available to provide assistance.
- Determine how to handle disagreements among the professionals.

- **If no decision is possible by consensus, place the waterbody segment on a watch list instead of the 303(d) list.**
- Conflicts between evidence need to be addressed, e.g., biological data showing attainment while chemistry data showing impairment — Some states use a matrix showing courses of action if different combinations of lines of evidence show impairment when other lines of evidence show attainment or not enough information. For example, chemistry data showing possible impairment combined with biological data showing attainment of beneficial uses might indicate that more data needs to be gathered. The waterbody might be an ideal candidate for placement on a watch list.
- Citation of studies and consultants in a listing (or de-listing) rationale.
- Address all dissenting comments in the rationale, supporting all opinions with good science.
- What to do if someone discovers that a BPJ was done without following the procedure – **Perhaps re-open the list for the waterbody.**
- If a waterbody listing is carried over from the previous cycle, we need to see a fact sheet, which delineates the current status, the affected beneficial uses, why it was listed (criteria, best professional judgment, specific weights of evidence [including how much weight], etc.), and what (and how much) information is needed to de-list.

• **Weight of Evidence**

- Another concept that needs a well-defined procedure is “Weight of Evidence.” Like BPJ, Weight of Evidence sounds good, but without a clear procedure, confusion results.
- Both the Environmental and Regulated Caucuses advocate the use of multiple lines of evidence when possible.
- Beneficial use assessment should be included as part of the evidence. This would not necessarily be a full-blown UAA, but obvious stakeholder concerns should be considered, e.g., restricted access to a waterbody, which prevents and outlaws recreational use.
- Numeric criteria or narrative standards with a numeric translator must be adopted by rule or statute, e.g., do not use beach postings and advisories. Instead, to satisfy the concerned public, use the data, that caused the posting or advisory, and verify that it is still valid.
- Include evidence on site specificity.
- The Environmental Caucus wants to allow all data with a sliding scale of quality for all data and information (but require minimum QA procedures) — This may be confusing, because the sliding scale must be defined, as well as how much low quality data is equivalent to a given amount of high quality data. In fact, one does

not want too much low quality data because it will skew the data set.

- Furthermore, the environmental groups assume that most waterbodies are impaired; therefore, we should not worry about incorrectly listing clean waters — This is an example of an abuse of BPJ, and assumes we have the answers before the assessment. It causes confusion and dilutes the prioritization of the truly impaired waterbodies.
- The Environmental Caucus wants to use all information in the decision process; pictures and opinions show obvious pollution — This information could be used if BPJ has a detailed definition and procedure; otherwise, the listing would be subjective and would, therefore, establish an undefined, subjective de-listing criterion.
- The Environmental Caucus advocates using qualitative data to support quantitative lines of evidence. This and the previous two comments suggest using limited or “soft data.” This is not adequate for an “action list,” but may be reasonable for a “watch list.”
- The Environmental Caucus states that confidence in the listing decision [can] be low when listing but must be high when de-listing. This is a dangerous precedence; guilty until proven innocent. Listing and de-listing should have comparable thresholds because they are two sides of the same coin; however, an impaired waterbody should not be ignored because of a lack of data. If limited data suggests that a waterbody is impaired, adequate data should be collected to make a determination. This could be accomplished through an appropriate “watch list” program. Placement on a watch list should require development of a reasonable timeline to collect the appropriate data to either list or de-list the waterbody and a determination of who is responsible for collecting the data. The watch list program should have the authority to ensure that the data are collected, that a determination is made to either list or de-list, and that the timeline is adhered to the extent reasonable. If not following the timeline can be justified; a new time line must be developed.
- Both the environmental and regulated communities desire consistency throughout the State, with provisions for site-specific considerations. The environmental community wants additional flexibility for other circumstances. **These circumstances should be defined; otherwise the concept can be abused.**

We should not list for the sole reason that other regions followed a questionable procedure, e.g., using only two samples to make a listing decision because “U.S. EPA did it in the past” (in other states).

Precedence: When and where is the use of precedence appropriate, if at all. For example, is it enough that because another Regional Board used certain criteria in listing or delisting, another Regional Board can automatically do the same – or not?

Biological Data

- The weight of biological data as evidence of impairment should be carefully considered, especially if pollutant concentrations indicate an opposing view of impairment. "Biological data" is a very general term that covers experimental data such as toxicity tests on the actual aquatic species occupying the waterbody (GOOD; easy to link to actual sources and, therefore, effective controls) to "Biological Indicators" that integrate all impacts, natural and otherwise (BAD; hard to trace to individual sources and, therefore, hard to identify effective controls). For example, treatment plants are often sited at locations where stream character naturally changes (stream gradient is a good example), and separating these effects from effluent effects is problematic. Small differences in biological indicators may be enough to warrant inclusion on a watch list, but they should never be used to justify major remediation efforts without other information to link these differences to the parameter(s) such efforts are meant to address.
- A biological impairment must be linked to a pollutant source, in order to make a listing decision. Otherwise, it might be determined later that the cause of impairment is pollution, instead of a pollutant. Perhaps, such a waterbody should be placed on a watch list and further studies conducted. Impairments identified solely on the basis of a biological indicator may have nothing to do with water quality, and thus have nothing to do with effluent discharges, either collectively (pollution) or individually (a specific pollutant). Many biological indicators are sensitive to natural factors such as stream gradient, stream shading, substrate and the presence or absence of exotic species.

Beneficial Use Designations and Criteria

- A judgment for a lawsuit between City and County of Los Angeles et al. vs. U.S. EPA stated that the U.S. EPA must approve or disapprove the Basin Plan, in whole or in part, in such a way as to disallow MUN criteria to be applied to asterisked potential MUN waterbodies in the Basin Plan (until further studies are done). Therefore, such waters should be de-listed for the potential MUN beneficial use.
- It is our opinion that the LARWQCB's interpretation of the Alaska Rule is not correct because it allows old drinking water criteria to be used, i.e., Title 22 criteria. LARWQCB correctly does not allow CTR criteria (post 2000) to be used. No MUN criteria should be used for waters designated as potential MUN, as asterisked in the Basin Plan.

Waterbodies with restricted access, e.g., flood control channels, which are fenced-off for safety reasons, i.e., illegal to enter without a permit, should not be designated with REC1 beneficial use. The general public is never, nor shall ever be, allowed in the Los Angeles River or similar concrete-lined storm runoff channels for recreational purposes. The designated beneficial uses of our waterbodies should be consistent with local ordinances.

Site Specific Concerns

- Water Effect Ratios (WERs)
 - Use WERs in the decision-making process when available.
 - Build in re-openers for site-specific objectives under development.
 - Automatically de-list when a WER is developed, if attainment of the aquatic life beneficial use is indicated by the WER study.

Threatened Waterbodies

- Antidegradation "Tier 3" waterbodies, which decline in water quality but are meeting standards, should not be listed; they should be handled separately under the antidegradation policy (40CFR131.12). The Antidegradation policy works well as it stands. This policy is for *unimpaired* waters that may decline in water quality, but continue to attain WQS. Therefore, there is no need to make the TMDL program more complicated than it already is by listing unimpaired waters. Furthermore, the lack of definitions for "threatened" and "a decline in water quality" causes confusion, as noted in the U.S. EPA Listening Session.
- Waterbodies anticipated becoming impaired in the next listing cycle are not currently impaired, and therefore should be separately categorized in the 305(b) assessment or a watch list. Listing unimpaired waterbodies on the 303(d) list is not consistent with current federal regulations.

Air Deposition

- Waterbodies primarily impaired by air deposition should be de-listed and not be listed in the future; the CWA has no authority to address air deposition. Instead, put the waterbody in a separate category in the 305(b) assessment for public information. Waterbodies partially impaired by air deposition may be listed, but not with the intent to give the wasteload allocation reduction for air to water sources.

Availability of Raw Data and Fact Sheets

- All stakeholders need all the raw data and fact sheets with the listing rationale for each waterbody segment, from both old carried-over listings and new listings, with rationales for continuing the listings and the current status, and what remains to be done to achieve de-listing.

Involvement of all Stakeholders/Public Participation

- The staff report from the Regional Board and State Board should address all general concerns about listing procedures.
- In addition, all specific concerns about waterbodies should be addressed on the individual waterbody fact sheets.

- Justify any decisions where there was a lack of information – why not put the waterbody on a watch list instead?

Both the environmental and regulated communities desire an open process; the previous listing process was poor. This is a difficult challenge, since there should be ample time for our RWQCB to analyze data and prepare reports, as well as time for public review of information and preparation of comments; this conflicts with deadlines imposed by consent decrees and regulations. Nevertheless, the public should be involved in reviewing the methodologies, so citizens are clear about how listing decisions are made.

The U.S. EPA Integrated List

- The integrated list is an improvement over current conditions in that it separates waterbodies into categories, with one category equivalent to the 303(d) list. Waterbodies without sufficient data or affected by pollution are placed in separate categories, similar to a watch list.

At the U.S. EPA Listening Session on 303(d) Listing, most attendees agreed that the Integrated List (which combines the 303[d] list and 305[b] assessment) would be very large and therefore should be submitted every 4 or 5 years. But, since the CWA requires a 305(b) assessment every 2 years and the Integrated List Guidance cannot change the CWA requirements, some thought must be given towards the list size and list changes during non-Integrated List years. Also, the list size would require a long time to review and prepare comments properly (potentially as long as one year).

Specific Listings

A preliminary examination of the raw data for the Los Angeles River indicated several listings carried over from the previous cycle with no new data. The City of Los Angeles requests that the Regional Boards be required to provide updated fact sheets for all listed waterbodies. This would help all concerned parties to be informed about the current status, listing rationale, and requirements for de-listing.

Summary of Environmental Caucus Recommendations We Agree and Disagree With:

- Environmental Caucus recommendations we agree with. These are the ones that have highest probability of adoption:
 - Need for transparency.
 - Need to accelerate restoration efforts, GENUINE improvements in water quality.
 - Need for ample time to review and comment.

Environmental caucus recommendations we could agree with, with modest modifications.

- They want listings even where pollutants are unidentified, we could live with this for a watch list, not the 303(d) list.

- They believe consistency is not needed if circumstances warrant — site-specific considerations should be taken into account; other circumstances should be defined, otherwise the concept can be abused. This is reasonable, and the counter-argument (no local discretion at all) is unreasonable and politically unworkable.

Environmental caucus recommendations we strongly object to:

- They do not want watch lists, we insist on them.
- They want listings to not be too specific.
 - Specific listings are PRECISELY what is necessary if we are to find their causes and identify real solutions.
- They want listings to be “precautionary.”
 - This is a formula for lawsuits and wasted efforts to solve non-existent problems.
- They say all waters impaired.
 - Many listing are not accurate; this is well known.
 - False listings will continue if we do not change anything.
 - Takes resources away from genuine listings.
 - This harms credibility of State’s environmental stewardship.

SCAP

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Principals for 303(d) Listing Process

1. Divide 303(d) list into a preliminary (watch) list and an action list. Watch list would be used for further data gathering and assessment.
2. A “transparent” process for listing and de-listing process.
3. A State listing process that includes:
 - A publicly reviewable document
 - A description of how different types of data will be evaluated
 - Explanation of how the following factors will be considered:
 - a. data quality, age, degree of confidence, degree of exceedances
 - description of procedures for collecting and using ambient water quality data
 - description of methods and factors to develop a prioritized schedule
 - requirements to develop listing methodology which includes descriptions of factors used to “de-list” water bodies.
4. A weight of evidence approach
 - Consideration of spatial, temporal (at several scales), and hydrologic variations and their effects on water quality
5. For uses related to aquatic life, consider biological indicators as having a greater weight than pollutant concentration levels, to the extent that some waters may have unimpaired beneficial uses even though some chemical criteria have been exceeded. Water quality objectives or criteria that are based on national guidance may not be reflective of local on-site specific conditions.
6. Consider on a case-by-case basis whether or not a water body is oligotrophic, mesotrophic or eutrophic and provide criteria for each type.
7. Eliminate subjective criteria such as “significant amount observed.”

8. Control Measures – Recognition of control measures already in place – or expected to be installed within the next listing cycle – that will result in protection of beneficial uses. Control measures that should be considered an adequate basis for de-listing include permits, clean up and abatement, cease and desist, or time schedule orders, and watershed management plans that are enforceable and include a time schedule for compliance with objectives.
9. Analytical and Public Review Process should contain:
 - A thorough explanation of the thinking process that went into each decision should be made available in writing
 - The Regional Board should document each of the types of data that support water quality decision-making and explain how they are used in the context of applicable water quality standards to support different water quality determinations
 - A description of and reference for the quality assurance procedures should be included in water quality assessment and listing documentation. The Regional Board should define data quality requirements and how they utilize and interpret data to make decisions about whether the water body is impaired or attaining water quality standards.
10. Sample Size -- In the CALM draft, EPA is recommending that in order to have a high level of confidence in the results, a sample size of at least 30 samples is necessary. Recognizing that sample size is a big debate, we believe that a statistically-based approach should be used in the listing process, with an adequate sample size. The tremendous implications or attainment/impairment decisions argue for the use of rigorous and statistically-valid data sets.
11. Fact Sheets -- Explain the proposed listings and de-listings, including constituents of concern, the data used, and the water quality standard and the basis for the decision to list or de-list must be provided to the public when the list is made available for public review. This is absolutely essential to enable informed public review, and will go a long way towards instilling confidence in the process and analysis prepared by the Regional Board.