

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER QUALITY  
FEBRUARY 3, 2015**

**ITEM 8**

**SUBJECT**

CONSIDERATION OF A RESOLUTION TO AMEND THE WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST

**DISCUSSION**

The goal of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C § 1251(a).) Pursuant to Clean Water Act sections 303(d) and 305(b) (33 U.S.C. §§ 1313(d) and 1315(b)), states are required to report to the U.S. Environmental Protection Agency (U.S. EPA) on the overall quality of the waters of the United States within their state. The "303(d) List" is referred to as the list of a state's impaired waters, or those waters that do not meet applicable water quality standards after the application of certain technology-based controls. States are required to include a priority ranking of such waters, taking into account the severity of the pollution and the uses to be made of such waters, including waters targeted for the development of Total Maximum Daily Loads (TMDLs). The "305(b) Report" is the mechanism by which states report on the health of all the waters of the United States, not just those that are impaired. U.S. EPA encourages states to combine the 303(d) List and the 305(b) Report, referred to in California as the "Integrated Report." States are required to submit their 303(d) Lists and 305(b) Reports every two years (the listing cycle). (40 C.F.R. § 130.7(d).) The State Water Resources Control Board (State Water Board) administers this portion of the Clean Water Act for the State of California.

On September 30, 2004, by [Resolution No. 2004-0063](#), the State Water Board adopted the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy). The Listing Policy describes the process by which the State Water Board and the nine Regional Water Quality Control Boards (Regional Water Boards) comply with the listing requirements of Clean Water Act section 303(d) and establishes a standard process to develop the list.

Currently, the Listing Policy requires the following two-step board review and approval process for the development of the 303(d) List:

First, the State Water Board and Regional Water Boards solicit all readily available data and information on the quality of surface waters of the State. (Listing Policy, section 6.1.1.) The Regional Water Boards must assemble and evaluate all information submitted, regardless of the manner in which the information is compiled or submitted. (Listing Policy, section 6.1.2.1.) The Regional Water Boards prepare a fact sheet for each water and pollutant combination that is proposed to be included or removed from the 303(d) List. The fact sheets must describe the lines of evidence and use the weight of the evidence approach to evaluate water quality standards attainment. (Listing Policy, section 6.1.2.2.) The Regional Water Boards consider each proposed list change as documented in the water body fact sheets, after providing advance notice and opportunity for the public to comment, and provide written responses to those comments. After consideration of all testimony, the Regional Water Boards approve their

recommended listing decisions and submit all documentation of the hearing process and water body fact sheets to the State Water Board. (Listing Policy, Section 6.2.)

Next, the Listing Policy requires the State Water Board to evaluate each of the Regional Water Board's fact sheets for completeness and consistency with the Listing Policy and applicable law and consolidate all the Regional Water Boards' lists into a statewide list. Before the State Water Board considers its recommended statewide list, it is required to hold a public workshop, provide advance notice and opportunity for public comment, and review specific listings timely requested for review. The State Water Board submits its recommended 303(d) List and supporting fact sheets to U.S. EPA for approval as required by the Clean Water Act. (Listing Policy, Section 6.3.)

Since 2004, advancements in technology and monitoring programs have significantly increased the amount of data and information on the quality or condition of surface waters submitted to the State Water Board and the Regional Water Boards for listing assessment. Consideration of the extensive and voluminous data and information submitted to the Regional Water Boards would require time and resources far in excess of those available to the Regional Water Boards to fulfill the Listing Policy's protocols within a listing cycle. Consequently, the State Water Board has been unable to submit 303(d) Lists to U.S. EPA every two years for all of California's surface waters. As a result, State Water Board staff proposes to amend the Listing Policy to create a more efficient process for timely submission of the Integrated Report.

The proposed revisions to the Listing Policy include four significant process changes:

First, modify the definition for "readily available information" to mean all information submitted to the California Environmental Data Exchange Network (CEDEN), a website location ([www.ceden.org](http://www.ceden.org)) for sharing and collecting information about the State's waterbodies. If CEDEN cannot accept a particular subset of data, the Regional Water Boards or the State Water Board may accept that data and information if it meets the formatting and quality assurance requirements detailed in Section 6.1.4 of the Listing Policy and the notice of solicitation.

Second, clarify that the State Water Board List need not include assessments from all regions as part of every listing cycle. At the beginning of each listing cycle, the State Water Board shall identify, in its notice of solicitation, which Regional Water Boards shall make listing recommendations for that cycle. Regional Water Boards which are "off cycle" may nevertheless make recommended listing changes for high priority data. U.S. EPA has indicated support for this approach.

Third, add that the State Water Board shall have discretion to administer a Regional Water Board's assessment, evaluation, and listing recommendation process and approval on behalf of that region. This process would occur in cases where a certain region is not or cannot complete their regional integrated report in a timely manner. Having the Regional Water Board staff perform the assessment, evaluation, and listing recommendations is the preferred process due to regional staff knowledge of local waterbodies and Basin Plan objectives.

Fourth, add that after the State Water Board staff consolidates the Regional Water Board list recommendations, the State Water Board Executive Director has the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA. The Executive Director shall provide the public with notice of the proposed approval and the opportunity to provide written comments to which the Executive Director shall provide written responses. Alternatively, the consolidated statewide list may be scheduled for a State Water Board meeting for its approval

after advance notice to the public and an opportunity to comment is provided. The Executive Director and the State Water Board shall only consider changes to the waters that are timely requested for review (no later than 30 days after the Regional Water Board's approval) unless, at the election of the Executive Director or the State Water Board other list recommendations are noticed for consideration and comment.

The foregoing proposed changes to the Listing Policy involve changes to the process by which the 303(d) List is compiled, promote efficiencies in the manner in which data is solicited and assessed, and streamline the public participation and review process. The proposal will allow for more timely 303(d) List submittals by the State Water Board.

Additionally, the State Water Board adopted the Listing Policy prior to the development of sediment quality objectives. By [Resolution No. 2008-0070](#) (September 16, 2008), the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries—Part 1 Sediment Quality, which contains narrative sediment quality objectives to protect benthic communities and human health. In Resolution No. 2008-0700, the State Water Board acknowledged the need to ensure the Listing Policy is updated to be consistent with the adopted sediment quality objectives. Accordingly, the proposed changes to the Listing Policy include amending Section 6.1.3 to correlate with the adopted sediment quality objectives.

The “strikeout and underline” version of the Listing Policy, reflecting the proposed changes, is attached.

#### **POLICY ISSUE**

Should the State Water Board amend the State Water Quality Control Policy for developing California's Clean Water Act Section 303(d) List?

#### **FISCAL IMPACT**

A potential increase in efficiency and staff resource savings at the State Water Board level.

#### **REGIONAL BOARD IMPACT**

A potential increase in efficiency and staff resource savings at the Regional Water Board level.

#### **STAFF RECOMMENDATION**

The State Water Board should approve the proposed amendment to the State Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List.

<p>State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the State Water Board's Strategic Plan Update: 2008-2012 to “[i]mplement strategies to fully support the beneficial uses for all 2006 303(d)-listed water bodies by 2030”; Goal 5 to “[i]mprove transparency and accountability [...] by enhancing and improving accessibility of data and information”; and Goal 6 to “[e]nhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.”</p>
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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION 2015-

### AMENDMENT TO THE WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST

#### WHEREAS:

1. Section 303(d)(1) of the Clean Water Act (CWA) (33 U.S.C. § 1313(d)) requires states to regularly identify surface waters that do not meet applicable water quality standards after technology-based controls have been implemented (referred to as the section 303(d) List) and prioritize such surface waters for the purposes of developing total maximum daily loads (TMDLs). (CWA § 303(d)(1); 40 C.F.R. § 130.7(b).) The states are required to submit their section 303(d) List biennially to the United States Environmental Protection Agency (U.S. EPA). (40 C.F.R. § 130.7(d).)
2. Water Code section 13140 authorizes the State Water Resources Control Board (State Water Board) to formulate and adopt policy for water quality control.
3. Water Code section 13191.3, subdivision (a), requires the State Water Board to prepare guidelines to provide the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) with recommended procedures to evaluate information solicited in support of listing and delisting candidate surface waters for the development of the section 303(d) List and developing and implementing TMDLs.
4. On September 30, 2004, by [Resolution No. 2004-0063](#), the State Water Board adopted the Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy).
5. The State Water Board has submitted to U.S. EPA three section 303(d) Lists for California's surface waters since it adopted the Listing Policy in 2004.
6. Since 2004, advancements in technology and monitoring programs have significantly increased the amount of data and information on the quality or condition of surface waters submitted to the State Water Board and the Regional Water Boards for listing assessment. Consequently, the State Water Board has been unable to submit the section 303(d) Lists biennially to U.S. EPA for California's surface waters. State Water Board staff proposes to amend the Listing Policy to create a more efficient process for effective and timely submissions of the section 303(d) List ([Listing Policy Amendment](#)) to U.S. EPA.
7. The CWA and the Listing Policy require the State Water Board to adopt a statewide section 303(d) List and submit it to U.S. EPA for approval. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Executive Director. The Listing Policy Amendment provides (at Section 6.3) that the Executive Director, on behalf of the State Water Board, may evaluate the statewide section 303(d) List and comments thereto, respond to comments, and adopt the statewide section 303(d) List for submission to U.S. EPA.

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8. The Listing Policy Amendment (at Section 6.1.1) revises the definition of “readily available data and information” to mean “data and information that can be submitted to the California Environmental Data Exchange network (CEDEN) [...]” CEDEN is a State Water Board database for submitting, storing, and sharing information on surface water quality. Pursuant to the revised definition, readily available data and information must be submitted to CEDEN upon the State Water Board and Regional Water Board’s next solicitation cycle. State Water Board staff anticipates that next notice of solicitation will be sent out to solicit data and information for the 2018 Integrated Report (the CWA section 303(d) and 305(b) reporting requirements). For the upcoming 2012, 2014 and 2016 Integrated Reports, the data and information submitted in response to the 2010 notice of solicitation shall be assessed and considered. As a result, the Listing Policy Amendment’s requirement that all data and information must generally be submitted to CEDEN will not be implicated until the State and Regional Water Boards send the 2018 Integrated Report notice of solicitation, which will provide sufficient time for persons and organizations unfamiliar with the CEDEN system to obtain training, if any is needed.
9. After the Listing Policy was adopted, the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries—Part 1 Sediment Quality ([Resolution No. 2008-0070](#) (September 16, 2008)), which contained narrative sediment quality objectives to protect benthic communities and human health and guidance to interpret the objectives. In Resolution No. 2008-0700, the State Water Board acknowledged the need to ensure the Listing Policy is updated to reflect the adopted sediment quality objectives. The Listing Policy Amendment contains revisions (at Section 6.1.3) to ensure consistency between the Listing Policy and the sediment quality objectives and the guidance adopted to interpret the objectives.
10. The State Water Board’s regulations for implementing the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA) require the State Water Board to conduct environmental review of its certified exempt regulatory programs, which includes state policies affecting water quality control. (23 Cal. Code Regs., §§ 3775, 3777.) The requirement to perform an environmental review is inapplicable, however, if the State Water Board “determines that the activity is not subject to CEQA.” (Ibid., § 3720, subd. (b).) A governmental agency’s discretionary action is subject to CEQA if it is approving a “project” as defined in section 21065 of the Public Resources Code: “‘Project’ means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]” If the subject matter does not constitute a “project,” then the approval is not subject to CEQA. (14 Cal. Code Regs. § 15061, subd. (b)(3).)
11. The State Water Board’s approval of the section 303(d) List itself is not a “project” subject to CEQA because the list is for informational purposes and such action has no potential to result in a “direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment” (Pub. Res. Code § 21065). Similarly, amending the Listing Policy is not a “project.” The changes to the Listing Policy promote efficiencies to the process by which the State Water Board and the Regional Water Boards administer, approve, and adopt the statewide section 303(d) List. The amendment streamlines the manner by which interested persons may submit information concerning the quality of the surface waters of the State; clarifies that the State Water Board may adopt a section 303(d) List which reflects a portion of the Regional Water Board’s approved section 303(d) List recommendations in a listing cycle rather than including list recommendations from each of the nine Regional Water Boards

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each listing cycle; adds that the State Water Board shall have discretion to administer the Regional Board's assessment; provides that the State Water Board Executive Director may consider, adopt, and submit to U.S. EPA the Regional Water Board's list recommendations by considering and responding to written comments; corrects typographical errors, and makes other non-substantive revisions; and updates the evaluation guideline selection process used for interpreting narrative objectives to be consistent with the existing guidance for the sediment quality objectives. Accordingly, the State Water Board finds that amending the Listing Policy is not subject to CEQA or the State Water Board's procedures for implementing CEQA.

12. The Listing Policy Amendment is consistent with and advances the following goals identified in the State Water Board's Strategic Plan Update: 2008-2012: Goal 1 is to "implement strategies to fully support the beneficial uses for all 2006 303(d)-listed water bodies by 2030"; Goal 5 is to "improve transparency and accountability [...] by enhancing and improving accessibility of data and information"; and Goal 6 is to "enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures."
13. In considering the adoption of the Listing Policy Amendment, the State Water Board has considered the consensus recommendations adopted by the public advisory group convened pursuant to Water Code section 13191. Those recommendations were that the listing process should be transparent, the public participation process should be transparent and include outreach, and although site-specific information should be taken into consideration, the regional water quality control board should utilize a consistent set of tools and principles.
14. On November 12, 2013, the State Water Board provided electronic notice to persons interested in the California Integrated Report that the State Water Board and U.S. EPA were discussing strategies to make the process for developing the Integrated Report more efficient and submittals to U.S. EPA more timely. That notice included a link to a letter to U.S. EPA from the State Water Board, Division of Water Quality (dated July 15, 2013), which detailed proposed procedural changes to the Listing Policy. The notice also described the strategy of having the 303(d) List be comprised of a portion of the nine Regional Water Board listing recommendations each listing cycle.
15. In accordance with Water Code section 13144, the State Water Board consulted with and carefully evaluated the recommendations of concerned governmental agencies.
16. In accordance with Water Code section 13147, the State Water Board provided requisite notice to the Regional Water Boards of the public hearing regarding the proposed adoption of the Listing Policy Amendment and provided notice by publication in each region pursuant to Government Code section 6061.
17. On November 20, 2014, the State Water Board provided notice to the public (Notice of Opportunity to Comment) that (1) the Listing Policy Amendment was available for the public's review and written comment, (2) the deadline for the public's submission of written comments to the proposed Listing Policy Amendment was December 22, 2014, and (3) the State Water Board would separately provide notice of the date at which it would consider approving the Listing Policy Amendment. On November 21, 2014, the State Water Board provided notice to the public of a Revised Notice of Opportunity to

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Comment, which corrected the day of the corresponding date on which the written comment period ended.

18. On December 17, 2014, the State Water Board provided notice to the public that the State Water Board would hold a hearing at its February 3, 2015 board meeting to consider approving the Listing Policy Amendment.
19. The State Water Board reviewed written comments timely submitted on the proposed adoption of the Listing Policy Amendment and provided written responses to all written comments.
20. The State Water Board, in compliance with California Water Code section 13147, held a public hearing in Sacramento, California, on February 3, 2015, with respect to the board's adoption of the proposed Listing Policy Amendment and received and responded to public comments.
21. The regulatory provisions of the Listing Policy Amendment do not become effective until the provisions are approved by the Office of Administrative Law

THEREFORE, BE IT RESOLVED THAT THE STATE WATER BOARD:

1. Adopts the [Listing Policy Amendment](#).
2. Directs State Water Board staff to submit the Listing Policy Amendment to the Office of Administrative Law for approval.
3. Directs the Executive Director or his designee to make minor, non-substantive modifications to the text of the Listing Policy Amendment, if the Office of Administrative Law determines during its review that such changes are needed, and directs the Executive Director to inform the State Water Board of any such changes.
4. Directs staff to file a Notice of Exemption with the Office of Planning and Research.

## CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 3, 2015.

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Jeanine Townsend  
Clerk to the Board