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FILE:WC/43-0-25 STATE WATER RESOURCES CONTROL BOARD

February 17, 2004

Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: *Comments on Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*

Dear Mr. Wilson:

The Sonoma County Water Agency (Agency) is pleased to provide comments on the State Water Resources Control Board's (SWRCB) draft 303(d) Listing/De-Listing Policy, dated December 2, 2003. These comments also reference the SWRCB's draft policy of July 1, 2003. The Agency fully supports the SWRCB's goal of establishing a standardized approach for assigning water bodies to the 303(d) list, including requirements for consistent and statistically valid data evaluations, requirements for data quality and quantity, and implementation provisions.

The Agency endorses many of the concepts embodied in the SWRCB's draft listing/de-listing policy. Many listings contained in the State's 1998 and 2002 303(d) lists were based upon limited data. The basis and rationale for past listing decisions is unclear. Thus, the Agency supports guidance regarding the requirements for and transparency of listing decisions. The Agency further encourages the SWRCB to reinstate language from the July 2003 draft that would provide for a re-evaluation of each water body identified on the 2002 303(d) list. Although the December 2003 draft policy specifies that water segments and pollutants on the section 303(d) list shall be reevaluated if new data and information become available, the Agency encourages the SWRCB to ensure that earlier listings are consistent with the new listing/de-listing policy, even when a listing review would not be triggered by new data or information.

In July 2001, the National Research Council (NRC) published a report to Congress¹ that examined the scientific basis of the TMDL program and that included several findings and recommendations that are directly relevant to the State of California's 303(d) listing/de-listing policy. Consistent with the NRC's recommendations and with the SWRCB's July 2003 draft listing/de-listing policy, the Agency strongly supports the concept of "dual lists," and encourages the SWRCB to reinstate the use of dual lists in its final listing/de-listing policy. Use of a "monitoring list" would be appropriate for impairments with undetermined causes, for use when insufficient data exist to determine a water body's impairment status, or for cases where water quality standards may be inappropriate.

¹ *Assessing the TMDL Approach to Water Quality Management*, National Academy Press, Washington, D.C., July 2001.

A monitoring list may be a more appropriate step for the listing categories described in sections 3.1.6, 3.1.8, and 3.1.9. Section 3.1.6 states that "a water segment may be placed on the 303(d) list... if the water segment exhibits statistically significant water or sediment toxicity... *and* the toxicity is associated with a pollutant or pollutant," [emphasis added]. However, the same paragraph goes on to state that "waters may be placed on the section 303(d) list for toxicity alone," which seems to indicate that a pollutant need not be identified prior to listing. The listing of water body segments should not occur unless a pollutant has first been identified. Confusion caused by lack of an identified pollutant of a listed water body segment could be alleviated by placing waters exhibiting toxicity without a known cause on a monitoring list. Once the pollutant or pollutants are identified, a determination could be made to place the water body on the 303(d) within either the Water Quality Limited Category or the Enforceable Program Category. The Agency supports similar monitoring list approaches for water bodies which exhibit adverse biological response or degradation of biological populations where no specific pollutant has yet been identified (described in sections 3.1.8 and 3.1.9.).

The Agency is concerned with language contained in section 6.2.5.6 of the December 2003 draft policy. This section would allow data to be "pooled" together for the purpose of impairment evaluations, and it appears that a reach could be listed as impaired if only one sample from that reach met the listing criteria, provided that sufficient data related to the same pollutant were available from adjacent reaches. Consideration should be given to whether the water body segment would be listed if data from that segment were evaluated independently.

Finally, the Agency is concerned that inclusion of sections 3.1.10 (Trends in Water Quality) and 3.1.11 (Alternate Data Evaluation) could result in the continued inclusion of water bodies on the State's 303(d) list in the absence of information that water quality standards are exceeded or that beneficial uses are impaired. Similarly, alternate data evaluation methods as specified in the draft policy could allow considerable discretion in evaluating water bodies and may lead to inappropriate listings. The Agency encourages the SWRCB to carefully address these concerns so that objective methods are used to evaluate impairments and produce scientifically defensible 303(d) listings.

Thank you for the opportunity to submit comments on this draft policy.

Sincerely,



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