

September 12, 2003

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

VIA EMAIL: wilscj@dwq.swrcb.ca.gov

Re: AB 982 Public Advisory Group Environmental Caucus Comments on "Draft Water Quality Control Policy for Guidance on Assessing California Surface Waters" (July 1, 2003)

Dear Mr. Wilson:

On behalf of the Environmental Caucus of the AB 982 Public Advisory Group ("Environmental Caucus"), I submit these preliminary comments on the State Water Resources Control Board's (SWRCB) "Draft Water Quality Control Policy for Guidance on Assessing California Surface Waters" (Draft Guidance). These comments echo and expand upon the points raised in our September 13, 2002 comments on the "Draft Concepts for Developing a Policy for Listing and Delisting on California's 303(d) List" (July 11, 2002), which are attached for your reference, and in AB 982 PAG meetings subsequent to those comments.

The Environmental Caucus intends to submit additional, more detailed comments on the Draft Guidance that is submitted for public review in October. **Due to the significant impact that the final guidance document likely have on water quality throughout the state, the Environmental Caucus requests a public comment period of 75 days in order to provide comprehensive feedback and recommendations for alternative action, as appropriate.**

As described in more detail the attached comment letter, our preliminary comments on the Draft Guidance include, but are not limited to, the following:

SCOPE

- The Guidance should not address beneficial use de-designation or water quality standards revision.
- The Guidance must define how waters will be defined into segments, in accordance with mandates in the U.S. EPA's "Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act" (July 21, 2003) ("EPA Integrated Guidance").

DATA

- All readily available data should be sought out and considered.

12734

- Similar to the position in the EPA Integrated Guidance, we are opposed to across-the-board minimum sample sizes. EPA made this point when recently adding back Humboldt Bay, San Antonio Creek, Bolsa Chica, Anaheim Bay and Huntington Harbor, all of which had a relatively low number of samples but high percentage of those samples exceeding standards.
 - At a minimum, listing should occur where toxics standards are exceeded more than once in any three-year period. This position is consistent with the EPA Integrated Guidance as well as 1997 and 2002 EPA technical guidance documents.
- QA/QC guidance, age restrictions, temporal restrictions, and other data requirements should be reasonable and consider the amount and type of data that can be provided, given available and prospective budgets.

ASSESSING COMPLIANCE WITH WATER QUALITY STANDARDS

- In evaluating whether a water segment meets water quality standards, the state should consider a variety of factors. One strategy (such as use of the binomial model) should not stand alone or trump other factors or strategies.
- There are numerous assumptions associated with the Draft Guidance's binomial method approach; many of these are far less protective of water quality than they can and should be. We will be providing a more detailed statistical review of the impacts of these assumptions and of the overall approach during the public review period.
- The binomial approach should not be used for toxics; instead, the 1-in-3-year maximum allowable exceedance frequency (described below) should be adhered to.
- The Guidance should be based on the premise that it should be easier to list and harder to delist, and accordingly there should be separate criteria for each process.

CONTENTS OF 303(d) LIST

- All water bodies that do not meet water quality standards must be on the "303(d) list," and should not be removed until it has been shown that the water body has met standards over a minimum period.
- We do not support the use of a "Monitoring List," "TMDLs Completed List," "Planning List," "Pollution List" or "Enforceable Programs List." In addition, the state's application of the "Enforceable Programs List" is at odds with the EPA Integrated Guidance, which calls on states to document how such enforceable controls are "required" to be, and "will be," implemented. By contrast, the state weakens even that off-ramp from the 303(d) list, allowing voluntary programs to qualify as "enforceable," a position to which we are adamantly opposed.
- The Draft Guidance must address threatened waters, in accordance with the Clean Water Act and the EPA Integrated Guidance. The Draft Guidance currently ignores threatened waters.
- The Draft Guidance should be based on the 1998 list, and should be applied to new listings only. It should not be applied against current listings before moving forward; we are strongly opposed to the transfer of staff from TMDL implementation to listing review and re-review. IN any event, current listings will be evaluated as they come up in priority order.

- The schedule for establishing TMDLs should be at least consistent with, and ideally more expedited than, the EPA Integrated Guidance. EPA's Guidance states that TMDLs "should be established 8 to 13 years" from the original listing. The state's Draft Guidance, by contrast, allows an indefinite schedule for many TMDLs.

PUBLIC ACCESS TO PROCESS

- Listing decision should be "transparent" to the public. This means that not only must the reasons for list deletions and rejections must be transparent, but also that all data – not just that "solicited" – should be considered in developing "fact sheets" for each water body/pollutant and water body/pollution combination.
- Transparency is essential for the process to be successful. However, this does not mean that there must be public consensus for listings.

* * *

Thank you for the opportunity to provide these preliminary comments. Please do not hesitate to call if you have any questions. We look forward to providing comprehensive comments during the public review period

Sincerely,

Linda Sheehan
Co-Chair, AB 982 Public Advisory Group

cc: Arthur G. Baggett, Jr., Chair, SWRCB
Celeste Cantu, Executive Director, SWRCB
Craig Wilson, Esq., Chief Counsel, SWRCB
Alexis Strauss, Water Division Director, U.S. EPA, Region IX

12738