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February 4, 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 City of Modesto is pleased to provide comments on the State Water Resources Control Board's (SWRCB's) draft 303(d) Listing/De-Listing Policy, dated December 2, 2003. These comments also reference the SWRCB's draft policy of July 1, 2003. We fully support 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.

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 policy. For example, the NRC recommended that states develop appropriate use designations for water bodies prior to the 303(d) listing process, and that states refine use designations prior to TMDL development. The NRC advised that water quality criteria be defined in terms of magnitude, frequency, and duration. The NRC also recommended creation of both a "preliminary list" and an "action list" rather than a single 303(d) list. We believe that the NRC's recommendations are important and should be incorporated into California's listing policy.

Behind the NRC's recommendations to Congress is a recognition that water quality standards (beneficial uses and water quality objectives) upon which listing decisions are made may be based upon outdated data or otherwise inappropriate.

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

Deficiencies in California's water quality standards have been widely documented² and have led to listings and to the development of TMDLs that may be unnecessary or inappropriate. Thus, California's 303(d) listing/de-listing policy should incorporate a standards review to ensure that standards are appropriate prior to the listing of water bodies on the 303(d) list. Additionally, we endorse the SWRCB's approach, detailed in the document *A Process for Addressing Impaired Waters in California*, December 2003, of evaluating the appropriateness of water quality standards prior to the development of a TMDL.

We further endorse 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, or have occurred despite evidence that natural sources have caused or contributed to the impairment. The basis and rationale for additional listing decisions is unclear. Thus, we support guidance regarding the requirements for and transparency of listing decisions. We further encourage 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 re-evaluated if new data and information become available, we encourage the SWRCB to ensure that earlier listings are consistent with the new listing policy, even when a listing review would not be triggered by new data or information.

Consistent with the NRC's recommendations and with the SWRCB's July 2003 draft listing policy, we strongly support the concept of "dual lists," and we encourage the SWRCB to reinstate the use of dual lists in its final listing/de-listing policy. Use of a "planning 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. We are particularly concerned that the language contained in Section 3.1.6, 3.1.8, and 3.1.9 of the December 2003 draft policy appears to indicate that a water body can be listed due to toxicity, adverse biological response, or degradation of biological populations even in the absence of a clear link to a specific pollutant as the cause of such effects. We encourage the SWRCB to reinstate the planning list for situations such as these.

We are also 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.

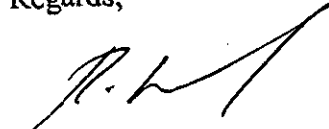
Finally, we are concerned that inclusion of Sections 3.1.10 (Trends in Water Quality) and 3.1.11 (Alternate Data Evaluation) could result in the continued inclusion of water bodies on the State's 303(d) list in the absence of information that water quality standards are exceeded or that beneficial uses are impaired. For example, short-term trends in water quality may be more closely linked to hydrologic conditions (e.g., drought periods) than to increases in pollutant loading or real degradation of water quality conditions. Similarly, alternate data evaluation

² See, e.g., *A Review of the Los Angeles Basin Plan Administrative Record*, by Environmental Defense Sciences, February 2003; and *A Review of the Administrative Record for the Central Valley's Water Quality Control Plan, 1975-1994*, by Larry Walker Associates, Inc., September 2003.

methods as specified in the draft policy could allow considerable discretion in evaluating water bodies and may lead to inappropriate listings. We encourage the SWRCB to carefully address these concerns so that objective methods are used to evaluate impairments and produce scientifically defensible 303(d) listings.

We thank you for the opportunity to submit comments on this draft policy, and we look forward to working with you. If you have any questions or comments, please call me at (209)577-6387.

Regards,



Robert Howard
Deputy Director of Operations & Maintenance