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Facsimile By Request

February 18, 2004

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Craig J. Wilson  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95811-0100

RE: Water Quality Control Policy for Developing California's Clean Water Act  
Section 303(d) List

Dear Mr. Wilson:

This letter is submitted on behalf of the Environmental Protection Information Center (EPIC), located in Garberville, California. EPIC has a long history of monitoring water quality issues in Northern California, particularly in relation to logging practices on public and private lands. Its members have observed, over the past few decades, how once healthy and vibrant streams and watercourses have become degraded and impaired due to logging and other activities in the watersheds. Even though these conditions have been recognized, little is being done to restore the watercourses, much less stop or temper the kind of conduct which contributes to the ongoing and intensified impairment. EPIC is very concerned that any process intended to list or delist watercourses pursuant to section 303(d) of the Clean Water Act fully incorporate methods that will take into account legacy and existing conditions, combined with current real-world events, which exist in these watercourses.

The baseline conditions described in the "Functional Equivalent Document Water Quality Control Policy for Developing California's Clean Water Act section 303(d)List" (hereafter "303(d) Policy") lacks evidence of current conditions. The document does not accurately describe the degraded conditions which not only exist, but which are compounded by current-day approvals of operations, such as private land logging in Northern California or oyster operations in Humboldt Bay. Nor does it take into account that implementation plans for TMDLs languish, so that even if TMDLs have been adopted, nothing effective is occurring to ensure proper implementation. It seems that a lot of the work of protection has gotten bogged down in bureaucratic paper-shuffling. EPIC does not mean to criticize too harshly, and at the same time remains critically concerned that not only are most of Northern California's watercourses impaired, but little is done to curtail the very kind of conduct which contributes to that impairment, and which condemns those streams and rivers to years of legacy harm.

While standardizing the listing/delisting process can have its advantages, it should not be so inflexible as to preclude data, analysis and monitoring which would yield a more protective regime for a water body. There are times when unique conditions, events, activities, or reporting methods may provide invaluable information that can better inform a listing decision. Both the Regional Boards and the SWRCB should be receptive to this, and should not be allowed to discount information or reporting if it does not meet some standard format. Indeed, to do so at the cost of a listing would mean that this proposed 303(d) Policy could have a significant impact on the environment, which must be fully and openly evaluated and mitigated.

While attempting to secure the most comprehensive and contemporary data is admirable, older data and documentation should not be discarded entirely. Some streams in Northern California will take decades to recover from the damage done in the 1950's, compounded by events which occur up to the present time. The historical information about such a watercourse can be very useful in understanding what conditions need to return and what constitutes real recovery. Many conditions do not become obvious until long after the cause has occurred, such as in the case of some logging operations. In such a case, setting aside information that is older than 10 years could deprive the agencies of the kind of information that could better inform the decisions on listing/delisting and strategies to protect water quality.

While it makes sense to determine water body segments based upon Basin Plan water body listings, the 303 (d) Policy should not ignore the need to consider related and connected water body components or segments and the effects of conditions from one segment to the other. The conditions in one reach may well extend into another, or derive from conditions upstream, and thus some consideration should be given to the larger context to fully protect water quality.

EPIC does not agree that water bodies which exceed water quality standards due to natural sources should not be placed on the section 303(d) list. As far as EPIC understands little in the way of baseline monitoring and a true comprehension of so-called "natural conditions" has ever really been accomplished in the streams in Northern California. To hear the timber industry, every condition is a "natural" condition, even if it is a result of human activity. In some cases, the existence of non-human related conditions may impair a watercourse, and any amount of human activity would further exacerbate that condition. In such a case, the water body should be listed. In forestry, no agency has been able to appreciably control cumulative watershed effects, in part because thresholds and baselines are not given precision. At a minimum, if the 303(d) Policy is to preclude listing of watercourses which are in fact impaired due to so-called "natural conditions" then those conditions must be defined, evaluated, and the public must be allowed to review those definitions and evaluations before the 303(d) Policy is adopted.

Any priority ranking and TMDL completion schedule should incorporate effective implementation of any TMDL. Prioritizing a water body and adopting a TMDL can mean little

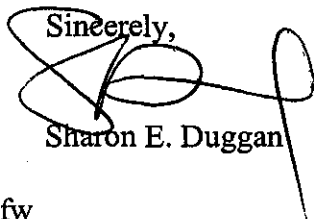
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if there is not effective implementation planning. This should be part of the prioritization scheme - determining if it actually be accomplished. Additionally, consideration for priority should be given, as appropriate, to more than just a singular water body. If, for example, a watershed planning area, which encompasses several different streams or which flows into a much larger water body like a river or a bay, has documented impairment throughout, it may be that the area as a whole, rather than just one or two segments within it, should be prioritized for listing. In this way, more effective and efficient review could occur, ostensibly resulting in greater water quality protection.

EPIC believes that any effort to adopt a policy for delisting, or to attempt to delist a water body, requires full compliance with all laws, including the California Environmental Quality Act, the Clean Water Act, the Porter-Cologne Water Quality Act, and the federal and state endangered species acts. EPIC recognizes that the 303(d) Policy identifies specific criteria for delisting factors. There needs to be a mechanism in place that verifies existing conditions (the results of sampling needed to establish delisting), **AND** will also identify any intervening conduct or activities, the effects of which (1) would defeat a delisting and (2) will not be observed or documented until after the sampling results could authorize a delisting. The impacts from some activities may not reveal themselves until sometime in the future, after which the water body has been delisted. That would be inappropriate, and could be prevented through a careful reporting and monitoring program that is ongoing and records present day actions which could have deleterious effects far into the future. Such a program must be incorporated into a delisting policy. Additionally, decisions to delist must be entirely transparent to the public, and the public must be given full opportunity to meaningful participate in any determinations which could affect water quality. Any reevaluation of water quality standards, which could result in lowering or removing standards, must also be subject to legal requirements and public review.

EPIC appreciates your careful consideration of these comments and looks forward to responses and opportunity to review any necessary revisions to the 303 (d) Policy.

Sincerely,  
  
Sharon E. Duggan

sed.fw  
cc: EPIC