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City of Santa Clarita

February 17, 2004

VIA FAX 916 341-5550

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State Water Resources Control Board
P.O. Box 100
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Subject: City of Santa Clarita Comments on the Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List and Draft Functional Equivalent Document

I would like to commend the SWRCB on its phenomenal efforts in establishing consistency to the 303(d) listing process in California. City of Santa Clarita (City) staff had the opportunity to provide verbal testimony at the public hearing in Torrance on February 5, 2004. These written comments provide details not presented at the public hearing.

The requested changes are not a "when in doubt, throw it out" philosophy, as has been suggested by some. These requested changes follow a "when it doubt, *figure it out*" philosophy. The overarching theme of these comments, which also apply to all issues identified in the draft document as a whole, is that the policy must provide pollutant specific, detailed guidance, as opposed to general guidelines or generic policy statements. Too often these general guidelines are interpreted to an extreme resulting in ongoing, expensive and divisive legal battles. Specificity is an investment as it can be difficult at times to reach a consensus, but will result in consistency and stability that can be budgeted for and understood by all parties. This will result in more funding available for protection and less money in litigation.

The City specifically supports the Binomial Approach recommended in this document. While there have been concerns regarding the level of rigor that would be needed for listing and delisting waters, that is not the fault of the Binomial Approach. The monitoring groups will be able to determine, up front, how many samples and what percentages are needed to list a water body. Looking at what would have occurred in the past is not an accurate portrayal of what will occur in the future, as far as applying the Binomial Approach. The number of samples and certainty must be increased for all areas, following the "figure it out" theme. Just

knowing that a water body needs to be protected should not be enough to get a water body listed; these feelings need to be backed up with quality controlled and quality assured data sets. These feelings, however, should be enough to increase the level of concern and monitoring of a water body. The SWRCB and RWQCB can quantify the waters during the 305(b) process, giving everyone more time to acquire the appropriate level of data to require a listing, which will help define the solution to a potential water quality problem.

For example, the Santa Clara River recently went through a TMDL for Nitrogen Compounds. It was demonstrated, through a field calibrated model, that storm drains were not a significant source of the pollution, however aerial deposition and sewage treatment plants were determined to be a significant source. If we had simply accepted that there is a problem and not gone through rigorous data review, we would have been attempting to solve the water quality problem addressing storm drains, resulting in very little improvement to the water body and wasting valuable, limited resources. We can now approach air pollution issues and sewage treatment plants, thus working toward restoring the river. A water body being impaired but unlisted is remote using this policy. The fears and concerns about the intentions of permittees are overshadowing the need for scientific evidence and consistent policy.

In addition, the City has the following issue-specific comments.

Issue 1: Scope of the Listing/Delisting Policy

- We disagree with the recommendation for Alternative 1 to incorporate guidance on listing/delisting factors only. It will be critical to have a specific priority list or we won't be solving the problems that need to be solved and wasting already depleted resources. The criteria should be sufficient to both broadly apply the policy requirements used to determine compliance with permit limitations and translate narrative objectives for the regulation of point sources in a consistent and accurate manner. If the policy is not scientifically based or too weak to utilize in both functions, the policy should be revised. Therefore, alternative 1 is not a good option.
- Alternative 2 is the better alternative despite concerns about combining the section 303(d) process with standards review and revision and the lengthy process to revise beneficial uses or water quality objectives. Even though it is unlikely that the SWRCB and RWQCB's would be able to complete these revisions within the mandated 3-year time frame, there should be a phasing of the efforts. The SWRCB, RWQCB, permittees, and the environmental community cannot have an effective listing policy unless the problems we are all attempting to solve are defined. The SWRCB and the RWQCB will be making great time, but likely traveling on the wrong road

and potentially wasting limited resources. This action could result in serious water quality issues being ignored.

- The City recommends that a third alternative, using Alternative 2 as its basis but requiring the beneficial uses and water quality objectives, be reviewed prior to TMDL development to help prioritize the data review needs.

Issue 2: Structure of the Section 303(d) List

- The City would support Alternative 5 only if detailed and specific guidelines were established for each pollutant type, rather than general guidelines, for the placement of various categories. General guidelines are too similar to the current, inconsistent system and should be more detailed to prevent variations in interpretation.

Issue 3: Weight of Evidence for Listing and Delisting

- Alternatives 1 and 3 are not good options as the policy is intended to use similar screening methods for consistency in the process. Neither of these alternatives will provide that consistency.
- Alternative 2 should be the methodology. This will ensure that the appropriate data sets are used to determine water quality and habitat problems. The process can be transparent if the SWRCB creates outreach guidelines to explain how the methodology is used so that non-technical people can understand the process.
- Some verbal testimony and other arenas have given the impression that the policy should make it easy to get a pollutant on the list and difficult to get pollutants off the list. The City strongly disagrees with that line of thinking. The Weight of Evidence should be the same regardless of whether the process is listing or delisting. The quality of the data sets should be equal, and it should be an equally rigorous process for putting reaches on or taking them off the list. The City would like to see text specifically stating that listing and delisting by way of Weight of Evidence should be constant.

Issue 4G: Interpreting Nutrient Data

- The City would prefer using Alternative 2, based on the fact that it would provide consistent, scientifically sound numerical endpoints. However, due to the time constraints of waiting for criteria to be developed, the City can agree on using Alternative 3 with some adjustments.

- In Alternative 3, models are suggested for use in the absence of a Regional Technical Advisory Group (RTAG). It is the City's experience that using a model for nutrients has a few drawbacks. Aerial deposition is very difficult to model, yet was found to be a significant source of nutrients in the Santa Clara River. Guidance should address how to work with aerial deposition in addition to the changing nature of nitrates, nitrites and ammonia coupled with other factors such as pH and temperature. Language should be written into Alternative 3 that requires additional evidence, such as Weight of Evidence, to be utilized in concert with this alternative to trigger listing.

Issue 5C: Interpreting Toxicity Data

- Realizing that toxicity is a major issue of concern with all water quality issues, the City agrees with the use of Alternative 2 and Alternative 3 in concert. However, the SWRCB and RWQCBs must realize that it is very difficult for a municipality to solve a problem when it does not know what it is and where it came from. Therefore, the City requests that language be written that requires the SWRCB and RWQCBs to scientifically identify the pollutant(s) in a reasonable timeframe.

Issue 5E: Interpreting Temperature Water Quality Objectives Issue: How should water temperature data be interpreted?

- Temperature varies with the shallow nature of southern California streams that may have nothing to do with discharges, but are the natural condition of arroyo type systems. This natural condition could result in an erroneous exceedance of the water quality objective and define a critical condition, although previous discussions have stated that natural conditions should not be a listing factor. Please consider providing specific guidance on the topic of temperature in dry streams for southern California streams that have low flows naturally at certain times of the year and conflict with the critical conditions.

Issue 5F: Interpreting Data Related to Adverse Biological Response Issue: How should data related to adverse biological response be interpreted?

- The City's concern with Alternative 1 is the approach taken for this policy. There is no specific interpretation of biological response, and SWRCB/RWQCB staff often utilizes public opinion rather than a consistent, scientifically based approach. The RWQCB's should not interpret adverse biological response data on a case-by-case basis specifically because of inconsistencies among RWQCB's. Depending on

the expertise and experience of the RWQCB staff and the political environment in which the water body listing is assessed is not achieving the goal of this policy to be consistent.

- The SWRCB should adopt Alternative 2. The Policy should establish specific guidance and evaluation tools to interpret adverse biological response data and information. It is not a disadvantage for the RWQCB's to be limited by the approaches presented and interpretations of the various kinds of data and information that may be submitted. Further issues in this document define the type of data that can be used so there is no disadvantage; just define the types of data and then specify how those defined data types are going to be utilized.

Issue 6F: Quantitation of Chemical Measurements

- Please add and recommend a third alternative that non-detects should only be interpreted as unknowns.
- If the SWRCB or RWQCB want more sensitive, more expensive tests, then the results of these tests should be utilized even if it increases the SWRCB's or RWQCB's costs for compliance monitoring.
- The stakes on tightened standards are too high to assume pollutants are present when they may not be.

Issue 7A: Review of the Existing Section 303(d) List

- Please add and recommend a third alternative. Prior to developing a TMDL, the listing data that put the pollutant of concern on the 303(d) list must be evaluated with the new criteria.
- This will help:
    - ensure unnecessary TMDLs are taken off the 303(d) list and focus limited resources on priority areas,
    - reduce the time burden for RWQCB and SWRCB staff by preventing unnecessary listings, and
    - establish quality assured data sets when TMDLs are developed which will reduce TMDL timelines.

Issue 7B: Defining Existing Readily Available Data and Information

- Ensure that any group submitting data and information utilized also submits documentation of quality assurance and quality control. If the data source is unknown, then the SWRCB or RWQCB should do quality assurance and quality control checks themselves before the data is approved for inclusion. Unfortunately, not all data collected follow these procedures and have resulted in potentially inaccurate listings.

Issue 7G: Data Age Requirement

- While we agree that using older data and information can provide context for newer data, such as characterizing trends or checking for compliance with anti-degradation provisions, it is unclear from this policy what precautions are being required to be taken to avoid inappropriate interpretation of the data. Older data can be utilized to represent current conditions if it can be established that the water body has not changed over time, but should not be used as absolute water quality requirements as the data may or may not have been quality assured and quality controlled, and in many cases it is impossible to verify the data sets. Specifically, the City has concern about stream flow data for defining historic purposes, especially when the quantity of water in the stream is largely out of the control of the City (private water companies pump and distribute water).

Again, thank you for the opportunity to participate in developing this policy. By working together, this policy can be protective and restorative while providing the consistency and accuracy necessary for 303(d) and TMDL process.

Sincerely

Travis Lange
Environmental Services Manager

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