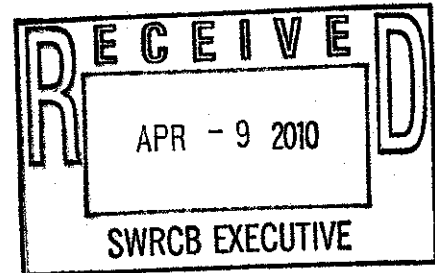




April 9, 2010

Mr. Charles Hoppin, Chair and Board Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Via Email: commentletters@waterboards.ca.gov



Re: California Environmental Quality Act Scoping – Proposed Amendment To State Water Quality Control Policy For Developing California's Clean Water Act Section 303(d) List

Dear Chair Hoppin and State Board Members:

Please accept the following comments on behalf of San Diego Coastkeeper ('Coastkeeper'), San Francisco Baykeeper ('Baykeeper') and their more than 6,500 supporters. Coastkeeper and Baykeeper are non-profit environmental organizations which protect the bays, beaches, watersheds and ocean of the San Diego and San Francisco regions, respectively. We have been involved in the Sediment Quality Objectives ('SQO') process since 2004 and have submitted numerous comments and considerable input over the course of its development. Coastkeeper was an original member of the Stakeholder Advisory Committee for the SQO Phase I process. Ultimately, we, as well as Sierra Club and the Environmental Health Coalition resigned from the Advisory Committee, finding it a failed process that was not transparent, did not address repeated concerns, and provided little real movement on cleaning up contaminated sediment.¹ Nonetheless, we remain keenly interested in seeing sediment standards established for California's bays and estuaries that are protective of human health and the ecosystem.

To that end, we provide the following comments on the proposed amendment to the State Water Board's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy):

The CEQA Scoping Document lacks clarity and transparency as to its true intent

The Scoping Document lists three potential alternatives: 1. No action; 2. Amend the Listing Policy to ensure consistency with the Sediment Quality Objectives; and 3. Use the Sediment Quality Objectives as an evaluation guideline, instead of amending the Listing Policy for

¹ See - Environmental Groups Letter, Resignation from the Sediment Quality Objectives Advisory Committee, May 23, 2006, appended to this letter.

consistency.² However, no details are given as to what will happen to the Listing Policy to 'ensure consistency' with the SQOs. Staff's presentation to the Board does not do much to clarify the issue as it only states that the "Listing Policy [should be amended] to ensure consistency with the Part 1 SQO as directed during the SQO adoption". We are left to assume that it is Staff's intent that the Listing Policy should be altered to remove the option to list water segments based on toxicity alone.³ If deleting a section of the Listing Policy is the true intent of this amendment, then that should be explicitly stated in the CEQA scoping document.

Further clarification of the project should be provided consistent with the CEQA guidelines.⁴ We respect that the purpose of the Scoping Hearing is to seek input on the scope and content of information for consideration in amending the Listing Policy. However, the contribution of informed input is impossible without full knowledge of the proposed action, which would serve to clarify the inferred intent of the amendment, as mentioned above.

Listings should continue to be allowed on the basis of toxicity alone

The Water Quality Control Plan for Enclosed Bays and Estuaries Plan, Part 1, Section VII.E.8.b. currently states that "[w]ater segments that exhibit sediment toxicity but that are not listed for an exceedance of the narrative sediment quality objective for aquatic life protection in Section IV.A. shall continue to be listed in accordance with Section 3.6 of the Listing Policy."⁵ This component of the SQO and the Listing Policy is fundamental to ensuring that the SQO policy does not weaken the environmental protections afforded to biota that are wholly or partially dependent on sediment. Coastkeeper strongly believes that this aspect of the SQO must remain and that the Listing Policy should not be altered in any way that eliminates the ability of entities to list water segments based on toxicity alone.

In their presentation to the State Water Resources Control Board on March 29th, staff state that choosing alternative 1 would result in inconsistencies with the State Water Board Resolution 2008-0070 (Adoption Of A Water Quality Control Plan For Enclosed Bays And Estuaries – Part 1 Sediment Quality).⁶ We disagree. We view the SQOs as an *additional* tool to help understand the ambient condition of sediments, but not the sole tool for properly assessing whether a given water segment should be placed on the 303 (d) list.

² Public Scoping Meeting for Proposed Amendment to California Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. Division of Water Quality, State Water Resources Control Board, California Environmental Protection Agency. February 2010, pg 2.

Division of Water Quality, State Water Resources Control Board, California Environmental Protection Agency.

³ See Staff presentation to the State Water Resources Control Board, March 29th, 2010, slide 10 "No action alternative: If the State Water Board does not take action, existing sediment toxicity listing criteria will remain in the Listing Policy."

⁴ 14 California Code of Regulations §15378

⁵ Water Quality Control Plan For Enclosed Bays And Estuaries-- Part 1 Sediment Quality Effective August 25, 2009 State Water Resources Control Board California Environmental Protection Agency, pg 16

⁶ Water Quality Control Policy Amendment Scoping Meeting. March 29, 2010, State Water Board, at slide 6

The SQOs assess the benthic line of evidence at the whole community level – this sets a fairly high bar that must be crossed before any determination of impact can be ascertained. This aspect of the SQOs is at odds with the original mandate for SQOs, which required it to be protective of the most sensitive benthic species. Management actions such as 303d listing, or effluent limitations in permits should NOT be delayed by the desire to demonstrate an effect in the benthic assemblage or until the chemical cause or causes have been identified. Toxicity by itself should be enough. By keeping the Listing Policy as is, the Board will ensure that even the most sensitive species will be sufficiently protected.

We are deeply concerned that alternative 2 would severely roll back protections offered to biota and would weaken the Listing Policy overall. Alternative 1 is the only option that will meet the original mandate and ensure that wildlife that is dependent on sediment will be sufficiently protected.

Sincerely,

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May 23, 2006

Mr. Chris Beegan
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

RE: Resignation from the Sediment Quality Objectives Advisory Committee

Dear Mr. Beegan:

This is to inform you that the undersigned have decided to resign from the Sediment Quality Objectives Advisory Committee effective immediately. We have participated in the Advisory Committee for over two years because we strongly support the need for sediment quality objectives (SQO) that will protect the beneficial uses of the bays and estuaries in California. However, during the past several months we have become increasingly concerned that the status of the SQO development at this late date has fallen short of our expectations. We have seriously considered this action and on balance we believe that we can no longer expend the time and energy to continue serving on the Committee for the reasons cited below.

1. The Stakeholder process of the Advisory Committee has been unsatisfactory in addressing member communications

Each of us has been involved in numerous stakeholder groups, many where we were able to exchange views to our satisfaction. Unfortunately, this was not, in general, the case here. We have not, in many instances, received responses to our comments, both during the SQO meetings and to written submittals. We are not sure that these comments are being accepted or not.

The exchange of information between the advisory committee and the program management has not been acceptable. The program management has not responded to written comments, both solicited and unsolicited. As an example, the communications below are a sample of serious concerns that were brought up by environmental stakeholders that either went unanswered, or were not discussed to our satisfaction. This list does not include many of the status emails sent asking for minor clarifications or technical information.

<u>Issue</u>	<u>Sender</u>	<u>Date</u>
Preliminary List of Issues and Alternatives	Kimura	2/20/06
Indirect Effects	Kimura	2/16/06
Application guidance	Solmer	7/14/05
Application guidance	Kimura	7/11/05
Application Guidance	Kimura	7/7/2005
Arsenic and dioxin TEQ information	Kimura	6/05/05
Limited Range of Work Plan	Kimura	4/26/05
Environmental Justice Recommendations	Hunter	4/04/05

2. *Frequent change of direction and approval has made it difficult to fully respond or participate in the process*

From the beginning of our participation in early 2004, we have been given conflicting information on where the process would ultimately end. At several points, we were told that answers to our questions were 'just around the corner' or that the next document (specifically the August 2005 'preliminary description of the proposed approach') would allay any of our concerns. Instead, the process has changed beneath our feet, so that it is impossible to tell where we stand. Documents have been scaled back to meet time or financial constraints, and side agreements have been made with parties outside the process that effect the direction of the Advisory Committee.

It was often unclear where direction on the process was coming from. Although we were frequently told that you would be implementing the SQOs for the State Board, often representatives from SCCWRP or SFEI seemed to be directing the process.

In order for the SQO process to have validity in the environmental community, or with the general public, the process will need improved transparency. Because there are differences in the water bodies of concern, it is essential that detailed conceptual site models be developed and maintained to facilitate communications.

3. *Non-member participants have dominated meeting time to the exclusion of members*
Much ado was made when the process began over membership on both the Advisory Committee and Scientific Steering Committee. In the past 6 months, we have noted that non-member dischargers who attend the meetings have become very vocal, often to the point where members could not speak. We have no issues with expanding the membership, but the representation should be more balanced, and non-members should not be able to drown out those who have followed the process since the beginning.

4. *There has been a failure to follow up on Scientific Steering Committee recommendations and a general lack of scientific rigor*

a. *Indirect Effects have been inadequately addressed*

We recognize and understand that developing the SQOs represents a very challenging task given the time and funding constraints. Notable progress has been made to date in defining the Direct Effects. We commend the efforts that required painstaking analysis of the existing database and to formulate new methods by which to assess sediment quality, although it should be noted that the consideration of direct effects to other than benthic invertebrates has not been included.

Unfortunately, the same progress has not been made in addressing the Indirect Effects. We do not have confidence that the sediment quality assessment for bioaccumulation, the indirect effects, can be developed by the SF Estuary Institute's staff to protect human and wildlife health.

Moreover, it appears the Scientific Steering Committee agrees with this assessment. At the last SSC meeting, the members found that the indirect effects side is so poorly developed at this point that the State Board could not be ready to include indirect effects in the August draft policy. It is our understanding that the SF Estuary Institute, while well regarded in terms of monitoring experience, does not have an extensive background in bioaccumulation science.

b. *The process fails to include a dedicated consultant to provide information on Human Health Risk Assessments and wildlife risk assessment*

We have expected that by this time that a cogent, defensible health risk assessment analysis would exist that complies with the Porter-Cologne Water Quality Control Act § 13391.5 (c). Its definition of a “ ‘Health Risk Assessment’ includes an analysis of both individual and population wide health risks associated with anticipated levels of human exposure, including potential synergistic effects of toxic pollutants and impacts on sensitive populations.” We have no confidence that this can be completed and reviewed in time to meet the latest schedule.

This omission is due to the lack of a qualified Health Risk biologist with the skills and resources to adequately advise the process. We strongly suggest that the Scientific Steering Committee include one or more members with this expertise.

c. *The process fails to set protective end points for protecting beneficial uses*

We have observed that the SQO program has relied heavily on empirically based arguments. To a degree this is understandable given the program directive not to obtain additional data. Nevertheless, these arguments should have included assessments of the uncertainties in the causal effects to the biota, i.e., the physical, biological and chemical processes involved. This information, in our view is essential in setting the end points.

The Scientific Steering Committee indicated the need for a toxicologist. We agree with this assessment, and also renew our suggestion to also include a scientist(s) experienced in human and wildlife risk assessment. The SQO process has put a large premium on number crunching and has spent relatively little time in understanding the physical, biological processes that are essential in setting endpoints.

Conclusion

We do not believe that the will or resources exist to fix this flawed process with the time remaining. Although we regret that we must now terminate our participation, we strongly recommend that the issues and recommendations outlined above be addressed to ensure a satisfactory product is developed.

Sincerely,

Ed Kimura
Sierra Club
Coalition
San Diego Chapter

Gabriel Solmer
San Diego Coastkeeper

Laura Hunter
Environmental Health

Cc: Brock Bernstein, Facilitator