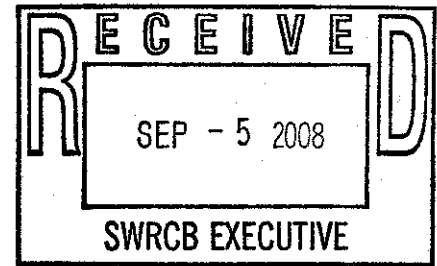


Sept 5, 2008

Sierra Club California  
801 K St, Suite 2700  
Sacramento, CA 95814



Ms. Tam Dudoc, Chair  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Subject: Proposed Adoption of the Proposed Water Quality Control Plan  
for Enclosed Bays and Estuaries Part 1, Sediment Quality Objectives**

Dear Ms Dudoc:

Sierra Club California offers the following observations and comments on the proposed Sediment Quality Objectives, and appreciates the opportunity to comment.

**Proposed Policy is Inconsistent with California Water Code**

Perhaps the most serious and overarching flaw with the proposed policy is that it focuses the assessment of impacts on "benthic communities", rather than focusing on providing "adequate protection for the most sensitive aquatic organisms" (see CA Water Code 13393). Assessing impacts at the community level rather than at the species level will have a diluting effect, because some species will likely be severely impacted or extirpated before broader community level impacts are visible. Additionally, focusing at the aggregated community level, as opposed to focusing on preventing toxicity to any species, is likely to make it more difficult to set clear standards which are adequately protective of the most sensitive species.

We believe that the statute is clear, and that the standard and approach must "provide adequate protection for the most sensitive aquatic organisms. To substitute a less protective standard would be a clear violation of the Board's statutory mandate.

**Multiple Line of Evidence Approach Creates Undue Obstacles to the  
Protection of the Resource**

Under the proposed policy, there are three lines of evidence to determine whether there are impacts: toxicity, chemistry and benthic community. The most protective

approach would be that if any of these lines of evidence identify a significant impact, the water body should be identified as exceeding acceptable standards. Unfortunately, the proposal would require identifying the adverse impact through at least two of these approaches. We are concerned that, as a practical matter, this will lead to the inappropriate exclusion of water bodies that are impacted, but which have not been found "hot" by more than one test. This concern is exacerbated by the fact that list of chemicals that can be used to determine impact via the chemistry line of evidence is unduly limited, omits important and common toxins (such as pyrethroid pesticides) and lacks a clear provision for updating the list of chemicals that can be used for the LOE.

To the extent that data exists to allow the use of Multiple Lines of Evidence, that is an appropriate approach (provided that evidence from the available lines of evidence is used to achieve an outcome consistent with the precautionary principle). However, lack of data to provide MLOE should not preclude action.

### **SQO Policy Creates Obstacles for CWA 303(d) Listing Process**

It appears that the proposed Sediment Quality Objective would have the effect of making it more difficult to include impaired water bodies on the Clean Water Act 303(d) list. The requirements of the SQO approach would make it more difficult to put water bodies on the 303(d) list, and creates additional costs, and opportunities for additional delays, disruptions and distractions from the discharger community seeking to avoid listing.

While we all would like to see fewer impaired water bodies in California, we believe the appropriate approach is to clean up polluted sediments and water bodies, rather than create administrative obstacles for their inclusion on the 303(d) list and eligibility for TMDL planning.

In general, given the current state of our aquatic ecosystems, we do not believe there is justification for abandoning the current protective approaches used by the water boards in protecting water quality. The SQO proposal takes an entirely different approach to sediment quality which requires proof of an impact (through multiple tests) before regulatory controls can be developed. This is an abandonment of the precautionary principal, which we believe will slow progress toward cleaning up toxic sediments.

The SQOs should not override existing narrative toxicity objectives in the Basin Plans or make any other changes which would limit the ability of the Water Boards to react to the best available science about toxins in benthic sediments.

We are concerned that the Sediment Quality Objective, as proposed, is less protective than existing policies and at odds with the Board's mandate under the Water Code.

Given that the proposed SQO is less protective than the status quo, we believe the Board must conduct a full analysis of impacts and include meaningful alternative regulatory approaches.

We urge you not to adopt this flawed approach, and instead reconfigure and bolster the policy to provide "adequate protection for the most sensitive aquatic organisms" as required by section 13393 of the Water Code.

Thank you for your consideration of our comments.

Regards,

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