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Division of Water Quality

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Gray Davis
Governor

February 5, 2002

Members and Alternates:

MEETING OF THE AB 982 PUBLIC ADVISORY GROUP

The AB 982 Public Advisory Group (PAG) will meet on February 15, 2002 at the California State Chamber of Commerce, 1215 K Street, 14th Floor, in Sacramento, California.

Please find enclosed the meeting agenda and the documents to support many of the agenda items. If you are planning to have handouts, please bring at least 40 copies for the PAG members and audience.

If you have any questions regarding the PAG or the meeting, please call me at (916) 341-5560. You may also call the liaison to the PAG, Laura Sharpe at (916) 341-5596.

Sincerely,

Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
Division of Water Quality

Enclosures

cc: Interested Parties

AB 982 Public Advisory Group

Friday, February 15, 2002
10:30 a.m. to 4:30 p.m.

California State Chamber of Commerce
1215 K Street, Suite 1400
Sacramento, California

A G E N D A

1. *Convene Meeting – Co-Chairs* 10:30 a.m.—10:35 a.m.

2. *Introduction* 10:35 a.m.—10:40 a.m.
 - Steve Ekstrom
 - Description of the Meeting: Listing Waters on the Section 303(d) list in 2002 and development of concepts for the SWRCB's Listing and De-listing Policy.

3. *October 10, 2001 Meeting Summary* 10:40 a.m.—10:45 a.m.
Action Item: Consider approval of Meeting Summary (Attached)

4. *The Clean Water Act Section 303(d) List in 2002.* 10:45 a.m.—12:00 p.m.
 - Tom Mumley, Tom Howard, Craig J. Wilson
 - Overview/Status
 - Process
 - Schedule (attached)
 - Dialogue/discussion on the 2002 List

5. *Lunch* 12:00 p.m.—1:15 p.m.

6. *Concepts for the Listing/De-listing Policy* 1:15 p.m.—3:30 p.m.
- Tom Mumley, Tom Howard, Craig J. Wilson
 - Presentation of issues and comments (attached) received at several meetings with PAG members, the Storm Water Quality Task Force, and a California Farm Bureau water quality group.
 - Dialogue/discussion on the issues and comments.
 - Discuss of the PAG's future involvement in the Policy development.
7. *Break* 3:30 p.m.—3:45 p.m.
8. *Update on Implementation of the TMDL Initiative and Action Plan* 3:45 p.m.—4:15 p.m.
- Tom Mumley
 - Dialogue/discussion
8. *Wrap-up and Next Steps* 4:15 p.m.—4:25 p.m.
9. *Public Comment* 4:25 p.m.—4:30 p.m.
- Any person wishing to address the PAG may do so during this item.
10. *Adjourn* 4:30 p.m.

Agenda Item 3

October 10, 2001 Meeting Summary

AB 982 Public Advisory Group

Hyatt Regency Hotel, Carmel Room
1209 L Street
Sacramento, California

Meeting Summary

Wednesday, October 10, 2001

Convene Meeting: Co-Chairs Craig Johns and David Beckman opened the meeting at approximately 9:30 a.m. and declared a quorum.

Introductions: Steve Ekstrom, PAG facilitator, asked members to introduce themselves. He also noted that the primary purpose of this meeting was for PAG to react to the TMDL Initiative/Action Plan that will form the basis of the Second Report to the Legislature.

Summary of the July 16-17, 2001 meeting: The summary was accepted with one change. A PAG member asked that when addenda are included with meeting summaries that authors' names be indicated. The author of the addendum (Leslie Mintz) was identified.

TMDL Initiative and Action Plan: Tom Howard, Deputy Director, and Tom Mumley, TMDL Program Manager, discussed their roles. Tom Howard stressed the Board's commitment to the TMDL program, noting that the Board has declared it to be its highest water quality activity. He stated that his role was to ensure the appropriate implementation of the TMDL program. The TMDL program will embrace a problem solving approach.

A reorganization of the Division of Water Quality (DWQ) is nearly complete. A new TMDL section will be formed in DWQ as one of six sections of the Division. Ken Harris will be the TMDL Section Chief. Tom Mumley, with the San Francisco Bay Regional Board, will be the TMDL Program Manager. Unit Chiefs will be Craig J. Wilson (Monitoring and TMDL Listing), Val Connor (Assessment and TMDL Support), and Paul Lillebo (Basin Planning).

Tom Mumley noted that the PAG has wanted a more clearly defined TMDL program and that the Board listened to this concern and responded with this reorganization plan. Tom Mumley emphasized the importance of good communication with PAG and mentioned that there is a lot of unfinished business that he looks forward to getting PAG's advice on.

PAG members expressed their appreciation for the way in which the Board and staff have responded to their concerns.

Tom Mumley gave an overview of the TMDL Initiative, noting that more detail would follow later in the meeting. Comments from PAG included:

- TMDL productivity: What can be expected? How will it be defined?
- Accountability: What specific products can be identified?
- Early implementation: Some environmental caucus members are concerned with “early off-ramps” that would prevent TMDLs from being completed.
- Stakeholders: Some environmental caucus members are concerned that more time for input is not always better; regulated caucus members pointed out that often really good ideas emerge from stakeholders and caution needs to be taken not to cut their input opportunities too short. The caucuses do not agree on the scope of stakeholder processes.
- TMDL definition: The Initiative and Action Plan appears to broaden the definition of a TMDL. It is appropriate to stay with the established definitions.
- “Clean water” as an overarching goal or vision: Both communities felt that this was missing from the Initiative.
- Prevention: We need to make sure that clean waters remain clean.
- Appreciation was expressed for the chart that showed PAG’s consensus points and where they show up in the TMDL Initiative.
- TMDL Program scope: It is not appropriate to implement the various water quality programs through the TMDL Program. Each effort needs to be independent.

PAG’s Interaction and Involvement with the TMDL Initiative and Action Plan;

Role of the PAG: Tom Mumley explained that of the nine strategies in the Initiative, the first five currently have specific actions. Actions on the remaining four are to be determined. Using handouts and a slide presentation, he reviewed each of the five strategies in detail, asking for PAG’s input.

I: TMDL Program Structure and Management

PAG comments included:

- Be clear about actual TMDL productivity, e.g., how many TMDLs are targeted to be completed, and by when.
- Look for ways to combine “reaches” in a water body as a way of possibly reducing the number of TMDLs that need to be developed.
- PAG’s role as suggested by staff is appropriate.

II: Information Management

PAG comments included:

- Need to make sure the TMDL database is available on the SWRCB website.
- Can staff say when the action plan will be posted on the website? (Staff will indicate this in the action plan).
- Need to make sure Regional Board members are educated and informed about the TMDL Program.

- Could staff put the Basin Planning Procedures Manual on the web?
- Look for ways to link the website with other existing databases.
- How will PAG's comments be included in the report to the legislature?
- PAG's role as suggested by staff is appropriate.

III: TMDL Toolbox and Guidelines

Tom Mumley explained that he intends to form workgroups that will specialize in various TMDLs (e.g., pathogens, habitat impairment, metals, pesticides, hydrocarbons, trash, and dissolved oxygen). These workgroups can be resources to any Region as they develop their TMDLs.

PAG comments included:

- Concern about using TMDL "templates." (Tom explained that this was not a shortcut approach but a way of learning from best practices; it is not intended to be a "one-size-fits-all" approach).
- Look for cross-cutting issues and produce guidelines.
- Be clear about how stakeholder input will be used to review workgroup products.
- When will workgroups be formed, and who will be on them? (Tom responded that members will be named in about one month, and in about two months their work plans will be identified).
- In addition to the suggested PAG role of advice and comment, it was suggested that PAG could also serve as a sounding board as staff work through the challenges and issues.
- PAG's role as suggested by staff is appropriate.

IV: Outreach, Communication and Participation

Tom Mumley explained that the intent of stakeholder participation is not necessarily to achieve consensus, but that there's a spectrum of ways stakeholders can be involved (e.g., facilitated meetings, councils, providing testimony, public forums, etc.). There are criteria that could help define appropriate input methodologies.

PAG comments included:

- Let stakeholders know about timeframes.
- How will processes for any particular TMDL be determined? (Tom's response: it's an art; start at the lowest level of participation and work up, as needed; share experience).
- It would be useful if staff could describe factors to be considered when deciding on a stakeholder process, with some examples.
- Perhaps "stakeholder process" should be one of the tools in the TMDL toolbox and guidelines.
- There needs to be emphasis on helping rural regions get more stakeholders involved.
- Perhaps work groups could recommend viable stakeholder processes according to their particular pollutant.

- Regions should make a commitment to reaching out the environmental justice community.
- PAG's role as suggested by staff is appropriate.

V. Early implementation

Tom Mumley explained that early implementation is a way of engaging parties early, perhaps even by giving notice of the intent to develop a TMDL. The intent is to get awareness "on the table" early, and to use incentive-based solutions.

PAG comments included:

- Don't let early implementation cause delays.
- Perhaps the title of this strategy is not accurate, as it implies starting action on a TMDL early, before it's even developed; maybe a better title would be something like, "Pre-TMDL Action."
- Could "early implementation" apply to non-point sources? (staff believes it could).
- PAG's role as suggested by staff is appropriate.

Update on the Section 303(d) Listing Scheduled for 2002; Listing Policy: Val Connor, Chief of Assessment and the TMDL Support Unit, gave a presentation on the schedule for 2002. No questions were asked by PAG.

TMDLs in California: Diazinon in Urban Creeks: Bill Johnson gave a presentation on how diazinon is being treated in urban creeks. He pointed out that as diazinon is being phased out other pesticides are being emphasized and that they could be harmful to water quality. Discussion followed, one area of contention being the relationship between the Water Boards' and the Department of Pesticide Regulation.

PAG's Role Relative to the SWRCB's Report to the Legislature: Tom Howard explained that the draft report is not written yet because staff wanted PAG's input on the Initiative/Action Plan first. He asked what role PAG wanted to play. After discussion the following was agreed to:

1. Staff will prepare a draft report by the end of October, and will immediately mail it to PAG members.
2. The co-chairs will form a subcommittee that will prepare PAG's comments on the draft report.
3. By November 7 the co-chairs will give staff a status report on the subcommittee's progress.
4. Comments to the SWRCB from PAG will be submitted by November 21.

Wrap-up and Next Steps:

October 16, 2001

DRAFT

Regarding the five-strategies/action plans that were reviewed today, PAG should get any additional input to Tom Mumley by October 19th. Tom can be reached at (510) 622-2395, (916) 341-5627, or tem@rb2.swrcb.ca.gov.

Regarding the four other strategies (Monitoring and Assessment, Basin Planning, TMDL Implementation, and Budget Development and Management) PAG will have opportunities to comment as the action plans are developed.

The ***next PAG meeting*** will be on January 15, 2002 in Sacramento, specific location to be determined. The primary agenda for the meeting will be listing and de-listing Policy.

Public Comment: No one from the public chose to address the PAG.

Adjournment: The meeting was adjourned by the Co-Chairs at 3:50 p.m.

Agenda Item 4

Process and Schedule for the 2002
Section 303(d) List Submittal

Section 303(d) List of Water Quality Limited Segments

Methodology For Evaluating Regional Water Quality Control Board Recommendations for the Section 303(d) List

Introduction

This report describes the process by which the State Water Resources Control Board (SWRCB) staff is evaluating and recommending waters for revision of California's Clean Water Act Section 303(d) list of water quality limited segments. This process is intended to apply to only the listing process conducted in 2002. The SWRCB is in the process of developing a listing/de-listing Policy that will provide a consistent approach for adding and deleting waters from future list submittals.

Overview of Process

The RWQCBs solicited the public for data and information and then submitted recommendations to the SWRCB for listing water quality limited segments still requiring Total Maximum Daily Loads (TMDLs). The RWQCBs have assembled and evaluated all existing and readily available water quality-related data and information to develop the list (40 CFR 130.7(b)(5)) and provided documentation to list or not to list a state's waters (40 CFR 130.7(b)(6)).

The SWRCB is reviewing the RWQCB recommendations and identified waters that do not meet applicable water quality standards with technology-based controls alone. The record contains the rationale for decisions to use or not to use any existing and readily available data and information (40 CFR 130.7(b)(6)(iii)). The SWRCB is also identifying and setting priorities for the listed water quality limited segments still requiring TMDLs (40 CFR 130.7(b)). A water quality limited segment is "any segment [of a water body] where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after application of technology-based effluent limitations required by CWA Sections 301(b) or 306."

In developing the staff recommendations it is assumed that:

1. The 1998 Section 303(d) list forms the basis for the 2002 list submittal.
2. All waters listed on the 1998 list will be included in the 2002 list submittal unless it was recommended by a RWQCBs to change the listing status of a water body.

3. If there is insufficient data and information to list, water bodies will be placed on a "Watch List". The Watch List is not part of the Section 303(d) list but will be sent to the U.S. Environmental Protection Agency.

SWRCB staff is reviewing each RWQCB proposal on a case-by-case basis. Staff will make an assessment of several factors as follows:

1. Watershed/Water Body
2. Stressor/Beneficial Use
3. Assessment of data quality. Extent to which data quality requirements are met.
4. Linkage between measurements and beneficial use or standard
5. Correlation of stressor to response
6. Utility of measure for judging if standards or uses are not attained
7. Water Body-specific Information
8. Sensitivity of the measurement for detecting response
9. Spatial representativeness
10. Temporal representativeness
11. Quantitativeness
12. Use of standard method
13. Source of pollutant
14. Availability of an alternative enforceable program

For each of these factors, staff is preparing a written description of how the RWQCBs addressed the water body. Each recommendation to the SWRCB is being developed based on strength, value, and believability of all the data and information available. Staff are using best professional judgement to consider all existing readily available data and information in making recommendations. SWRCB management will review initial recommendations and final recommendations will be made for additions to the list, deletions from the list, waters excluded from the list, or waters to be placed on the watch list.

Clean Water Act Section 303(d) List Submittal
2002
SCHEDULE

Task	Completion Date
Complete Draft Section 303(d) List and Staff Report	April 2, 2002
Notice Hearing	April 2, 2002
Northern California Hearing (Sacramento)	May 23-24, 2002
Southern California Hearing (Most likely in Ontario)	May 30, 2002
Respond to Comments	June-July, 2002
SWRCB Workshop	September, 2002
SWRCB Meeting	September, 2002
Submit Section 303(d) List to U.S. EPA	October, 2002

Agenda Item 6

Concepts for the Listing/De-listing Policy

Issues and Discussion Regarding Listing/De-listing Policy

February 15, 2002
PAG Meeting

Where did the comments come from?

- Environmental Caucus (4 meetings)
- Regulated Caucuses (2 meetings)
- Storm Water Quality Task Force
- California Water Quality Coalition
- Meetings held December 2001-February 2002

More on the Environmental and Regulated Community Comments

- The comments presented here are summarized from the discussions
- The topics discussed in the meetings covered a variety of topics
- A summarized list of all comments grouped by major topic is available
- In the comment sections “E” signifies an Environmental Community comment and “R” a Regulated Community comment

The SWRCB Seeks Advice on These Major Issues

- Scope of the Policy
- Listing Concepts
- De-listing Concepts
- Weight of Evidence
- Watch List
- Sources of Pollutants
- Other Issues Identified by the PAG

Policy Scope

- *ISSUE*: What factors should be addressed by the Listing/De-listing Policy?
- *ISSUE*: Incorporate guidance on:
 - » listing/de-listing factors?
 - » beneficial use designation/de-designation?
 - » water quality standards revision or development?

Comments on Scope

- R: Policy should include provisions for development of list and revision of standards and beneficial uses
- R/E: Develop list of Water Quality Limited Segments still requiring TMDLs
- E: Divorce listing decision from management decisions (development of the TMDLs)
- E: List should be a scientifically-based decision on impairment

PAG Dialogue

- *ISSUE*: Scope of the Policy
 - » Dialogue
 - » Consensus
 - » Future Direction

Listing Concepts

- *ISSUE*: How specific should be Policy be?
- *ISSUE*: Should the SWRCB specify public participation process, types of data to solicit, and how data will be evaluated?

Comments on Listing (1)

- E: Overarching policy principle should be to protect the environment and human health
- E: Base on Best Professional Judgement (BPJ), each circumstance is so different
- E: Should be precautionary

Comments on Listing (2)

- E: Should not be too specific
- E: Burden of proof on regulated community to prove why WQS are not met
- E: List even if the pollutant is not identified
- E: Do not consider the TMDL in Listing Process

Comments on Listing (3)

- R: Establish core principles in the Policy
- R: Should be predictable
- R: Specify BPJ
- R: Should be objective, specific, and rigorous
- R/E: Data needs to be scientifically defensible

Comments on Listing (4)

- R: Process needs more integrity
- R: Process should be transparent
- R: Don't reinvent process, use other State approaches
- E: Establish open process, previous list process in CA poor
- E: Avoid poor communication between public, RB, and SB

PAG Dialogue

- *ISSUE*: Listing
 - » Dialogue
 - » Consensus
 - » Future Direction

De-listing Concepts

- *ISSUE*: Should de-listing be allowed?
- *ISSUE*: What factors should trigger de-listing?
- *ISSUE*: After TMDL completed, should water body be removed from the list?

De-listing Comments

- E: It is illegal to de-list
- E: Keep waters on list until WQS met or BU restored
- R: Need to review the entire existing list
- R: Specify how to get waters off the list
- R: Remove from list if TMDL completed
- R: Remove if the data are bad

PAG Dialogue

- *ISSUE*: De-listing
 - » Dialogue
 - » Consensus
 - » Future Direction

Weight of Evidence

- Budget Act requires use of Weight of Evidence (WOE) approach
- *ISSUE*: What are the components of the approach?
- *ISSUE*: How specific should the WOE be?

Comments on WOE (1)

- Use multiple lines of evidence
 - » R/E: Biology, toxicity, and chemistry
 - » R: BU assessment, bioassessment, toxicity, and chemical WQS attainment
- R: Establish rigorous QA/QC requirements that all data must meet
- R: Use only credible data
- R: Use a credible amount of data

Weight of Evidence (2)

- R: Any numeric value must be adopted as numeric WQO, otherwise do not use
- R: Adopt translator and use it consistently
- E: Single line of evidence should be used if WQS not met
- E: Some communities may not be able to list or de-list if they can't afford monitoring (Environmental Justice issues)
- E: Use sliding scale of quality for all data and information

Comments on WOE (3)

- E: Use numeric values to interpret narrative standards
- E: Allow all data but require minimum QA procedures
- E: Use all data, not some predetermined type or amount
- E: Don't worry about listing clean waters, most water bodies are impaired
- E: Use all information: pictures and opinions show obvious pollution
- E: Use qualitative data to support quantitative lines of evidence

Comments on WOE (4)

- Confidence in the decision should be:
 - » E: Low when listing
 - » E: High when de-listing
 - » R: High when listing
 - » R/E: the same when listing or de-listing

Comment on WOE (5)

- R: Use FL approaches for developing the list (e.g., binomial model, 2-part list, etc.)
- E: FL approach sets the bar too high
- E: Consistency not needed if circumstances warrant
- R: Consistency needed throughout State

PAG Dialogue

- *ISSUE*: Weight of Evidence
 - » Dialogue
 - » Consensus
 - » Future Direction

Watch List

- *ISSUE*: Should the SWRCB create a “Watch List”(WL)?
- *ISSUE*: What waters should be placed on a watch list?
- *ISSUE*: What should happen to waters placed on a watch list?

Comments on WL (1)

- E: WL is a mechanism to avoid listing, lots of potential for abuse
- R: WL is a mechanism to focus on getting the information to list
- E: When in doubt, list
- R: When in doubt, get more information
- E: Watch-listed waters should focus on watershed management

Comments on WL (2)

- E: Watch-listed waters should be posted as areas to avoid
- R: Watch List should not be part of 303(d) list (no regulatory force)
- R: FL planning list is appropriate
- E: FL planning list is not appropriate
- R: NAS preliminary list is supportable
- E: NAS preliminary list is not supportable
- E: Watch list accommodates the regulated community

PAG Dialogue

- *ISSUE*: Watch List
 - » Dialogue
 - » Consensus
 - » Future Direction

Natural Sources of Pollutants

- *ISSUE*: Should waters be listed if the source of pollutants in natural?
- *ISSUE*: Should TMDLs be required for natural sources of pollutants?

Comments on Natural Sources

- R: Don't list, TMDL is not necessary
- R: Don't list, we can't do anything about WQS exceedance caused by natural conditions
- E: List, TMDL is necessary to prevent future degradation
- E: List, illegal to avoid listing if WQS not met.
- E: List, make low priority, change WQS or BU to remedy issue

PAG Dialogue

- *ISSUE*: Natural Sources of Pollutants
 - » Dialogue
 - » Consensus
 - » Future Direction

PAG Input in the Future

- Do you want to have more detailed input into the Policy?
- Options
 - » schedule more meetings
 - » convene subcommittees
 - » other options