

Comments on the Proposed 303(d) Listing Policy

A presentation to the State Water Resources Control Board Workshop to
Review Implementation of the Water Quality Control Policy for
Developing California's Clean Water Act Section 303(d) List

By

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on Behalf of the
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Sacramento, California

20 March 2007

CPR Agrees with the August 24, 2004 Statements of the Regulated Caucus of the AB 982 Public Advisory Group

- CPR appreciates the extraordinary lengths to which your Board and staff went to ensure the greatest amount of public and stakeholder involvement in the development of the Policy.
- CPR also agrees that it is imperative that any future listing decisions be made using a consistent and objective set of guidelines.
- CPR further appreciates the State Board's efforts to provide a balanced policy.

Evolution of the California 303(d) List 1976 - 1998

“The listing of impaired waters pursuant to Section 303(d) has evolved over time. Initially, in 1976, fewer than 20 water bodies were identified in the 305(b) report as ‘Water Quality Limited Segments.’ The ‘Water Quality Limited Segments’ list remained virtually the same until 1988, when it increased to 75 water bodies. In the 1990 305(b) report, the list was identified for the first time as the ‘Section 303(d) List.’ The 1990 list included approximately 250 water bodies. Since 1990, the 303(d) list has increased with each biennial listing process, and in 1998, 509 water bodies were listed with 1,471 water body reaches and pollutants reflecting combinations of quality problems.”

Evolution of the California 303(d) List 1976 - 1998 (Continued)

“Prior to 1988, the listing process varied among RWQCBs. Some RWQCBs formally adopted the 303(d) list for their regions, while others did not. In 1998, staff at all nine RWQCBs presented their 303(d) list to their respective boards for official approval. All RWQCBs but San Francisco RWQCB adopted their lists by resolution. The SWRCB also formally approved the 1998 statewide 303(d) list before submittal to USEPA.”

(Source: Structure and Effectiveness of the State’s Water Quality Programs: Section 303(d) of the Federal Clean Water Act and Total Maximum Daily Loads (TMDLs), Report to the Legislature Pursuant to AB 982 of 1999, State Water Resources Control Board, January 2001.)

Recent Improvements to the 303(d) List

- Since State Board staff was assigned responsibility for developing the 303(d) List, the process and the resulting 303(d) lists have been greatly improved.
- The 2002 list benefited from being used to help develop the listing-delisting policy.
- The 2004/2006 list was even more improved because of the rigor incorporated into the policy.

CPR Agrees with the AB 982 PAG Summary of the Effectiveness of the Existing Listing Program

- The listing of waterbodies as impaired pursuant to Section 303(d) is an important step in the TMDL process.
- Listing of a polluted water on the Section 303(d) List creates the basis for new restrictions intended to assist impaired waterbodies in meeting water quality standards and protecting beneficial uses.
- To the extent that waters are improperly listed, this could divert funds from other programs and could have other societal and economic impacts.
- Alternatively, to the extent that waters are improperly excluded from the list, impaired waters may not receive the attention and resources needed to restore and protect them.

(Source: Report on the Structure and Effectiveness of California's Efforts to Develop Total Daily Loads (TMDLs) to Restore Impaired Waters and Recommendations for Future Policy Development, AB 982 Public Advisory Group, February 2001)

A 303(d) Fail-Safe Mechanism Exists

- USEPA Region 9 reviews the State 303(d) List and may amend the List.
- As noted in a March 8, 2007 letter from Alexis Strauss to Tom Howard, the State and EPA agreed on more than 99% of the State's assessment determination.
- EPA added 36 waterbodies to the 2004/2006 list of impaired waters and added additional pollutants to 34 waters already listed by the State.
- The existing listing-delisting policy worked well for the 2004/2006 303(d) List.

Conclusion

- CPR supports staff's recommendation to use the existing Listing Policy in developing the 2008 303(d) List.
- If responsibility for developing the waterbody fact sheets continues to revert back to the Regional Boards, no changes should be made to the existing policy at this time.
- It will be important for the Board to assess the quality of the process and the quality of the resulting lists by comparing State Board staff-prepared fact sheets to those prepared by the Regional Boards.
- After the 2008 303(d) List is adopted, the State Board should request that staff prepare an updated report on the structure and effectiveness of the 303(d) listing program.