

AB 982 Public Advisory Group

Clarion Hotel, Brannan Room
700 Sixteenth Street
Sacramento, California

Meeting Summary

Monday, July 16, 2001

Convene Meeting: Co-Chairs Craig Johns and Linda Sheehan (substituting for David Beckman) opened the meeting at 1:30 p.m. without a quorum. Art Baggett, Chair of the State Water Resources Control Board (SWRCB), welcomed the Public Advisory Group (PAG) and introduced Celeste Cantu, SWRCB's new Executive Director. Celeste outlined her management philosophy, stressing the importance she places on collaborative efforts with stakeholders, as exemplified by the PAG.

Summary of March 26, 2001 meeting: Action on this item was deferred until a quorum of members was present.

TMDLs in California: The Trash TMDL and the Mercury TMDL: Jonathan Bishop, from the Los Angeles Regional Water Quality Control Board (RWQCB) gave a presentation describing the trash Total Maximum Daily Load (TMDL) for the Los Angeles River. Following this, Dr. Tom Mumley from the San Francisco Bay RWQCB gave a slide presentation of the mercury TMDL for the San Francisco Bay. PAG members had several questions for each presenter. Both were thanked by the PAG for their fine presentations.

Adjournment: The Co-Chairs adjourned the meeting at 4:00 p.m.

Tuesday, July 17, 2001

Location change: The meeting for this second day was changed to Grapes Restaurant, 815 11th Street in Sacramento.

Convene Meeting: The Co-Chairs David Beckman and Craig Johns opened the meeting at 8:50 a.m. and acknowledged that a quorum was present. Celeste Cantu, the SWRCB's Executive Director, welcomed the PAG and restated her management philosophy for the benefit of members who were not at the previous day's meeting. Pete Silva, member of the State Water Board, also welcomed PAG members.

Summary of March 26, 2001 meeting: With a quorum now present action was taken on the March 26, 2001 meeting summary. Craig Johns made the point that some of the comments attributed to him under the agenda "Review of the State Water Resources Control Board's TMDL Structure and Effectiveness Report" were made by others. Following discussion it was agreed to revise the summary to state that the points made in

the discussion were made by PAG members and not attribute them to any person. With the agreement that the summary would be changed accordingly, PAG accepted the March 26, 2001 meeting summary by a consensus vote.

It was also noted that there are a few roster changes to be made. Craig Wilson agreed to send out the current roster for everyone's review. Any proposed changes will require that each co-chair submit those changes in writing to Celeste Cantu, SWRCB Executive Director.

Measures Being Taken to Expedite the TMDL Process: The document that was mailed out with the agenda was the product of the TMDL team which highlighted steps being taken to speed up the TMDL process. PAG members had numerous comments:

- A strong evaluation component is lacking.
- There is no apparent internal structure that monitors overall progress of the TMDL program.
- It is now clearer than ever the SWRCB does not have a TMDL program.
- The pace of TMDL development is so slow that the SWRCB will not get them done.
- Many of the topics to expedite the process are good, but the PAG's suggestions are missing. For example, the PAG's SWAT team idea is not mentioned.
- The PAG wants the SWRCB to have a TMDL program.
- The PAG wants fast, quality, science-based TMDLs.
- Much disappointment was expressed that the PAG's comments were not on the list.
- It is remarkable that the PAG and its comments were not referenced in the document.
- The "strike team" issue is very important because the work of the Regions have to be transferable to other regions.
- Another way to expedite TMDL development is to develop them under contract.
- The SWRCB needs to show progress for the funding input. For example, be specific about what the PAG can expect in six months or a year.
- The SWRCB can play an important role in serving the Regions by reviewing the quality of the scientific information used.
- Focusing on the document attached for Item 9, significant disappointment was expressed about the lack of evaluation methodologies, evaluation criteria, lack of specificity in objectives and criteria.
- The SWRCB is way off track on developing TMDLs (many should have been completed this year to continue to meet long-term deadlines).
- The SWRCB needs to develop and implement guidance/procedures on the whole TMDL development effort. This "top-down" guidance will help the Regions avoid struggling through each TMDL.
- The SWRCB needs to show more productivity per Personnel Year (PY). Very little work is getting done with the resources that have been made available.
- The SWRCB have not answered many questions related to process. How do the environmental data enter the process?

- PAG members were troubled by fact the SWRCB can't give any guidance on the TMDL development process or 303(d) listing/delisting process. California should be leading the country in these areas.
- Other State agencies are problematic also. Frustration was expressed about Caltrans, Department of Conservation, Department of Forestry, and the Department of Pesticide Regulation.
- The only approaches that seem to work are lawsuits, but litigation is not sustainable.
- The SWRCB needs to show strong leadership.
- The SWRCB should think creatively to get higher level (more experienced) people on staff.
- The staff has to be productive to meeting the challenge of completing TMDLs.
- The SWRCB needs to flesh out timelines and deliverables for TMDLs. For example, what is the timeline for the TMDL master contract?
- SWRCB should use expertise across Regions.
- SWRCB should make better use of PAG to "push" for things that the State can't because of regulatory restrictions.
- On the next report document expediting efforts, staff should add timelines and expectations about future events/expectations.
- If SWRCB's efforts and results are better than what is written, then a better document should be prepared for PAG.
- Overall, the SWRCB, needs (1) more specificity in the TMDL documents, (2) to present the various deliverables, and (3) more productivity from its staff.

Surface Water Ambient Monitoring Program Update: Craig Wilson presented an overview of the report that was included with the agenda. Among other things, Craig discussed the proposed reference condition study (establishing a clean water baseline) and the formation of a scientific panel to "review, study and design approaches, indicators and other relevant topics."

PAG members offered some comments:

- The PAG would like to see the proposed names for the scientific panel before it is finalized.
- The PAG would like to be notified in advance of workshops.
- Suggestion: commit to a template or format for all data that is generated by the Boards' monitoring efforts.
- The PAG appreciated the thoroughness of the staff report and the progress that's been made.

National Academy of Sciences (NAS) Report – Assessing the TMDL Approach to Water Quality Management (Executive Summary): PAG members commented on the report:

- The NAS report is good for environmental and regulatory communities in that it advises to move forward since there is sufficient science.
- The report could be used as a basis for examining California's TMDL program.
- The report verified many of the points PAG made in its report last year, e.g., the value in balancing good science with moving ahead knowing that there will always be some uncertainty.
- The report underscores the need for budget increases (more PYs).
- The report underscores compliance monitoring.

Goals, Objectives, and Evaluation Criteria: Assessing Progress in the State's Efforts to Implement the Clean Water Act, Section 303(d): The PAG had many comments on the staff report:

- Evaluation criteria are missing; most of the "Work Elements" are too vague to be evaluated.
- PAG requests/recommendations not in the document.
- Comments about the goals: some are quite possibly illegal; some members wanted to simplify the goals; some felt the term "environment" should be in the goals; some felt goal 2 should be eliminated, while it was noted by another member that goal 2 seems to be paraphrased from Section 13000 of the Water Code.
- There's no mention of antidegradation.
- Objective 4 should be emphasized as it was a PAG consensus item; other PAG recommendations should be incorporated.
- None of the PAG's requests regarding the deficiencies in the State Report on the TMDL program structure are addressed. Structure is admittedly different than goals and objectives, but this document could have incorporated information on staffing or deliverables, as requested in the PAG TMDL report transmittal letter. Moreover, the detailed workplan PAG asked for by Legislative oversight committee is relevant to this.
- This document describes TMDLs as a very broad overarching effort. The TMDL program should be more discrete.
- Do not build watershed management into the TMDL program.
- Treat the TMDL program as a "silo" like other programs.
- The main goal of the TMDL program should be to achieve water quality standards.
- Include more policy language, e.g., when to halt stakeholder input
- Objective 5: make sure this objective includes public education and make sure enforcement is addressed.
- When implementing public hearing processes and in order to increase access, be sure there are meetings distributed throughout the State or Region.
- The web (i.e., Internet) needs to be woven through data management.
- It is impossible to separate TMDLs from watershed management and other programs.
- The document should focus on the implementation of the TMDL program.
- There's no mention of PAG reports to the Legislature.

- The document needs to be rewritten completely, the document is disjointed, lacks specificity and is poorly organized.

One PAG member submitted written comments on the staff report (attached).

Update: Development of the 2002 Section 303(d) list and Development of Listing/Delisting Policy: It was noted that the State should develop a policy statement per the PAG's recommendations from last year. Staff noted that there's currently an effort underway to develop policy for the 2004 listing. A member suggested that it would be good if PAG can react to the statement before it's finalized. Another member agreed, adding that the sooner a draft can get out for comment, the better.

Structure of the TMDL Program: PAG members had several comments:

- Please revise to explain what the SWRCB is doing as a program.
- This document reads more like a public relations piece.
- It appears to be wrong in the estimates for Region 4 and 8.
- The document doesn't describe the dire straights of the program.
- The document is inadequate to describe the structure of the TMDL program.
- There seems to be some internal struggle at the SWRCB because PAG's consensus recommendations and consensus legislation haven't been considered or agreed with.
- As presented, there is not enough productivity in completing TMDLs.
- The SWRCB-RWQCB "culture" is wrong and not working.
- There is clear difficulty in coordinating TMDL efforts (e.g., coordination of the Mercury TMDLs).
- Process comment: Need to know authors of reports.
- There appears to be no pride of authorship.
- The document sounds good, but it doesn't tell what the problems are.
- The report needs an honest assessment of what is needed to do the job and what the personnel are able to do.
- Compare resource needs to the number of water bodies, TMDLs to complete, etc.
- The comments are specifically focused on the SWRCB; not the RWQCBs.
- Each region should clearly state what's really needed to accomplish its goals.
- If this report is for the Legislature, it really needs to speak to the problems.
- There are some elements of structure in the report and therefore is a good start for the Legislative report.

Wrap-up: Some PAG members representing both regulated and environmental communities had just attended a lunch-time briefing on SB 710 revisions that SWRCB staff were preparing. During the PAG meeting wrap-up, both community representatives commented that the strong impression was that PAG's recommendations had not been taken seriously. If the State really does embrace stakeholder collaborative processes, as exemplified by the PAG, then it should take recommendations seriously and give them due acknowledgment. Some members commented that they would like to see the next version of document and have time to comment.

Public Comment: One person commented that it would be good to have “visuals” to accompany written documents (that are mailed out in advance of PAG meetings). Another person commended the PAG for its work to date and stated that its good the PAG is keeping an eye on the SWRCB.

Next Meeting: The next PAG meeting is scheduled for September 24, time and location to be determined.

Adjournment: The Co-Chairs adjourned the meeting at 3:00 p.m..

Comments submitted by PAG member, Leslie Mintz (Heal the Bay)

In my opinion, the State needs to re-do the Draft 303(d) goals, objectives and evaluation criteria.

Overall:

- 1) There are no evaluation criteria in here.
- 2) Everything lacks specificity and therefore is not helpful. Also, many of the work elements listed merely reiterate things already being done. The SWRCB will not create any policies that affect this year's listing cycle because they do not want to get sued for underground rulemaking. However, this document supposedly concerns future listing cycles, and thus should be able to be more specific.
- 3) None of the PAG's requests regarding the deficiencies in the State Report on the TMDL program structure are addressed. Structure is admittedly different than goals and objectives, but this goals document could have incorporated information on staffing or deliverables, as requested in our PAG TMDL report transmittal letter. Moreover, the detailed workplan we asked a legislative oversight committee for is relevant to this. Where is it?
- 4) The PAG (or its recommendations) are not mentioned at all. The PAG should at least be part of the evaluation criteria.

- **Goals**

ANTIDEGRADATION IS MISSING: Should be *restoring* and maintaining beneficial uses (see, e.g., PAG Report, p. 6).

Cf. NAS TMDL report mentions control of BOTH point and nonpoint sources of pollution. This SWRCB document does not.

Objective #4 should be a higher priority—it was a big point of PAG CONSENSUS.

“Access” and/or rather than just “Understanding.”

- **Id, List and Prioritize Impaired Waters**

PAG ISSUES AND RECOMMENDATIONS ARE NOT ADDRESSED: See PAG recommendations: top of page 10, PAG Report. Specifically, consistency among Regional Boards is not addressed in this document. Utilization of data is not really addressed. Amount of scientific rigor needed not addressed (regardless of whether it is the environmental or regulated caucus's view). The SWRCB needs to commit to addressing these issues.

Does address adequacy of funding/personnel to some degree. Does discuss statewide monitoring to some degree.

NO EVALUATION CRITERIA. Ultimately, the only way to evaluate the 303(d) listing process is to see waters improve.

“Develop a Policy” is to direct “revisions,” not, as the PAG recommended, to direct “how Regional Boards should maximize consideration of existing data.”[PAG CONSENSUS POINT]

- The only good thing here is the public process. How long would this take? Two years?
- The CWA fairly specific on how things may be listed and delisted, and doesn't any policy need to adhere to these federal requirements? (Say so in this document!)
- Need a timeline.
- “Develop” or “consider” What is the difference? And what does it mean anyway?
- What is the weight of evidence approach, etc.?

SWAMP stuff is good.

Data storage mechanism? Isn't the SWRCB doing this already with SWIM and STORET? Also, no mention of need to ensure public access in a user-friendly manner.

- **Develop Water Quality Attainment Strategies that address all waters, lead to corrective actions, manage in a watershed context, satisfy legal requirements.**

PAG RECOMMENDATIONS SHOULD BE ADDRESSED: This heading is really just the same as developing the TMDL program itself, and therefore the PAG recommendations should be specifically addressed in this document.

NO EVALUATION CRITERIA.

The SWRCB has already established dialogues (isn't that what the PAG is for?). Moreover, watershed stakeholder groups have disproportionate representation, and there are no elements that address this issue (like funds for interested 501s to travel etc.)

“pursue opportunities to integrate other program objectives...” What opportunities? This skirts around the PAG'S SUMMARY RECOMMENDATIONS/CONSENSUS to coordinate better with agencies.

“Use staff and contract \$\$ to secure necessary information to provide adequate scientific basis.” Where is the policy development as requested by the PAG? The SWRCB is going to decide on a case by case basis. Maybe they need to allow Regional Boards to do it this

year, but certainly not in the future. This is one of the major things slowing the Regional Boards down.

Collaborate how? Encourage what kind of initiatives, and how?

The Basin Plan stuff is just too ambiguous and unspecific to comment.

Note that the SWRCB did say they would include TMDL implementation plans in the Basin Plan amendment.

What does “evaluate the costs” mean? This is going to be on a waterbody by waterbody basis? No commitment to addressing the hard issues with policy guidance.

What is the statewide tracking program to be implemented?

Talk to us more about the statewide TMDL database. This is interesting. Can we lock in any more specifics?

Need specifics about training. Timeline, minimum resources to be devoted, etc.

How is the “roundtable” different from the PAG? Is it an academically oriented or scientific group? How is it not redundant?

- **Implement corrective and protective actions**

What specific implementation features? This looks interesting, but totally needs specifics.

- **Actively seek and manage resources**

FIRST UNDER THIS ITEM SHOULD BE SUPPORT PAG LEGISLATION TO IMPROVE THE PROGRAM. If work elements are “seek legislative changes that support timely completion of water quality attainment strategies;” “work with stakeholder groups and interested parties to develop “acceptable” legislative initiatives,” then the State should support PAG legislation!

Also, as per the CBI, disbursements in a more flexible process.

Will pollutant trading be evaluated in a public process?

Master contract legislation? Whatever happened to it?

- **Ensure Public Need for Understanding**

-Commit to a specific year when storm water data and industrial storm water data will be available on the web.

-All reports must be electronically available.