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Manager, CA Climate Policy and State Water Issues

VIA ELECTRONIC MAIL

December 19, 2014

Chair Marcus, and Members of the Board
State Water Resources Control Board
1001 "P" Street, 24th Floor
Sacramento, CA 95814

Subject: WSPA Comments on Proposed Listing Policy Amendments

Dear Chair Marcus, and Members of the Board

The Western States Petroleum Association (WSPA) is a trade association that represents the majority of petroleum related interests in the western United States. These interests include production, transportation, refining, and marketing of petroleum and petroleum-based products.

Delegation to Executive Director

WSPA requests the Board **not** adopt amendments to the Listing Policy that delegate authority for discretionary approval to the Executive Director for finalizing the proposed 303(d) List.

The Revised Notice of Opportunity to Comment (NOC), provided in part below, summarizes the proposed delegation of authority by staff:

"...after the State Water Board staff consolidates the Regional Water Board list recommendations, the State Water Board Executive Director has the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA."

"...Alternatively, at the Executive Director's discretion, the consolidated statewide list may be set for a State Water Board meeting for its approval after advance notice to the public and an opportunity to comment is provided."

WSPA does not support the delegation of Board discretion on such an important item as the Listing Policy. The current process for public notice and Board hearing for formal approval maintains an open process that our members wish to preserve. In the event that staff believes future changes to the 303(d) list are non-contentious, the Board can agendaize the issue on the consent calendar.

Data Acceptability Determinations by Regional Boards

The NOC states that the amendments modify the definition of “readily available information” to mean all information submitted to the California Environmental Data Exchange Network (CEDEN). However, Section 6.1.1 of the revised policy gives the definition as “data and information that can be submitted, that can be accessed via www.ceden.org.” The amendment also allows the State Water Board to accept data that has not been accepted by CEDEN but meets the criteria in Section 6.1.4.

While the NOC limits the information to that which has been submitted and accepted by the CEDEN and presumably meets the requirements of Section 6.1.4, it allows staff to make their own determinations about data quality & acceptability and supersedes the review conducted by the regional boards.

Section 6.3 of the current policy limits the State board’s function to “evaluat[ing] a regional board’s developed water body fact sheets for completeness, consistency with this Policy, and consistency with applicable law.” In order to maintain partiality in its own review of the recommendations by the Regional boards, we believe State Water Board staff should not be making determinations about data acceptability. We request this amendment be removed.

Data Types

Section 6.1.1 of the amended policy strikes out various types of data and information that are considered readily available. We request this amendment be removed.

The listing of applicable documents, data, and information should be retained in the policy to ensure completeness of review. Perhaps not all types of data and information are relevant to each water body, but for each item, the Regional Board should provide the item or explain why it is not relevant or has not been provided.

Listing Process for Each Cycle

Section 6.1.2.1 states,

“the State Water Board will identify...whether the State Water Board will administer a particular Regional Water Board’s listing process, pursuant to 6.2, for that region.”

Section 6.2 states,

“At its election, the State Water Board may administer the listing process for each listing cycle. If the State Water Board administers and considers a region’s proposed list on behalf of a Regional Water Board, the State Water Board shall adopt the list at a public

hearing....The State Water Board's recommendations on behalf of a Regional Water Board shall be consolidated into the statewide list submitted to U.S. EPA with the supporting fact sheets without further consideration."

These amendments could result in short-circuiting the public process. The current process has two review steps, one each by the regional board and then by the State Water Board. The proposed amendment would foreshortened the process, remove a check on the system, and allow staff to over-ride the responsibility of a regional board. Combined with the relaxed standards for the submittal of data and information, the foreshortened process could circumvent important stakeholder input. We would request this amendment be removed.

The NOC states that this foreshortened "process should only occur in cases where a certain region is not or cannot complete their regional integrated report in a timely manner."

The actual revised policy does not make this statement or place such a limitation on the State Water Board's ability to take over the responsibilities of a regional board. The statement in the NOC needs to be reflected in the actual policy. Further, there should be documentation required from the regional board stating that it will not be able to meet its obligations under 303(d) and requesting that the State board take over its function for the current listing cycle, and only for that listing cycle.

We appreciate the opportunity to comment on the proposed amendments. If you have any questions regarding our input, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Kevin Buchan". The signature is written in a cursive, flowing style.