



SQUAW VALLEY SKI CORP

rev'd
1/14/04
Policy +
TMDL
Guidance

January 14, 2004

Mr. Rik L. Rasmussen
TMDL Section
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
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RE: Comments on Draft Total Maximum Daily Load Guidance and Draft Implementing Policy

Dear Mr. Rasmussen:

Please consider these comments, delivered on behalf of Squaw Valley Ski Corporation, on the "Draft Total Maximum Daily Load Guidance and Draft Implementing Policy."

Policy

1. The "Draft TMDL guidance" and also the "Draft Statewide Policy for consistent Identification of Waters that do not meet Water Quality Standards" documents both rely on the exceedance of Water Quality Standards as the criteria for 303(d) listing and subsequent TMDL development.

Neither of the Draft Listing document nor the Draft TMDL guidance documents suggests that establishment of actual Beneficial Use Impacts must occur, or that it must be established that Beneficial Use Impacts are caused by land use or other anthropogenic activity in advance of listing or TMDL development.

Thus, the underlying premise is that existing Water Quality Standards have been properly identified and established in order to prevent Beneficial Use Impacts. In other words, both the Draft Listing Policy and the Draft TMDL guidance assume that if Water Quality Standards are violated, Beneficial Uses must be impacted; this assumption is the weak link in the proposed draft TMDL guidance.

One or both processes (listing and TMDL) should provide for establishment of actual beneficial use impacts, and TMDL development should be undertaken to eliminate said impacts. In the alternative, the appropriateness of the water quality standards being violated should be verified in the context of listing, TMDL development, or both. TMDL development in itself may necessitate standards revision.

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Basing 303d listing and TMDL development (rigorous processes according to the draft guidelines) upon existing water quality standards (apparently often adopted through a substantially less rigorous process) without confirmation that water quality standards correspond to avoidance of Beneficial Use Impacts places too much confidence in existing standards.

While the draft TMDL guidance document offers mechanisms such as use attainability analysis (UAA) or development of site specific objectives (SSO) as appropriate methodologies in lieu of TMDL development in cases where applicable standards are not appropriate, some degree of consideration should be given to existing standards even within the listing and/ or TMDL development process. Otherwise, Regional Boards and Regional Board staff may not recognize those times when UAA or SSO are appropriate options instead of TMDL development.

2. It is interesting to note that Senate Bill 469 required the SWRCB to prepare guidelines to be used by the SWRCB and the RWQCBs for the purpose of listing and delisting waters and for developing and implementing the TMDL program by July 1, 2003, while the draft guidance documents were not released for comment until after that date. The late development of the guidance documents will have an impact upon TMDLs that are in progress; these TMDLs would have otherwise benefited from the development of guidelines in compliance with the timeframes set forth in SB469. It would be helpful for the TMDL guidance document to identify the way that the draft guidelines, once adopted, will influence TMDLs completed between July 1, 2003 and the eventual date of the guideline adoption, and the way that the guidelines, once adopted, will affect TMDLs that are in progress.

3. Section 2 commencing at page 2-1 identifies that the Project Definition should be based on a "preliminary review" which will be "used to develop an initial *hypothesis* of the causative factors" of water quality impairment. Section 2.2 regarding Data Analysis states that a brief analysis will be "performed to support the... *potential* sources of impairment."

Later, on page 2-3, the practitioner is directed to "describe the designated uses being affected."

The order of suggested task completion appears illogical. It would make more sense to first establish and describe designated use impairment, and subsequently to develop hypotheses regarding the causative factors of the impairment.

4. The question "What characteristics of the waterbody and/ or watershed could be affecting the impairment" posed on page 2-3 should include as one example "natural conditions including naturally high sediment production rates."

5. Section 2.3 "Preliminary Project Definition" directs the practitioner to "identify the likely causes of the impairment." According to the document in its current form, actual impairment would not be established via completion of the steps recommended in sections 2.1 (Preliminary Data Compilation) and 2.2 (Data Analysis), so identifying the likely causes of impairment would improperly presuppose that impairment exists. The fact that a water body was 303d listed may have been based only on exceedance of Water Quality Standards, and not through demonstration of Beneficial or designated use impacts.

6. Figure 3-2 illustrates a feedback loop between the "Needs Analysis" and the "Resources" available for project completion. Available resources should not influence the Needs Analysis for project completion. For example, if it were necessary to obtain certain additional data in order to validate a proposed TMDL and associated load allocations, it would be improper to complete the project absent that additional data. In such an instance, the need for additional data would not be affected by resource constraints, and it would be improper to continue the TMDL effort absent the necessary data.

7. Section 3.5 titled "Development of the Project Plan" suggests that "Other sponsors [willing to commit technical staff resources or financial resources to support data gathering or analysis] may include industry, specialty groups, and nonprofit agencies." The document continues "protection of the unbiased scientific and policy decision process of the RWQCB" should remain a priority. Upon what information will the RWQCB rely in order to protect the objectivity of the work product if data gathering or analysis is performed by "other sponsors"? If the RWQCB relies on "other sponsors" for data gathering or analysis, the agency may not have the necessary information or the ability to protect the unbiased scientific and policy decision process.

8. Section 5, "Project Analysis" provides that "The next phase consists of project analyses that will determine the pollution or pollutant management requirements and provide the rationale and justification for the implementation of an optimal set of... actions needed to improve or maintain water quality to support beneficial uses." Because the document does not specifically identify, in the preceding sections, the point at which actual beneficial use impacts are to be established, or the point at which a nexus must be demonstrated between such impacts and their causal factors, it appears premature to provide justification for actions to support beneficial uses at this juncture of project development.

9. Section 5 "Technical Analysis" contained at page 5-1 states "The technical analysis of watershed loading and waterbody response (linkage analysis) results in the calculation of the allowable loading to meet water quality standards (e.g. the loading capacity for TMDLs) and supports the evaluation of multiple management and pollutant reduction scenarios to achieve water quality standards." For the reasons outlined above in item #1, the TMDL loading capacity should be determined in order to prevent Beneficial Use Impacts, and not simply to meet existing Water Quality Standards, which may not be properly related to Beneficial Uses.

10. Section 5.2 regarding "Data Analysis" states at page 5-11 that "The purpose of the listing confirmation and impairment analysis is to reevaluate the water quality conditions leading to the listing of the impaired water and to confirm that the impairment is still supported by any data collected after the listing occurred." The Listing Confirmation and Impairment Analysis must go further, because the draft listing criteria does not require establishment of actual Beneficial Use Impacts. If the TMDL problem statement is considered a hypothesis, the listing confirmation must include establishment of ACTUAL (not potential) Beneficial Use Impacts, not just confirmation that water quality conditions remain unchanged based on the data acquired since listing.

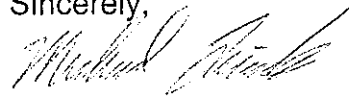
11. Section 6 regarding "Regulatory Actions" states at page 6-10 that "Regardless of the implementing program, the RWQCB has the responsibility to determine the loading capacity (LC) (the TMDL) for the waterbody and the load reductions necessary... to attain standards." The LC, TMDL, and load reductions necessary should be keyed to prevent or to correct actual Beneficial Use Impacts, irrespective of standards attainment, for the reasons outlined in item #1 above.

12. Section 7 titled "Development of an Implementation Plan" states "The information presented in Chapters 1 through 6 focuses on the technical and regulatory options analysts should consider when identifying how to effectively restore and support beneficial uses." In fact the information presented in Chapters 1 through 6 focuses on options analysts should consider when identifying how to ensure Water Quality Standards attainment, not restoration and support of Beneficial Uses. This distinction between a focus upon Beneficial Use analysis and Water Quality Standards attainment is evidenced by Figure 7-1 on the same page (the Adaptive Implementation Process), which is also predicated upon "progress demonstrated in meeting WQS [Water Quality Standards]" rather than upon restoring and maintaining Beneficial Uses.

13. Section 7.2 Components of Implementation Plans states on page 7-3 that "An implementation plan in California should include the following items: Description of the actions necessary to achieve water quality standards." For the reasons outlined in item #1 above, actions should be oriented toward restoring or preserving Beneficial Uses, not existing Water Quality Standards attainment.

Mr. Rasmussen, thank you for considering these comments delivered on behalf of Squaw Valley Ski Corporation. Please contact me if I may provide further explanation regarding any of the above matters.

Sincerely,



Mike Livak
Plans and Permits

cc: Nancy R. Wendt, President Squaw Valley Ski Corporation
Craig J. Wilson, SWRCB Listing Unit