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January 27, 2004

Chairman Arthur Baggett, Jr.
Members of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments on the Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List and Draft Functional Equivalent Document

Dear Chairman Baggett and Members of the Board:

The City of Santa Rosa ("City") appreciates the opportunity to comment on the State Water Resources Control Board's (State Board) Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Draft Listing Policy) and Functional Equivalent Document (FED).

The City supports the State Board's efforts to establish a statewide approach to assessing California's Surface Waters. Moreover, we applaud your staff's efforts in seeking broad stakeholder input into development of the current draft of the Listing Policy. Your staff has gone to extraordinary lengths to work with all interested parties in developing, for the most part, a very objective and scientifically-sound Listing Policy. However, the City has a few concerns about the current draft which need to be addressed to make the Policy reasonable, fair and workable.

Listing Options: The Draft Listing Policy proposes a single list - - the 303(d) list - - that includes three categories. We encourage the State Board to adopt a final policy that contains a separate list for waterbodies where impairment may or may not exist, but insufficient credible or objective data exist to warrant a listing. As stated in the FED:

"Water bodies placed on the preliminary (monitoring or planning) list would be the focus of additional monitoring and assessment of new data and information. This additional assessment would lead to a better understanding of the impacts to beneficial uses and water quality standards exceedances. If, as a result of the more complete assessment, there is sufficient evidence to indicate that water quality standards are indeed exceeded, the water segment on the preliminary list would be moved to the section 303(d) list." (FED at p. 36; emphasis added.)

This list would be similar to the State's existing monitoring list. It also could function similarly to the Planning List proposed in the July 1, 2003 Draft Listing Policy. A monitoring or planning list provides stakeholders the assurance that attention will be focused on waters suspected to be impaired without imposing the consequences of developing a TMDL on stakeholders and the State and Regional Boards. The City agrees that progress should be shown

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in collecting the additional data to make a listing decision for segments on the preliminary list, however we do not support automatically listing a segment if a full evaluation cannot be made by the next listing cycle. Listing should be based on sound science. The policy should allow appropriate timeframes to collect adequate temporally and spatially representative data.

The City recommends the State Board adopt Alternative 2 with appropriate time schedule requirements as described above in addition to maintaining the categories of the 303(d) described in Alternative 5 (impaired segments, TMDLs completed and enforceable programs).

Review Criteria for Existing 303(d) Listings: The City also recommends that the State Board revise the language in Section 6.1 to allow review of any water segment listed on the 2002 Section 303(d) list for conformance with the adopted listing policy when an interested party requests the review and states why, under the adopted policy, the listing decision would change. The Draft Listing Policy currently limits the evaluation of existing listings to water segments with *new* data or information. Although the requirement for new data or information may be reasonable to reassess listings decisions made based upon the final adopted statewide listing policy, the City does not believe the requirement for *new* data or information is appropriate in reassessing the 2002 Section 303(d) list.

TMDLs take significant time and resources to develop. Requiring that TMDLs be developed for water segments whose listings cannot satisfy the criteria in the draft policy burdens both State and Regional Board staff as well as stakeholders. According to the FED and Draft Listing Policy, the existing list (*i.e.* the 2002 TMDL list) will serve as a basis for the next list. Segments from the 1998 TMDL List "have been carried forward to subsequent lists as the State Board has decided to (use) previous lists as the basis for the development of the biennial section 303(d) list. The 2002 section 303(d) list was no exception" (FED at p. 189.) However, many of the listing decisions on the current 303(d) list were made with limited or questionable data, which would not meet the criteria such as statistical exceedance frequency requirements, data quantity or quality requirements, etc. set forth in the Draft Listing Policy. Requiring *new* information or data for these cases adds an onerous requirement to the reevaluation process for existing listings that are not scientifically supportable.

The draft Functional Equivalent Document only considered two options: (1) a complete reevaluation of the existing list for conformance with listing policy; and (2) an evaluation only when *new* data are available. The City believes that is both reasonable and fair to examine and adopt a third option that would allow review of existing segments upon submittal of a request showing why the listing decision was improper without requiring the data or information to be new. This would address some of the concerns stated in the evaluation of other two options in the FED.

First, it would not require staff to review the entire existing 303(d) list at this time, but would focus efforts on those segments where an interested party requests the review and states how, under the adopted policy, the listing decision would change. Second, it would allow


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reevaluation of existing listings that do not warrant the development of costly and time consuming TMDLs for segments that do not meet the listing criteria. This would save both staff time and money to focus on segments where a TMDL is really warranted. Third, an interested party need not go through an exercise to obtain *new* data or information when the existing information does not support a listing decision, such as the case of the Laguna de Santa Rosa where significant existing data would not justify a phosphorous listing under the Draft Listing Policy.

The City believes that this third approach is both fair and reasonable and requests the State Board include and adopt this option in the FED and modify the language in Section 6.1 to allow an interested party to request review of an existing listing by stating how the newly adopted policy would lead to a different listing decision without having to provide new data or information.

Thank you for this opportunity to provide these comments. Should you wish any further information about either of these issues, please contact Dave Smith at (925) 284-6490.

Sincerely,



Greg Scoles
Deputy City Manager

cc: Members, Santa Rosa City Council
Members, Santa Rosa Board of Public Utilities
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